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**VIOLENCE AGAINST WOMEN IN RURAL SOUTHERN CAPE:  
Exploring Access to Justice Within a  
Feminist Jurisprudence Framework**

by

Lillian M. Artz

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requirement of the degree of  
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Supervisor: Elrena van der Spuy

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## **ABSTRACT**

Women in rural and severely underprivileged areas remain one of the most vulnerable groups in South Africa to violence in their communities and in their homes. To date, information on rural women, their experiences with domestic violence and social development is both fragmented and inconsistent. The issue of access to justice for rural women presented in this thesis is based on the premise that violence against women keeps women in conditions of poverty, and fear of poverty keeps women trapped in violent situations. It is also based on feminist theory that argues that historical, legal, cultural and political factors contribute to domestic violence and even with emerging policy and legislation promoting women's safety and freedom from violence, the criminal justice system has not shed its predilection of institutionalised sexism. It will be argued that systemic discrimination against rural women has led to the inadequate implementation of legislation and policy relating to women's fundamental rights to safety and freedom from violence.

This research, therefore, takes the challenge of constructing an appropriate framework for an integrated analysis of law, gender, and social development. It does so through a feminist jurisprudence framework. The central aims of the research are to: (i) examine the nature or profile of domestic violence in rural areas; (ii) identify the obstacles which prevent women from accessing justice in the face of domestic violence; (iii) identify support mechanisms within rural communities for victims of domestic violence; (iv) explore current policing, justice and health care responses to rural women who experience domestic violence; (v) examine the nature of secondary victimisation of these women by their communities and the relevant criminal justice departments; (vi) examine the nature of current policy and legislation in relation to violence against women and establish the extent to which they have impact on rural women; (vii) to identify gaps in service delivery in rural areas and (viii) to highlight the unique barriers to justice that rural women face.

The issues of access to justice for rural women is introduced in this thesis through a study undertaken in rural areas in the Southern Cape. Access was facilitated to 15 different communities in the Southern Cape and 168 women in total were interviewed on issues of violence against women and access to justice. Another 28 women were

interviewed on issues relating to maintenance. The primary data collection technique of this research in the Southern Cape took the form of 19 focus-group interviews through a cross section of community structures. These interviews took the form of 'workshops', in which an active exchange of information between the researcher and the researched took place. The focus-group interviews were held in communities in Knysna, Rheenandal, Kurland Dorp, Plettenberg Bay, Sedgefield, Mossel Bay and George. The results indicate that access to justice for rural women is limited for the following reasons: (i) women in rural areas lack nearby services and the cost of transportation decreases a woman's ability to leave violent situations or even seek information or assistance to deal with the problem; (ii) women in small rural communities articulate fears of community gossip or alienation from their communities if they seek assistance; (iii) women in rural areas have little option but to remain in the home with the offender because there are no accessible safe houses or shelters; (iv) women remain powerless over alcoholism within their communities; (v) rural women remain in abusive relationships because they have little access to economic resources; (vi) limited access to state and private health, welfare and justice services results in systemic discrimination by the state in almost every area of rural women's lives; (vii) distances to basic public services are great and child care is a problem if travel is necessary; (viii) very few development services exist in rural communities; (ix) there are no or limited taxi and bus services and if they do exist they are expensive; and (x) the combined effects of poverty and violence for rural women in the Southern Cape creates formidable barriers to women's equality, mental and physical health, and their full participation in civil society. In light of these results current South African policy and legislation relating to domestic violence and crime prevention are discussed. The thesis concludes that current law contains systemic inequalities, that state legal structures are inherently discriminatory against women and, more specifically, do not meet the needs of rural women.

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*If a person is murdered because of his or her politics, the world justifiably responds with outrage. But if a person is beaten or allowed to die because she is female, the world dismisses it as 'cultural tradition'.*

Member, Worldwatch Institute 1990

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**Chapter 1  
INTRODUCTION**

**1. INTRODUCTION**

The issue of violence, especially that of violence against women, has received increasing attention in South Africa over the past several years. Since the elections, several pieces of legislation and policy as well as a national victim empowerment programme have been developed to aid women who have been victims of gender-based violence. These efforts, whilst commendable, are not reaching one of the most vulnerable groups in South African society, namely, rural women. This research will take the challenge of constructing an appropriate and workable framework for an integrated analysis of law, gender, and social development, on the basis that gender violence and oppression is embedded in social institutions, including within basic legal principles, and within civil society. In light of this reality, this research was developed in order to:

1. Examine the nature or profile of domestic violence in rural areas.
2. Identify the obstacles which prevent women from accessing justice in the face of domestic violence.
3. Identify support mechanisms within rural communities for victims of domestic violence.
4. Explore current policing, justice and health care responses to rural women who experience domestic violence.
5. Examine the nature of secondary victimisation of these women by the relevant criminal justice departments and their communities.

6. Examine the nature of current policy and legislation in relation to violence against women and establish the extent to which they have impact on rural women.

This chapter sets out to contextualise the extent of violence against women both internationally and locally and to introduce a number of criminological theories on domestic violence. The purpose of introducing the extent of violence against women and criminological theory at the outset of this research is to lay the groundwork for my engagement with the issue of access to justice for rural women.

## **2. RATIONALE FOR THE PROJECT**

### **2.1 The Extent of Violence Against Women Internationally**

Violence against women is an increasing problem internationally, research revealing intolerably high rates of violence against women. World-wide, even at the end of the 20th century, “staggering numbers of women are still slaves, spoils of war, sexually mutilated and, most of all, victims of abuse in its many brutal forms” (Wright, 1995). Heyzer (1995) also states that “women are the worst victims of war and hence the highest stakeholders of peace ... who have to fight to protect even their own bodies from abuse ... [and thus] are the ones who understand the full potential of what destruction means” (p. 26). The United Nations has referred to these abuses as a global epidemic that knows no geographical, cultural or linguistic boundaries and it affects all women without regard to their level of income. Yet even with alarming records of gross violations of women’s humanity all over the world, women’s rights are not commonly classified as human rights (Bunch, 1991).

Wright (1995) in her article of the 1995 United Nations Women's Conference in Beijing, reports devastating statistics of this international human rights abuse<sup>1</sup>:

In Peru, 70% of all reported crime involves women beaten by their partners... In Chile, Papua New Guinea, Sri Lanka, and Tanzania, at least 60% of women report being beaten or abused by a male family member or intimate. At least one of three women is beaten or abused in Malaysia, Mexico, South Korea and Zambia, according to *Violence Against Women*, a World Bank report.

There is more, however. In India eight out of ten wives are victims of violence, either domestic, battering dowry-related abuse and murder and in other countries, that are both developed and developing, like Bangladesh, Canada, Kenya and Thailand, more than 50% of female homicides are committed by family members (Bunch, 1991). Whilst the cultures, tradition, politics, dominant religion and socio-logical development of these countries varies, one can safely conclude that the one risk factor of the global epidemic of domestic violence is that of being female. Wright (1995) concludes from the *The Global Report on Women's Human Rights* that "domestic violence is a leading cause of female injury in almost every country in the world and is typically ignored by the state, or only erratically punished" (1995, p.9).

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<sup>1</sup> Wright, R. (1995). Beijing '95: Strike the women... *The Mail and Guardian*, September.

## 2.2 Violence Against Women in South Africa

Though internationally there has been a dramatic increase in the scope and magnitude of clinical and investigative interest in domestic violence (Hasselt et al., 1988), much of this research and theory is from Western countries whose socio-political and historical experiences are distinctly different from those of women in second and third world countries. Domestic violence is still the most pervasive, yet least recognised, human rights abuse in South Africa. Every day, women are murdered, physically and sexually assaulted, threatened, and humiliated by their partners, within their own homes. The social, cultural and political structures and institutions, in countries like South Africa, continue to openly support gender inequality, despite political rhetoric to the contrary. This institutional mind-set is rooted strongly in the history and traditions of South African society, but its persistence is unjustifiable in this democratic society. As Martin (1976) suggests, "the economic and social structure of [our] present society depend upon the degradation, subjugation, and exploitation of women" (In Bersani & Chen, 1988, p.73). The World Bank report, *Violence Against Women* (see Wright, 1995, p.9), extends this contention, maintaining that

...each society has mechanisms that legitimise, obscure, deny - and therefore perpetuate - violence. Even where a particular act of violence might be deplored, powerful social institutions - the state, families, normative systems that regulate gender relations - collude in maintaining the status quo.

This statement is particularly meaningful in the South African context where violence against women is of great concern as resources and support systems to help and

protect victims of domestic violence are few and inadequately funded. More generally, women in these societies are victims of deeply patriarchal norms that teach men to view women as possessions, where tradition stereotypes and represses women and where male domination is encouraged at an early age. Cultural and traditional beliefs have also been instrumental in creating obstacles for women in development and in placing women in more subordinate positions within rural communities, and in civil society in general (Sheikh Hashim, 1992). Customary laws are established practices, which while receiving social acceptance, also negatively affect women's legal rights (Ibid.). The result is a society which fosters laws and practices that both implicitly and explicitly condone violence against women, by either dismissing the seriousness of domestic violence in both political and public domains or only reluctantly intervening in 'domestic disputes'.

how in the above context have

As Margolin et al. (1988) suggest, patriarchal society also promotes economic and legal conditions that maintain spousal assault. For example, women have been kept economically dependent through an unequal division of labour and thus have difficulty gathering the financial resources necessary to leave their abusive partners. Also a product of being confined to primarily 'domestic' responsibilities, and denied legitimate access to educational and vocational pursuits, many women in South Africa have been kept relatively isolated. With isolation comes dependency, where women become paradoxically dependent on their abusive partners (Russell, 1992) and are further removed from any resources which may empower them to leave abusive relationships.

The frequency and extent of domestic violence in South Africa, however, is still based on a series of estimates because of a lack of reliable statistics. Although there have been various attempts to determine the prevalence of domestic violence in this country, the statistics that are available reflect only a small portion of domestic violence cases. Underreporting by abused women themselves, because of the 'sensitive' and volatile nature of domestic violence, also contributes to unreliable estimates of domestic violence. However, it has been estimated that 1 out of every 6 women in South Africa are regularly beaten by their partners (Women's Health Project, 1993; Rape Crisis, 1993). The research that does exist emphasises that domestic violence is a common phenomenon; suggests that most cases of domestic violence are not reported to the police; and furthermore, even when domestic violence is detected by the criminal justice system, the perpetrator frequently goes unpunished. Of course, South African research on domestic violence is still in its infancy, but the research that does exist has illuminated the devastating effects of this widespread problem.

### **2.3 The Lethality of Domestic Violence**

This study, along with many others on violence against women, has found that the results of domestic violence are severe. The trauma of abuse is life-long and affects a woman and her children not only physically, but emotionally and psychologically (Dutton, Hart, Humeston, Green, & McGregor, 1990). If brutal and persistent enough, it can lead to a woman's death -- what may start out as apparently minor acts can escalate both in intensity and frequency (United Nations, 1993). Vetten's (1996) research on femicide in South Africa is an example of the lethality and prevalence of

violence against women. Vetten undertook an examination of all inquest dockets in the Johannesburg magisterial district in 1994 - including an examination of the relationship between the perpetrator and the victim - and identified 119 separate incidents of intimate femicide during 1993 and 1994. Based on these figures she calculated that a woman was killed by her partner every six days during this two year period. Vetten cautioned, however, that this figure must be treated as an underestimate. She also found that 'provocation' was a recurrent mitigating factor identified by police officials, "among others", for the deaths of the women in their sample. Vetten's research is an excellent example for why we must demand that criminal justice agents abandon their patriarchal ideologies and ill-conceived notions of domestic violence and reconsider its seriousness and prevalence in our communities.

## **2.4 Laws and Policies and Criminal Justice Agents**

Laws and policies that deal specifically with domestic violence are often inadequate in helping women escape the cycle of violence in which they find themselves. Many of the women who are victims of gender-based violence have nowhere to go and live or continue to live, in fear and despair because of violence inflicted on them by their partners and men in their communities. They find little support from agents within the criminal justice system, even to the extent of being deprived of legal protections completely. Police, in particular, continue to regard domestic violence as a 'domestic problem' in these areas and obviously consider it peripheral to the greater domain of police work. Communities themselves often deny the problem exists and police and

justice officials are often poorly trained with respect to the complex nature of violence against women.

It appears that the patriarchal ideology of police, welfare and justice still exists and exacerbates the problem for victims of domestic violence in that the relevant agencies actively support non-intervention into the 'private' sphere and insist that wife battering is a civil rather than a criminal affair (Hill, 1987). Even with increasing pressure from advocates, professionals and intellectuals, domestic violence is still given very little recognition in the existing criminal justice system in South Africa, leaving battered women who seek legal protection from abuse with few alternatives. Whether this lack of effective response should be attributed to the callousness of the system, the complexities of domestic violence issues, or the strength of society's need to deny the painful realities of the violent nature of domestic violence is debatable, but it is certain that the historical treatment of women, based on centuries of social conditioning and economic domination, has had a dramatic effect on how women are treated by our present day laws and criminal justice institutions (Micklow, 1988). Furthermore, even the limited attention domestic violence has received in South Africa has been painfully slow to develop, and virtually abandoned in the political arena.

### **3. MOTIVATION FOR THE RESEARCH**

The need for in-depth and community needs driven research on violence against women, especially on rural women, in South Africa was critical for several reasons:

1. There is very little South African based research on violence against women which can inform the interventions which are necessary at policy, procedural and legislative levels. Much of the research that those involved in this field (be they government structures, NGO's or academic institutions) have to rely on in order to advocate for effective change, to a system which does not allocate the requisite resources to women, is that which has been done in other countries. Research tends to be drawn mainly from Western jurisdictions which, although useful in some respects, lack the insight and knowledge of the distinctive socio-political and economic circumstances which are characteristic of this country. Both research and intervention models developed by international research are often not applicable in this country, thereby necessitating South African-based research.
  
2. Both the research which has been done internationally, and that which is done in South Africa are seldom made accessible to those who are either in a position to effect change (policy and law makers) or those who are involved in direct service delivery (with those women who are in need of the interventions and/or programmes that are recommended in research). The reasons for this are numerous, ranging from the initial motivations for the research to the fact that many research institutions are removed from those who could benefit from the research.
  
3. There is often no commitment on the part of researchers to feed research findings and recommendations back into the communities where the research was done or to develop recommendations and models for appropriate and sustainable service delivery. Furthermore, the link between research and advocacy is essential and is

- most effectively carried out by the researcher together with target groups (be they a government structure, NGO or a community) with whom the research was done.
4. Government and NGO structures are increasingly turning to research to inform policy and direct service delivery programmes. Once again, due to the lack of South African based research, organisations are having to rely on international research to design and implement programmes, which is a far from an ideal situation.
  5. Women in rural, remote and severely underprivileged areas in particular remain the most vulnerable groups to violence in their communities and in their homes. Very little information exists on rural women which is largely indicative of the low priority given to rural women's development. It is largely for this reason that this project was developed: to provide research and recommendations to the state, NGO's and the broader community on access to the justice to which rural women are entitled.
  6. Finally, there are presently little or no structures, legislation and policy that facilitate change of women's status, thereby creating blockages in access to justice for women, particularly for rural women. The legislation, policies and structures that do exist tend to fail in their operation and effectiveness due to inappropriate or lack of administration of justice and result in secondary victimisation of women who are victims of gender-based violence.

#### **4. AIMS OF RESEARCH**

Previous South African research has examined the experiences of victims of gender-based violence, but little has been done with regard to rural women. This research aimed to identify the needs of women in rural areas who face both social and economic hardships which effect their ability to access justice in the face of violence. It also set out to examine the nature or profile of domestic violence in these areas and the access women have to support mechanisms within their communities. The project was established to fill a long standing gap in research on violence against women in the rural areas. It explores current policing and justice responses to this continuously marginalised population group, as well as examines the nature of secondary victimisation of these women by the relevant justice departments and their communities.

This research will take the challenge of constructing an appropriate and workable framework for an integrated analysis of law, gender, and social development. It does this through a feminist jurisprudence framework and grounds itself on both feminist epistemological and methodological terms.

On the basis of the data collected, it is hoped that criteria will emerge to develop considerations for policy for the treatment of victims of domestic violence in the most impoverished circumstances. This research aims also to identify gaps or issues for service delivery in rural areas as well as to highlight to the various justice sectors the unique barriers to justice that rural women face. It will also endeavour to address the 'cost' implications for criminal justice and health services as well as rural women

themselves in an effort to highlight the staggering impact that violence against women has on the state and for civil society. Alternatives and recommendations for dealing with family violence will be put forward with consideration to present transformations within the current administration of justice and the development of appropriate and accessible victim services.

#### **4.1 Why the Focus on Rural Women?**

While there have been some changes in South Africa's political climate with respect to women's rights, many communities are still bereft of the new South African social vision. Even with provisions entrenched in the newly adopted Constitution (1996), the ratification of a United Nations Convention of special concern to women (1993), the development of the Prevention of Family Violence Act (1994) and some progress made in the development of a South African Gender Commission, we have a formidable task in ensuring that these policies touch every woman in the country. Women in rural, remote and severely underprivileged areas remain one of the most vulnerable groups to violence in their communities and their homes.

To date, information on rural women, violence and social development is both fragmented and inconsistent. There is only very limited information regarding the socio-economic profile of rural women in the Western Cape, for instance. One of the most informative profiles was developed by the Project for Statistics on Living Standards and Development [SALDRU], in their 1994 national survey. SALDRU found that:

- 53% of South Africa's population live in rural areas
- 75% of the poor reside in rural areas
- 80% of the 'ultra poor' are rural inhabitants
- Females account for 49.9% of the population in the Western Cape.
- Female headed households in rural area are a high poverty risk social group.

Moreover, rural women still remain grossly underrepresented in local government and in social and business structures which form policy in our country, even though more than 50% of rural households are headed by women (Land and Agricultural Policy Centre [LAPC], 1996). The LAPC also estimate that women in rural areas contribute to 80% of unpaid labour - mainly as unpaid family labour.

Violence against women, however, has a direct, negative, economic impact on women and development. Violence against women, in general, keeps women in conditions of poverty, and fear of poverty, keeps women trapped in violent situations (Health Canada, 1997). Women living in rural areas face additional barriers in dealing with violence against women in their lives. While these barriers will be discussed more at length further in this document, just a few of these obstacles include:

- the very nature of the rural communities in that they are physically isolated from basic state, consumer and NGO services
- distances to public services are large and childcare is a problem if travel is necessary
- there are relatively few development services even within their communities (including water, sanitation, electricity)
- there are no or limited taxi or bus services

- telecommunications is poor and expensive
- response times of the police and ambulatory services are slow
- there are very few support services for abused women, nor is there any safe accommodation for women if they must leave their homes
- there is a dire lack of resources to create affordable and sustainable treatment or support services
- high rates of unemployment and underemployment means that rural women are in a weak position financially to purchase necessities, pay for travel or accommodation or pay for the costs of separation or relocation

#### **4.2 Why Domestic Violence?**

Domestic violence is a topic that has been widely researched by historians, sociologists, psychologists, lawyers and advocates. The 'science' of domestic violence has been published in a variety of mediums, ranging from 'popular' magazine articles to academic journals that provide information about the frequency, severity and scope of domestic violence. It has also just recently captured the attention of politicians and policy makers, globally. The scientific procedures and theoretical speculation in researching the topic has taken many forms, with much of the same result: domestic violence is the rule rather than the exception; domestic violence is somehow 'condoned' within civil society and it has serious implications for the health and economic well-being of women, their children and civil society. The question, therefore, that begs to be asked is "why another piece of research on domestic violence?".

The answer is multi-faceted. The most obvious reason to research violence against women in South Africa is the dearth of empirical reference to the experiences of women in developing countries within the growing body of domestic violence research internationally. Domestic violence research is predominately 'Western', with conclusions, recommendations and theories that are only useful within developed, welfare states. The literature is almost unidimensional, constructing a universal 'victim' in its wake. Harris (1990) refers to this as "gender essentialism" whereby a notion of a unitary, "essential" women's experience can be isolated and described independently of race, class, sexual orientation and other realities of experience. Domestic violence is defined by behaviours and not societal variables such as race, culture, history, political spaces, access to resources and socio-economic positions of its victims. Moreover, the theories are largely cognitive-behavioural or social learning theories, although there has been a small shift towards power-based theories and political realities of violence against women. Western literature is also plagued with assumptions about the family unit, the 'traditional roles' of women and access to justice, health and social services. Whilst this literature raises public consciousness in a variety of arenas, it severely lacks the concept of 'women and development' within the prevailing discourse.

### 4.3 Why Prioritise Violence Against Women in Rural Communities?

Violence against women does not only affect the lives of women, but their children and their part in social development and the upliftment of communities in general.

The National Network on Violence Against Women (1996) states that:

Violence against women cannot be divorced from women's poverty, lack of economic empowerment, inadequate access to education and training, women being denied their political empowerment and violation of their legal human rights.

The violent and victimising behaviour that we denounce as conflicting with fundamental human rights is often "the bolder, exaggerated expression of values and beliefs rooted and widespread in the larger culture" (Viano, 1992). It is for this reason that we must begin to focus on social and cultural attitudes that perpetuate violence against women. Most government policy is informed by research or other forms of civic input profiling existing conditions in South African communities. While rural development projects and services exist across the country, few have aggregated enough 'hard data' to effect change for the plight of women in impoverished communities. Data in relation to the nature and extent of violence against women in rural areas and the responses of justice systems they have access to in fulfilling the needs of women subjected to violence is virtually non-existent.

It is for this reason that I undertook a comprehensive examination of the experiences of women within their communities and in relation to access to justice for those women. This included listening to women who face the obstacles that the present

criminal justice process lays before them and to address the fact that women in rural areas tend not to have immediate access to the criminal justice system as a recourse to the abuses they face.

The role of women in our communities, their ability to access justice and women's access to political decision making in rural communities can provide an important analysis of the ways in which the country allocates its resources. Research into the problems women face and the impact of these problems on the social and economic development of women must be addressed before we begin to transform the legal situation of women. Solid Africa (1996) reports that in United Nations organisations it is estimated that 3.5% of projects benefit women, representing 0.2% of budget allocations, and less than 1% of F.A.O. (United Nations Food and Agriculture Organisation) projects actually contain strategies to benefit women. The scenario does not look much better for South Africa. However, the development of appropriate and accessible victim services is compatible with present transformations taking place in South Africa and can improve the quality of services rendered to women in our communities.

Providing women with meaningful and realistic choices must be a priority for gender violence research. Improving community and local level responses can minimise the need for less accessible criminal justice services. In addition, intervention can take place at the local level through better understanding of and access to existing policing, social welfare and justice services. Reform at the legislative and criminal justice levels has only recently begun to take place, requiring more immediate solutions as part of the larger strategy for transformation in victim services. Women in rural

communities must be encouraged to articulate their needs, concerns and demands for change, so that demands can then start to inform and shape policies and services for women in every region of this country.

## **5. CONCLUSION**

This study is unique in its use of a critical feminist approach for understanding violence against women within, and not dislocated from, mainstream criminological theory and research. It has effectively thrown out traditional assumptions about (i) what is crime and criminality (in relation to gender-based violence); (ii) what is scientific and valid knowledge about a social phenomenon; (iii) the socio-economic and political positions of women; and (iv) the welfare model of legal and social reform.

This study focuses on rural women, who have little means of access to basic state services. It takes into account the role of violence in women's development within civil society and attempts to bridge the gaps between violence against women, national gender-policy and meaningful change in rural women's lives. It effectively uses the experiences of rural women who have little access to state services, live in conditions of extreme poverty and who have been historically disenfranchised in South African society, as a baseline for analysing the scope and impact of domestic violence. It sees violence against women not just as a 'social problem' that requires legal remedy, but as a monumental obstacle to the development of women within this new democratic state. The research is also based on the premise that national laws, policies and initiatives cannot be successful without considering those in the position

of least access. It refuses to see the position of rural women as the exception in South African society, to be treated as scientific 'outliers' in the analysis of domestic violence in this country.

## Chapter 2 CONTEXT AND THEORY

### 1. PERSPECTIVES ON DOMESTIC VIOLENCE IN CRIMINOLOGICAL THEORY

#### 1.1 Introduction

There is a wide range of competing and complementary perspectives and theories on domestic violence that have been developed in a number of fields in the social sciences, including sociology, anthropology, psychology, criminology, health, social work and law. Within each domain, the etiology and points of emphasis in relation to domestic violence differ, resulting in a rather comprehensive list of theories. The dilemma in attempting to summarise these theories, however, is not only because they are domain-specific, but empirical data in support of these theories is rather insubstantial. Moreover, as Margolin et. al (1988) point out, empirical examination that measures one theory up against another is almost non-existent, making it difficult to compare the utility of these theories in practice. This is not to say that all forms of domestic violence are the same and require similar responses. Numerous theories can exist, because we may be trying to understand several different patterns and contexts of domestic violence. One would hope, however, that within any specific discipline, empirical work (whatever the authors chosen methodology) can assist in bridging some of the gaps between competing discourses.

Like the etiology of female crime and criminality, gender-based crime has long been a neglected subject area in mainstream criminology. Often reduced to footnotes of

greater works on men - that purport to be works on criminology in general (Klein, 1976) - the issue of crimes against women remains confined to a small 'feminist' domain within criminology and as a consequence, the tradition of 'ungendered' criminological paradigms continues. Even with the emergence of powerful feminist critiques of how crime and deviance have been constructed within criminological theory, (see Chesney-Lind, 1980; Gelsthorpe, 1997; Heidensohn, 1985; Klein 1976; Leonard, 1982; Millman, 1982; Smart, 1976 & 1977) criminology struggles to escape the crisis of 'fitting women into' dominant criminological discourses. This is mostly strongly evidenced by the dearth of literature on women as criminals and women as victims in relation to the volumes of criminological theory and debate written on men, that again purport to be greater works on criminology, in general, but are effectively special theories of male deviance. Smart (1977) suggests that crimes against women, in particular, have been ignored in criminology simply because the victims are women (in Heidensohn, 1985).

According to Kersten (1996) the criminological mainstream is still reluctant to reflect on obvious traits of the gendered reality of crime, victimisation and crime control. The gender component of criminology is reduced to sex-ratio differences in criminality and victimisation reducing 'gender' to mere essentialist notions or categories of male and female. Kersten (1996) refers to this as the "add another variable and stir" phenomenon (p.382), though this ghettoisation of gender is not unique to criminology. Instead of mainstreaming gender issues into criminology, the study of violence against women has almost been 'thrown out' of prevailing criminological discourses, into a new, separate enterprise referred to as victimology -

as though studying the victim of gender-based crime is more appropriately located outside the real study of crime and deviance.

Even with the increasing body of literature and legal work on women, crime and victimisation, feminist discourse and methodology continues to confront a serious challenge of legitimation in criminology. Some feminist criminology attempts to legitimise itself by appealing to positivist and timeless research methods, ignoring the politics of feminism itself. While others struggle to legitimise their work by relying heavily on the 'feminist deconstruction' of law, disengaging themselves with the real power-relations that exist in the field. They claim legitimacy by applying law through a 'feminist lens' but detach themselves from feminist epistemology and consciousness of shifting the boundaries of criminal law and criminality. Changes in legislative content become the focus of critical debate, instead of the highly significant political and social dynamics which shape criminal law.

Whilst there is a need to generate a body of research and analysis that shapes feminist principles into criminological discourse Gelsthorpe (1997) doubts whether a single feminist criminology can exist, because it could never do justice to the differences and tensions that exist in the field. She suggests that we should refer to 'feminist perspectives in criminology'. With some reservation she adds that feminists have generally engaged in two main projects in relation to criminology:

- (i) a substantive and political project which has focused on the absence of a gender dimension in mainstream criminological theory, and on the need for equality and fairness in notions of justice and in the delivery of justice; or

(ii) an epistemological and methodological project which has focused on the need to recognise forms of knowledge based on experience, and the need to use research methods sensitive to the task of eliciting an understanding of *women's experiences*<sup>2</sup> (Gelsthorpe, 1997, p.511).

It is my contention that the two 'projects' cannot divorce themselves from one another. The basis of mainstreaming a gender perspective into criminology as well as the notions of equality and fairness, are all grounded in one's epistemological perspective. For instance, the notion of equality must stem from some political notion of power-based inequalities within criminal justice. At all levels of criminological theory, debate and construction, feminist criminologists ought to be challenging the ontological, the epistemological and the political assumptions of mainstream criminology, as well as the institutional and systemic arrangements and structures that sustain patriarchy. Though over 20 years ago, Smart's (1976) comment on the analysis of gender in criminology still applies: "criminology and the sociology of deviance must become more than the study of men and crime if it is to play any significant part in the development of our understanding of crime, law and the criminal process and play any role in the transformation of existing social practices" (p.185).

'Experiences' are a central component of feminist criminology and epistemological reflection, not just a trajectory of criminological work. Feminist criminology can turn questions about crime and criminology on its head, bringing alternative questions (or reconstruction) to criminology. For example, in the case of domestic violence,

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<sup>2</sup> Author's emphasis.

conventional criminology might ask “why doesn’t she leave?” (somehow apportioning blame on an abused woman), whilst a feminist criminologist might contemplate the factors which inhibit a woman’s opportunity to leave her violent partner (Gelsthorpe, 1997). In the restructuring of criminological discourses, however, feminist criminology must give equal weight to power and politics, contexts and socio-historical spaces, epistemological standpoints and social change.

With such introductory comments in mind the discussion now turns to a consideration of theories of domestic violence - situated both within mainstream and feminist criminology. The following section will highlight a few of the most prevalent criminological theories on domestic violence and will provide a brief examination of each. Following this examination of sociological theories adopted in criminology on domestic violence, the discussion will introduce emerging feminist perspectives on domestic violence. It is against this backdrop that new insights will emerge from the findings in relation to the systemic discrimination of victims and survivors of domestic violence.

## **1.2 The Family Systems Theory**

The family systems theory on domestic violence understands domestic violence to be a phenomenon in which both partners contribute to the domestic violence dynamic equally. The term system may apply “both to a complex of interdependencies between parts, components, and processes that involve discernible regularities of relationship, and to a similar type of interdependency between such a complex and its surrounding environment” (Parsons, 1968 in Bersani & Chen, 1988, p. 79). Bersani

and Chen (1988) explain that the systems theory on domestic violence involves the interchange between the environment and the family and involve variables such as social structure, stress and frustration and 'consequent variables' such as violence. The authors cite the work of Straus (1973) who proposes that "feedback, which is essential for the operation of the family as a system, generates stability or conflicts, such as violence" (p. 80). In other words 'positive feedback' from violent acts intensifies the violence, while 'negative feedback' maintains the violence within tolerable limits. The social learning theory draws from the systems theory to some extent, in that it maintains that an individual's behaviour is determined by his or her social environment. The social learning theory adopts the notion that there are specific mechanisms whereby family members influence one another to perform violent behaviours (i.e. modelling, reinforcement and coercion), but extend the systems theory in its discussion of intergenerational violence, supported by a large body of research documenting the role of modelling in the acquisition of aggressive behaviour (Margolin et al., 1988). These theories, however, have been abandoned by many feminist sociologists because of the burden they place on the victim to 'control' the levels of violence within the home. However, these theories are still widely accepted in civil society. They assume that both spouses possess certain traits that make the family environment prone to domestic violence. The family systems theory takes the responsibility of the violence away from the abusive partner (positive feedback from his 'environment' means his levels of violence will increase) and without reservation, accepts that women play a role in and can control their abusive environments. Without much thought to the implications that this theory has on women, violence and social control, it assumes that if battered women would just change their behaviour, batterers could regain their self-control and the abuse would

stop. The reality of domestic violence, however, is that an abuser's environment (input) is neither a necessary nor sufficient condition for domestic violence to occur. The systems theory fails, therefore, to take a gender-specific position and consider power relations between men and women. Feminist theory has been more sensitive to the issues of responsibility, viewing women's symptoms of domestic violence as "sequalae of abuse, rather than concomitants or precursors of abuse" (Margolin et al., 1988, p.94).

### **1.3 Resource Theory**

Another, more widely accepted perspective on domestic violence is resource theory. Resource theory adopts a fundamental concept within sociological theory, namely power. Bersani and Chen (1988) introduce the work of Blood and Wolfe (1960) who maintain that the balance of power in a family will favour the individual who contributes the greater resources. Power, then, is viewed as "the potential ability of one member to influence the behaviour of another, whereas a resource is anything one member makes available to help others satisfy needs or goals" (p.60). Goode (1971) has developed Blood and Wolfe's work and found that success, prestige, position outside the family, occupation, political authority, intelligence and knowledge all affect an individual's power within the family structure. These factors may all influence the degree to which a spouse uses violence as the ultimate resource to persuade another spouse to perform particular functions (i.e. losing contact with family or friends, staying at home etc.). Whilst this theory acknowledges that there is a close relationship between power and resources within family structures, it does not extend itself to power imbalances beyond resources (i.e. patriarchy, physical

differences, childcare). Moreover, like the family systems theory of domestic violence, the resource theory is gender-neutral and devoid of cultural contexts. The implication of this theory is that the greater the resource imbalance between spouses, the more prone the family is to domestic violence situations. By ignoring other power imbalances it suggests that where socio-economic status is equal between partners, violence is less likely to take place within a domestic context. Moreover, it does not lend itself usefully to situations where a victim of domestic violence has more 'resources' than her partner who is abusing her. Like many theories of domestic violence, the resource theory can only be used to explain a possible contributing factor to this phenomenon and cannot be regarded as a 'total' theory. It does however lend itself to other theories of violence against women that see economic abuse as an obstacle to development.

#### **1.4 Exchange/Social Control Theory**

Another theory proposed to explain domestic violence is Gelles's (1983) theoretical hybrid of exchange/social control theory. It draws largely from exchange theory in that it suggests that people engage in behaviour either to earn rewards or to escape punishment, and to a lesser extent from social control theory in that it assumes that committing crime is part of human nature and that crimes are most likely to occur when 'controlling forces', which generally restrain people from committing crimes are weak or absent (Bersani & Chen, 1988). Whilst, the social control theory has been most widely used to explain juvenile delinquency (derivations of Chicago School analysis in its research on zones of transition; see Hudson, 1997), Gelles proposed that in combining these two theoretical traditions to family violence, we

should expect the following things: (i) that people will use violence in the family if the costs of being violent do not outweigh the rewards; (ii) that family violence occurs in the absence of social controls that would bond people to the social order and negatively sanction family members from acts of violence (Bersani & Chen, 1988). In Gelles's words "people hit and abuse other family members because they can" (1983 p.157). Bersani & Chen (1988) also outline three other factors identified by Gelles that reduce social control and increase the rewards of being violent. The first is inequality, which speaks to power structures in society and in the family that promote sexual inequality. Gelles argues that husbands are usually physically bigger than their wives, have higher status positions and earn more money and because of this they can use violence without fear of being struck back and do not fear economic or social sanctions against them in return. The second factor is privacy. The 'private' nature of domestic violence and the "sanctity" of marriage makes family/friends and the criminal justice process hesitant to intervene, for fear of breaking up the marriage. The final factor is the image of the "real man", who is not deterred by being labelled as a wife beater. Instead he considers his aggressive violent behaviour as proof that someone is taking control of a situation.

Gelles's exchange/social control theory is one of the first theories that has not pathologised the perpetrator or the victim of domestic violence and brings to feminist theory a simple, yet sound, understanding of why men batter: "because they can". Gelles also names the perpetrator of domestic violence (husbands) and their victims (women) and makes 'gender inequality' and 'power structures' a feature in his theory. Without apology he accepts that domestic violence is mostly committed by men and does not disguise his theory behind 'objective, gender-neutral' language, method or

terminology. His approach to family violence almost excuses his lack of empirical data, which is a critical failure in the 'real life' application of both the family systems and resource theories.

The family systems, resource and social control/exchange theories are examples of theories of domestic violence within mainstream criminology. More recently, feminist theorists in criminology have challenged many of the assumptions within these conventional theories. Heidensohn (1995) explains that the feminist critique of criminology has been concerned with two main features of the discipline: "the *presence* of women in a very few seriously distorting stereotyping accounts and the more notable *absence* from most major studies and exclusion from all sociologically-based theories" (p.153). The following section turns to a brief consideration of social cultural theories of domestic violence which examine the historical, legal, cultural and political factors that contribute to domestic violence. Within the collection of socio-cultural debates and theories on domestic violence there are a number of critical feminist theories that have been referred to as the 'patriarchal perspectives'. These perspectives are critical of the traditions and institutions that sanction, foster and maintain violence against women through laws and practices.

### **1.5 Patriarchy and Domestic Violence: Feminist Explorations**

There appears to be both a macro and micro-perspective of patriarchy and violence against women. The macro theory focuses on the patriarchal society that promotes economic and legal conditions that maintain gender-based violence. Briefly, the macro perspective contends that women are kept economically dependent through an

unequal division of labour and lower earnings and that laws and policies, which reflect male dominance and constructs, are not structured to protect women (Margolin et al., 1988; also see discussion on feminist jurisprudence in this thesis). The micro perspectives suggest that what underlies patriarchy is authority and that to study the family reveals that the traditional family reflects an arrangement of domination by males who hold authority over female members. The family system, then is patriarchy, and power differentials are maintained and reinforced within this system by making women subordinates. Socialisation processes - embedded within our system of institutions (tradition, religion, politics, economics) - within the family system perpetuate these imbalances. The Dobashes (1979) conclude that there are two central features for the foundations of patriarchy: (i) the way in which social relationships reinforce the controlling or dominant position of men; and (ii) the sanctification of a system of social relationships from which violence against women may result (in Bersani & Chen, 1988). There are traces of the patriarchal perspective in some criminological works - mostly relating to women as perpetrators of crime - but this position as a theory remains under heavy criticism in mainstream criminology. The micro perspectives, for example, come under attack for not fully realising the role of historically structured institutions and traditions, while the macro perspectives come under attack for not addressing the impact of immediate familial and environmental dynamics on the use of violence. To some extent these criticisms are valid. However, the resistance to utilise some form of patriarchal perspective within mainstream criminological and sociological theory on violence against women brings to question the issue of how these disciplines view the (or avoid viewing) violence against women as a product of institutionalised sexism within the family and within civil society.

## **1.6 Domestic Violence as Domestic Terrorism**

There is a new debate on domestic violence emerging that addresses domestic violence within a human rights framework. This debate shifts radically from the psycho-social paradigms of domestic violence and concerns itself with the political and cultural contexts of gender-based power and control (Marcus, 1994).

In terms of the new argument developed here, the home is one of the most dangerous places for women. It is the most common site of cruelty against women. Domestic violence has thus been referred to by various human rights activists as “domestic terrorism” and “domestic violence as torture” (Marcus, 1994; Bunch, 1991) and these concepts are just beginning to be acknowledged within mainstream human rights work. It moves beyond the personal and cultural factors and emphasises the fact that violence against women is fundamentally political. It is as Bunch (1991) explains a result of the “structural relationships of power, domination and privilege between men and women in society” and further that “violence against women is central to maintaining those political relations at home, at work and in all public spheres” (p.7). Bunch also argues that to view violence against women as ‘inevitable’ or ‘natural’ requires a narrow and pessimistic view of men and should instead be viewed as a politically constructed reality maintained by patriarchal interests, ideology and institutions. She further suggests that by linking women’s rights to the following approaches concretely situates them into the prevailing human rights framework: (i) women’s rights as political and civil rights; (ii) women’s rights as socio-economic rights; (iii) women’s rights within law; and (iv) the transformation of human rights

through a feminist perspective. Bunch maintains that “at a time when dualist ways of thinking and views of economic systems are in question, the creative task is to look for ways to connect these approaches” in order to achieve meaningful and substantive rights for women (1991, p.14).

### **1.7 Conclusion**

Conventional theories on domestic violence such as the family systems, resource and social control theories in criminology have indeed served their purpose in providing an intellectual platform from which to debate the production of knowledges. These theories - which fail to take power imbalances between men and women into account have sparked the creation of epistemological frameworks to inform more appropriate research methods and theories surrounding ‘gender’ issues in criminology.

Indeed, the new wave of feminist perspectives on domestic violence has been coupled with the re-positioning of feminist scholarship and research in relation to the production of knowledge within the social sciences. Over the past two decades, feminist theory has emphasised the importance of avoiding a structural separation between theory and research practice and has developed a new dialect of ‘doing’ and ‘knowing’.

Within the field of criminology specifically, feminist scholarship has not only raised critical debates about the lack of attention to gender-based crimes, but has also been critical of the misogynist representation of women in criminological theory. More recent challenges have including inverting gender essentialism and universal validity

within criminological theory and the legitimisation of women's experiences as alternative ways of 'knowing'. These debates have included the re-examination of current theories and research methods that are static, ahistorical and hierarchical (between the research subject and research object).

These new feminist theories and methods have triggered numerous debates within feminist and mainstream literature. The common thread, however, appears to be a shift towards research models that involve a continual examination of the interrelationship between one's theoretical position, research methods and political positioning surrounding the research problem. The politicisation of gender-related research is less contentious within these debates, as the feminist research movement shares the common goal of dismantling patriarchal structures and practices in society through reflective research models that have fundamentally political agendas.

The following chapter will discuss the epistemological framework that grounds the theoretical position, methodology and analysis of the findings. The epistemological framework can be defined as feminist standpointist. It provides both the women interviewed in this research and the author a speaking position from which our 'experiences', social and political positions are seen as 'valid' in the production of knowledge.

## Chapter 3 EPISTEMOLOGICAL FRAMEWORK

### 1. EPISTEMOLOGY

#### 1.1 Introduction

The following chapter sets out the epistemological framework that informed the methodology and analysis of the research findings. The discussion of the chosen epistemological framework, namely feminist standpointism, does not enter fully into the extensive debates on standpointism found in the literature. Instead, the primary objective here is to present the central tenets of standpointism, to which the methodology and analysis are anchored. This discussion is contextualised by an elementary introduction to feminist theory and methods in research and knowledge production.

#### 1.2 Feminist Theory and Methods

Feminist theory on methodology and knowledge production is marked by lively and sometimes contentious debate. Even within particular streams of feminism, the debates are constantly shifting. There is thus not one 'feminist method' - or universal theory of feminist methodology - to speak of. DeVault (1996) however, maintains that despite the variations within feminist theory, feminist *methodology* can generally be described as "a field of inquiry rooted in feminist activism and in feminists' critiques of the standard procedures of social science" (p.29). She proposes that while feminist methodology as a practice does not use or prescribe any single research method, it is

generally characterised by efforts to include women's lives and concerns in accounts of society, to minimise the harms of research, and to support changes that will improve women's status. She does, however, draw a distinction of feminist "research" and feminist "methodology". She understands feminist research as "a broader category including any empirical study that incorporates or develops the insights of feminism" and reserves the term feminist methodology for "explicitly methodological discussion that emerges from feminist critique" (p.31). She further endorses Harding's (1997) suggestion that we distinguish between *methods* (particular tools of research), *methodology* (theorising about research practices) and *epistemology* (the study of how and what we can know). These definitions are useful in separating the many feminist debates on method and knowledge production which are often used interchangeably within the literature. In practice, however, the boundaries of these definitions are easily blurred<sup>3</sup>.

Despite the shifting frameworks within feminist literature on feminist research and methods, there appears to be a general acceptance of the following principles:

1. Feminist theory challenges the scientific relevance and ethical justification of quantitative social science research. More specifically, they question the legitimacy of positivist methods of inquiry and the production of social theory itself.
2. Instead of an adherence to "truth, objectivity, neutrality and reason", feminist theory appears to openly admit to its own position as context and observer dependent. This means that it is historically, politically and sexually motivated -

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<sup>3</sup> It is my contention that given the evolutionary nature of feminist debate on theory and methods, these discrete definitions are less than pragmatic in their application in feminist research.

which does not mean that the feminist enterprise is false, subjective, irrational or biased. Feminist theory, instead acknowledges 'perspectivism' (Grosz, 1987).

3. Feminist theory is engaged with the question of language and representation in terms of their material and political effects (Grosz, 1987).
4. Feminists seek methodologies that shift the focus of standard practices from men's concerns, to reveal the perspectives of women. More specifically, they share a commitment to analysing the sources of oppression and equality for women (DeVault, 1996; Turner, 1998).
5. Feminist research tends to develop research strategies that minimise harm to women, are inclusive and level the hierarchies of control and power in research relations (De Vault, 1996).
6. Feminist research and the elucidation of findings attempt to preserve the emancipatory and consciousness-raising dimensions of feminist theory, including transformation of patriarchy and the empowerment of women.
7. Feminist theory and research gravitate toward the use of paradigms, concepts, methods and theories that more faithfully portray women's experiences (Turner, 1998).

In addition to these basic principles utilised by feminist researchers and theorists, feminist theory has been influenced by post-modern ways of thinking. Daly (1997) goes so far as to suggest that one cannot even make sense of feminist knowledge debates without reference to postmodern thought. Theories of postmodernism have also had a strong influence on the construction of independent feminist methodologies and epistemologies (Turner, 1998).

The debates on the influence of postmodernism on feminist theory and methods are complex and riddled with controversy. Some feminist theorists, for example (see Flax, 1990) argue that feminist theory should be viewed as a type of postmodern philosophy while others have been cautious of the potential for “extreme epistemological relativism” inherent in post-modern attacks on positivist theory (Turner, 1998, p.591). Others have reconciled ‘feminism’ and ‘postmodernism’ by arguing that each has its respective strengths and weaknesses and can be reinforced (or averted) by synthesising the two into a postmodernist feminism: a postmodern skepticism of metanarratives with the socio-critical power of feminism (see Fraser and Nicholson in Turner, 1998).

It has been argued that the varied viewpoints and approaches taken by post-modernists are congruent with what post-modernism is itself (Flax, 1990). According to post-modern theory, we cannot know anything absolutely or essentially. There is no truth, only social constructions of the world. The ‘knowledges’ and the ‘language’ that constitutes knowledges are always open to challenge and redefinition with shifts in their discursive content (Weedon, 1991). Thus, post-modernism throws us into a sort of epistemological scepticism. Whatever we think we may know is constantly being reconstituted in discourse, resulting in a knowledge that is precarious, contradictory and in process (Weedon, 1991).

Post-modernism nonetheless provides the scaffolding that supports feminist challenges to the epistemological dominance of scientism, the oppressive politics of modernist knowledge and the use of knowledge as a powerful means to keep classes or races subjugated by disqualifying their ‘truths’ (Grosz, 1987). Post-modernism

also recognises the oppressive politics of modernist knowledge (one hegemonic view of the world), and suggests that a certain view of the world has been privileged with respect to knowledge claims (what is considered valid or true). Bordo (in Nicholson, 1990) however argues that while, “reality itself may be relentlessly plural and heterogeneous ... human understanding and interest cannot be” (p.9). The implication is that post-modernism does not need to eliminate all theory to avoid the notions of totalisation and essentialism of modernity; the view that everything has a fundamental fixed essence which can be known. Nicholson (1990) adds that one must find types of ‘theories’ that are opposed to essentialism. For example, theories which situate themselves within particular social and historical frameworks will avoid the dangers of false generalisations, than theories that do not. She adds that if post-modernism entails abandoning all generalisations, the end result may be a nominalist ontology of individual politics.

### **1.3 Standpointism**

The position that this thesis adopts for its epistemological framework is feminist standpointism. It addresses some of concerns posited by feminist critiques of postmodernism and does not demand a prescribed approach to feminist methods of social inquiry. According to Gouws (1996), feminist standpoint epistemology starts from the assumption that knowledge is socially constructed and rejects the positivist notion of objectivity. The standpoint that starts with the lives of women is seen as less partial and distorted because it gives the view of the oppressed. Feminist research, therefore, should locate it’s discovery of knowledges in women’s lives and experiences. Gouws (1996) also points out that standpointism has implications for

the “context of discovery” as well as the “context of justification” (p.67). This is so because using women’s lives as the starting point for inquiry (Harding in Gouws, 1996), determines what types of questions will be asked (discovery) as well as how we proceed to find the answers to these questions (justification).

The relevance of standpointism in this thesis is that it does not negate the utility of research practices nor does it reject the notion of generalisable knowledge. Standpointism thus allows flexibility of research method, providing that women’s experience of the social world is the basis for knowledge and authority. However, a standpoint, as Hartstock (1987) explains, is not just an ‘interested’ position, but is “interested in the sense of being engaged” (p.159). Meeting the criteria of a standpoint, thus requires the valuation of women’s experience, and the use of this experience as the basis for critique and change. This does not necessarily mean that one can only utilise ones own experiences as the basis for a speaking position, but instead a feminist standpoint may be present on the basis of the “common threads of female experience which connect the diverse experiences of women and ... the structural determinants of the experiences” (Hartstock, 1987, p.174). The articulation of a standpoint based on “women’s relational self-definition and activity exposes the world men have constructed and the self-understanding which manifests these relations as partial and perverse” (p.174).

Standpoint theorists such as Nancy Hartstock (1987) and Harding (1987) have built on the basic principles of that govern the production of feminist knowledge by specifically focusing on women’s experiences as the center of analysis. While standpointists maintain that standpointist methodology “rooted in women’s

experience would elucidate the epistemological connections among the production of knowledge, everyday experiences, and political praxis that ‘postivistic’ epistemologies often deny” (Turner, 1998, p. 583), there is no clear argument within this position that it abandons positivist *methodology* completely. In addition to the well received qualitative methods of feminist research, standpointist theorists also do not openly disclaim the triangulation of research methods, provided that the research methods are reflective of and located in women’s experiences. Whilst it does challenge some of the tenets of traditional empiricism of positivist methods, the standpointist position focuses mainly on eliminating androcentric biases and developing alternative theories of knowledge that legitimate women, through their experiences, as ‘knowers’ (Harding, 1987).

DeVault (1996) provides her readers with useful examples of feminist researchers that have begun utilising standpointist frameworks for the design and analysis of quantitative research, triangulated research methods and policy research. Some of these authors argue that effective policy research requires a distinctly feminist standpoint as well as conventional research methods (such as cost-benefit analysis). Gelsthorpe (1992) argues that feminist methodologists - from diverse feminist schools of thought - have “refused to choose between subjectivity and analytical rigor” (in DeVault, 1996, p.39). Standpointists are one of these schools of thought.

This thesis has also taken the position that the triangulation of research methods is the most effective method of taking women’s own experiences with violence and attempting to translate these experiences - with as little distortion as possible - into recommendations for reform. The significance of the standpointist position in this

research is also the acknowledgement of the importance of specifically locating oneself within the academic arena as well as within the gender advocacy movement. It does so through a feminist praxis that is content and observer dependent. Standpointism thus provides an intellectual 'space' for me, as an outsider to rural women's experiences of violence, to seek knowledges from 'the other' - the poor, the uneducated, the rural - and to engage in a directly political and discursive practice, that is purposeful, in exposing the injustices that rural women experience.

The research undertaken here, though it adopts some quantitative techniques, is thus fundamentally different from 'traditional science' because of its epistemological foundation. For the 'scientist', genuine science requires that human and political characteristics should be eliminated from the research process in so far that it is possible to do so. By following strict methodological rules - distancing oneself from values, interests, and emotions generated by one's class, race, sex, or unique situation - results in a science that decontextualises and detaches the researcher from her research, or as Collins (1990) suggests, results in the "separation of information from meaning" (p.205; Harding, 1986). Whilst some critics of standpointism would argue that data about human relations must not be based on political or social value judgments, but rather be based on 'objective', 'empirical', descriptive accounts of 'reality', I maintain that social science researchers can never be disengaged, impartial and value-free in their intellectual inquiries. Value judgments regarding social, political, and moral issues are inevitably part of the research process. This is particularly true when we study violence in civil society.

This research also makes 'experience' and 'values' criteria of meaning as its fundamental epistemological tenet, in which experiences in this research occur at multiple levels. Through language and political/intellectual struggle, standpointism creates an epistemological framework that is sensitive to the questions of race, class and gender in the generation of knowledge claims. However, the objective of this particular epistemological framework is not to universalise the experiences of violence against women in rural communities into a grand narrative but to highlight the systemic discrimination of women who live in the most impoverished circumstances in this country through feminist research.

Standpointism is directed by both intellectual and political struggle and to some extent aims at recognising and shifting the power realities operative within our social, intellectual and political systems. It is a position from which "women's subjugated position provides the possibility of more complete and less perverse understandings" than the dominant position of men (Harding, 1996, p.26 in Daly 1997). In other words, the standpoint is informed by women's experiences and is understood from the perspective of feminism (Daly, 1997).

The conceptual and explanatory powers of standpointist research also affords feminist researchers the tools to challenge prevailing definitions of, and to foster fundamental paradigmatic shifts in, how we think about women. It is this fundamental tenet of most feminist scholarship which allows social and legal activism on behalf of victims and survivors of domestic violence. It also provides a sound platform from which to heighten public and political awareness of the extent and magnitude of domestic violence in rural areas. Furthermore it also offers a vehicle for proposing appropriate

policy, legislation and the delivery of services to deal with the problem in a way that departs from current phallogocentric constructions of 'justice'.

Hartstock (1987) maintains that a standpoint "carries with it the contention that there are some perspectives on society from which ... the real relations of humans with each other and the natural world are not visible" (p.285). In other words, the adoption of a standpoint exposes the real relations among human beings. This knowledge is seen as 'better' or 'truer' than existing phallogocentric knowledges because it is derived by "outsiders" who can see the relations of domination and oppression for what they truly are (Harding, 1990). In order to achieve a standpoint, however, "one must engage in the intellectual and political struggle necessary to see nature and social life ... which produces [women's] social experiences' ... instead of from the partial and perverse perspective available from the ruling gender experience of men" (Harding, 1990, p.185). The Standpointist, then, would maintain that the experiences of women can provide a starting point for developing potentially more complete knowledge claims than do men's experiences. Women's lives can make available a particular and privileged vantage point which can ground powerful critiques of phallogocentric institutions and ideologies and their experiences have important ontological consequences for both the understanding and construction of social relations (Hartstock, 1987).

Standpointism also sheds some light on the many questions I had engaging in research with impoverished rural women: Have I failed to take into sufficient account African women's experiences? Can I, through research, develop a powerful political voice for South African women? Can I create enough ferment in South African

politics to shift policies and legislation for rural women and mainstream the rural women's perspective and experiences? Can I sustain political attention to an area which is outside of my own experiences?

The standpointist reply is multi-variate. It requires that 'the knower' must be both emotionally and politically engaged and committed to her research. It adheres to an epistemology that is politically interested. It argues that the class, race, culture and gender assumptions and beliefs of the researcher must be placed within the frame of the picture she attempts to paint. It also advocates the use of political activism to advance the understanding of what happens around us, not only for moral political reasons, but also for scientific ones (Hartstock, 1987). The methodology, recommendations and advocacy work around this research attempts to fulfill these conditions. This research aims at a broader examination of patterns of institutionalised discrimination against women in rural areas through their everyday experiences.

Further, by employing the knowledge of those who are witnesses to the inadequate social and criminal justice systems in place, this research will have a particular vantage point which can ground insights and critiques of the existing practices around violence against women. This approach of engaging in the social, intellectual and political struggles to improve existing practices in dealing with domestic violence cases, may help change the subjective reality of domestic violence for criminal justice and social agents and empower the powerless in these cases. This specifically feminist standpoint can allow for "a much more profound critique of phallogocentric ideologies and institutions than has yet been achieved" (Hartsock, 1987, p.162).

Finally, this research aims at critically examining the power realities operative of South African policy makers, the criminal justice system and women in rural communities. By utilising feminist literature on survivors of domestic violence, my experiences working within rural communities and within the gender advocacy movement in South Africa, the problems of access rural women experience within the criminal justice system and associated support structures are illustrated. Acting as both an 'insider' (woman) and an 'outsider' (urban, educated) allows for a more complete understanding of how these 'systems' operate. The vision of this research includes changing the image of these social and political realities through intellectual and political struggle (Hartstock, 1987, p.159-160).

#### **1.4 The Critique of Standpointism in Feminist Research**

Some critics of standpointism argue that the feminist standpoint "obscures the heterogeneity of women" (see Spelman in Turner, 1998). Grosz (1987) also cautions her readers about a universal or mainstream feminist language and states that "if we continue to speak this sameness, if we speak to each other as men have spoken to centuries, as they have taught us to speak, we will fail each other" (Irigaray, 1983; 69, in Grosz, 1987). Thus, we must be careful of developing historically specific 'generalisations' in the light of complex realities that different women experience.

Mohanty (1988) retorts by arguing that "the homogeneity of women as a group is produced not on the basis of biological essentials, but rather on the basis of secondary sociological and anthropological universals. Thus, for instance, in any piece of

feminist analysis, women are characterised as a singular group on the basis of a shared oppression” (p.65).” Monhanty, who embarks from a standpointist position also suggests that “the discursively consensual homogeneity of ‘women’ as a group is mistaken for the historically specific material reality of groups of women” (p.65). This results in the assumption that women constitute a homogeneous group (often ‘victims’ of sexual harassment, oppression, exploitation and so on). The sisterhood cannot be solely on the basis of gender, but rather understood in terms of political, sociological and historical junctures. We cannot define women on a victim status or collective powerlessness.

It is important to note, however, that even grand feminist narratives presuppose homogeneity. Notions of equality, for example, may lead some feminist scholarship to argue that since ‘equality’ is a phallogentric construct, women should demand something else - a gendered justice or special rights based on special needs (Littleton, 1987). It may on the other hand, lend itself to a critique which says that promoting the similarity of women in the name of equality falls into the homogeneic trap of “us” women as a unified whole. While the male construction of law and social norms has developed in the absence of women, or at least without their participation, the reconstruction of these norms must happen both across and beyond women’s differences. However, I agree with Nicholson’s (1988) pragmatic approach to this problem where she suggests that we can indeed acknowledge the possibility of structural features of societies remaining relatively static over long periods of time and that is only when these categories (of knowledges and their languages) are employed without a sense of possible historical inapplicability that such analysis become problematic.

This research is explicitly politically interested and designed so that many voices can shed light on a problem from different vantage points. The very nature of this relationship is where I believe standpointism effectively consociates with my chosen methodology, to achieve the model of feminist research that is most appropriate for this subject matter. Nicholson's (1988) proposes that mini-narratives can be joined to tell complex tales, which can be politically powerful and can draw strength from its diverse components, rather than from the suppression of the diversity:

We also can employ the mode of narrative which can be as lengthy and as multi-stranded as the phenomena to be analysed demand. In other words, to explain a phenomenon such as sexism, which is large in its historical scope, but also diverse in its forms, we might create either one large or many overlapping and intersecting stories. The explanatory force and comprehensiveness of our account can as easily attest to the extent and seriousness of sexism as one grandiose explanation aimed to do. (Nicholson, 1988, p.97).

## Chapter 4 TERMS OF REFERENCE

### **1. Introduction**

This section does not, as Bryman (1988) suggests, attempt to set up “precise operational definitions against which reality may be gauged” (p.68). It instead introduces the terminology and debates surrounding access to justice and feminist jurisprudence as terms of reference for the discussion of the results. More, importantly, these debates were the frame of reference from which I developed this research and informed the basis for decisions surrounding my target group and methodology.

### **2. Access To Justice**

The current South African discourse on access to justice relies heavily on the use of informal and popular modes of justice within South African society, to remedy the inaccessible formal dispensation of justice. Popular justice may be said to reflect a combination of historical trends toward local, informal justice that have existed in everyday life for many communities and various forms of opposition to state justice systems. In South Africa, for example, popular justice was the product of political strategies to develop a set of alternative structures that would organise ‘peoples power’ and replace state bodies with more credible, community-based, structures (Pavlich, 1993). For the majority of (black) South Africans, state law was the basis of political, legal, and economic control; an instrument of repression, that did nothing to

protect the rights of members of these individuals (Grant & Schwikkard, 1991). The proliferation of peoples courts, and the popular justice movement in general, was not only a response to the failures of the formal legal system to provide adequate legal protection, but a need for black South Africans to develop their own system of government (social control) in order to render the country ungovernable (Grant & Schwikkard, 1991; Nina, 1993).

The proponents of informal justice - as 'people's justice' (Mathews, 1988; Merry, 1992, 1993; Abel, 1982) - define it in terms of increased access to and participation in justice. I have chosen not to adhere to this thematic. I concur with Foucault (1980) who states that acts of popular justice cannot fulfil its full significance unless it is clarified politically, by the people themselves. This means that informal justice must be designed and include the full and equal participation of civil society, not just community gate-keepers (which are likely to be men). The ideology of informalism, then,

...resembles Orwellian newspeak: political choice portrayed as blind necessity, the interests of dominant groups are dressed up as the wishes of the dominated, and informal processes appear as their mirror images...(Abel, 1982, p.7).

My argument rests on the well-established notion that sexism is deeply embedded in our patriarchal society and not just within formal legal institutions. This means that by using popular or informal structures as a basis for increased access to participation in justice, we are assuming that these structures are immune from sexism and inequality. It also assumes that communities are harmonious and that the informal

structures set up to facilitate access to justice will be functional, informed by the community as a whole (and not by 'community' as defined by men) and that these structures will provide those Constitutional rights to fair and equitable justice that the state has failed to provide. Whilst Nina (1997) is another proponent of 'informal justice' - or multiple forms of accessing justice (state and informal justice) - he also warns that informal justice mechanisms, that are unregulated, may create further inequalities in society. It is therefore the responsibility of the state, he argues, to pay equal attention to non-state organs of justice, in order that Constitutional rights of civil society are guaranteed within them. Nina's (1997) argument, deteriorates, however when he maintains that:

“the state should provide, in the first instance, means to all citizens, and in particular to citizens in need, access to an adequate forum for the resolution of conflict, or to legal representation in a criminal process, or to the provision of legal assistance in the rectification of a person's rights” (p.7-8).

Nina does not go further to address the issues of equality of opportunity (access) to the equality of result (substantive equality and justice). While informal justice may answer to equality of opportunity to be heard, it does not guarantee, equality of result. Equality to communities can have several different (phallogocentric) meanings. Informal justice cannot have a substantive effect on the status of women unless they are seen as equals in the community. Moreover, mere equality of opportunity will not improve the status of women, nor provide equal protection and benefit from 'justice' defined by that community. Women, are therefore systematically denied equal protection and benefit of both informal and formal justice. It can therefore be argued

that Nina's approach to the access to justice debate also ignores the social and political contexts, relevant to women, in which these structures actually operate.

The informal domain of access to justice for women is also rife with other contradictions. For example, the use of 'traditional authorities' as decision-makers in communities is in conflict to women's fundamental human rights. Even with Nina's strong advisement for regulation, I find informal mechanisms of justice for women highly problematic. Is Nina, in his theory of access to justice, proposing that: (i) 'traditional authorities' rethink women's historical inevitability to be unequal to men?; (ii) communities abolish traditional practices like lobola which requires women to 'seek' justice in marital crisis through the parents of their husbands?; (iii) we can train traditional and community leaders to become 'constitutional' in their judgements to promote the equality of women? In a society where 'culture' is used as an excuse for non-intervention in incidents of domestic violence, these patriarchal practices will not be abolished to provide access to justice for women. Who, then, within this model, will be responsible for challenging the patriarchy within communities?

Cappelletti and Garth (1978) define access to justice by arguing that 'the system' must be equally accessible to all and must lead to results that are individually and socially just. The underlying premise, therefore is, that social justice "presupposes effective access" (p.2). The authors also refer to alleviation of "legal poverty" or the incapacity of some individuals or groups of individuals to make full use of the law and its institutions by providing effective and equal justice. They further argue that

the possession of formal rights is meaningless without mechanisms for their effective application:

Effective access to justice can thus be seen as the most basic requirement - the most basic "human right" - of a modern, egalitarian legal system which purports to guarantee, and not merely proclaim, the legal rights of all. (Cappelletti & Garth, 1978 p.5.)

This is the definition that this thesis will adopt. It will argue that access to justice cannot remain merely a symbolic concession by the state (i.e. through state policy), but must be accomplished in real terms, such as adequate and accessible service delivery by state organs and hard legal reform. Access to justice will also refer to other forms of justice, including the right to health services, welfare services, police protection and assistance, and formal state justice services (including policy and legislation). The critical point of departure from traditional legal scholarship surrounding 'justice', is that this thesis is not merely an analysis of whether these mechanisms are in place, but whether they increase women's access to justice in real terms - through practice and procedure. The decision not to focus on 'popular' justice organs also departs from the prevailing access to justice discourse. The fact that community-based justice forums are unregulated and predominately controlled by men within communities, was a sound enough reason not to enter into a debate about informal mechanisms as an option for victims of gender-based violence. In fact, even Nina's (1995) research found that "system[s] should be worked out whereby certain cases can be referred to the formal structures [of justice]". Cases relating to privacy, human rights, gender, woman abuse, child abuse, rape, murder, should all be referred" (Interview with Edwin Molahlehli in Nina, 1995, p.75). The organs of popular

justice must refrain from these issues until equality between men and women within these communities achieved.

The existing discourse of access to justice, as it currently stands, is not acceptable as a functional discourse for feminist research on access. The concept of access to justice, set out in South African literature, fails not because of the malleable framework used to define 'access' nor its advancement of 'legal pluralism' (the co-existence of legal models and institutions independent from the official dominant legality; Brogden & Shearing, 1993), but its failure to address the marginalisation of women and imbalances of power in relation to access to justice for women.

Weedon (1991) describes discourses as a structuring principle of society, modes of thought and individual subjectivity and they also represent political interests and offer an explanation of where our experience comes from. It will be argued that the current discourse of access to justice is inadequate in light of women's experiences and a new discourse needs to be developed that engages new principles and political interests. The current discourse imposes serious limitations for feminist research. What is required is the creation of a discourse which is framed by women's experiences with access to justice.

### **3. Feminist Jurisprudence**

Progress in legal reform in South Africa to address women's rights and services has been a slow and uneven process and requires an assessment within a feminist jurisprudence model. What a feminist jurisprudence model sets out to do is to assess

the differential impact on women and men of policies, programmes, legislation or legal principles. In other words, we must analyse legislative or policy impact on gender equality. It emphasises the need for an active policy of bringing into the mainstream a gender perspective in all policies and programmes related to violence against women and of achieving gender equality and fair access to justice, as well as establishing a goal of gender balance in areas of decision-making related to the elimination of violence against women (The International Centre for Criminal Law Reform and Criminal Justice Policy, 1997). Feminist analysis of laws and criminal justice services can be undertaken on three levels<sup>4</sup>:

1. The formal: What does the law actually say?
2. The ideological: What values, beliefs and morals are held/or expressed not only by the criminal justice agents, but also by civil society?
3. The practice: What happens in daily practice, rather than ideological theory? What are the experiences of those who require assistance from laws and criminal justice?

The analytical apparatus of feminist jurisprudence is at once political, epistemological and methodological. Like the feminist theory of knowledge it is inextricable from the feminist critique of power (MacKinnon, 1983). It is a model of critical legal theory that emphasises the systemic inequalities of law and state legal structures. It asks “what, in gender terms, are the state’s norms of accountability, sources of power, real constituency” (MacKinnon, 1993, p185). In other words, what is the state and who does it serve? The development of feminist jurisprudence stems from the critique that substantively, the way the male point of view frames an experience is the way it is

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<sup>4</sup> Heidensohn (1985) has developed this analytical approach in looking at legal reforms for criminal women. The approach has been adopted, but modified for the purposes of this study.

framed by state policy, legislation and criminal procedure. For instance, judicial decision making that is dispassionate, disinterested, and precedential, is considered desirable. Who decides what is objective and neutral and who does it benefit? Who does it protect and who does it define? West (1988) argues that jurisprudence is 'masculine' because jurisprudence is about the relationship between human beings and the laws we have, and the laws we have are masculine in terms of their intended beneficiary and in authorship. It is a masculine construct, disguised as neutral legalistic constructs, revealed in process and procedure, adjudication and legislation unreflective of women's reality of justice, life and law.

The distinct values women hold, the distinctive dangers from which we suffer, and the distinctive contradictions that characterize our inner lives are not reflected in legal theory because legal theory is about actual, real life, enacted, legislated, adjudicated law, and women have, from law's inception, lacked the power to make law protect, value, or seriously regard our experience" (West, 1988, p.231).

Women are absent from jurisprudence, and thus feminist jurisprudence seeks to uncover what West (1988) refers to as "patriarchal jurisprudence" from under the protective canopy of mainstream jurisprudence. It concerns itself with both formal and substantive equality and the difference of women to men. It maintains that mainstream critical legal theory and jurisprudence is impoverished because it does not pay adequate attention to the real experiences of women; it in fact makes women invisible.

While far broader than the aim of feminist jurisprudence, the Gender Equity Analysis developed by the Canadian Department of Justice (1997) cites certain fundamental

principles that govern the application of gender equality. These principles are a useful first step for non-legal professionals working in the gender arena. They include:

- recognising the differential impact of measures on women and men according to their diverse life situations, including factors such as race, sexual orientation, disability and social class;
- taking into account the historical and current social context creating inequality and redressing these inequalities;
- a substantive analytical process of deconstructing laws and policies; and
- focusing not only on results but also on concepts, arguments and language used in gender analysis

The central aim of this feminist analysis of laws and policies is to consider the different socio-economic realities of women, as they are relevant to the issues at stake (whether around violence against women, social welfare, housing or general Constitutional rights and freedoms).

The World Bank<sup>5</sup> (1996), however, maintains that there are barriers to legal reform from a gender perspective. They state that the translation of statutory law and the administration and enforcement of laws to redress systemic gender discrimination is intensely problematic and maintain that these problems are particularly apt in South Africa where transformation within the criminal justice system and in its associated laws are resulting in gaps:

The operation of law may be hampered because it is poorly constructed, is inherently discriminatory against women, does not

reflect the needs and capacities of women, or is simply ignored by those applying it. In many instances, women do not know their legal rights, nor have the effective means of asserting them. Institutional legal arrangements may not, therefore, create equal opportunities for men and women to participate in their society's economies.

Hansson(1994) also argues that there is no clear consensus on existing laws in contemporary South Africa and that there are still vast differences and frequently conflicting values and interests of the many groups comprising this society. These have already been illustrated by recent Constitutional debates and amendments. Another barrier for feminist jurisprudence is the systemic, non-prosecutorial manner in which our legal system deals with domestic violence. It is a clear example of the state's ignorance of women's right to equal protection under both international, soft law and national, hard law which requires deconstruction of reform of all components of justice.

Feminist jurisprudence was thus chosen as the framework for analysis for this thesis, because it encompasses issues of access to justice, is grounded on feminist epistemological concerns and has a direct application to the state. It maintains that equality means access, not sameness and refers, like other schools of critical legal theory, to substantive equality and the importance of women's fundamental material difference from men. It differs from both liberal and critical legal theory in that it sees these as theories as engaging in the debate about law and life through a masculine legal framework or "masculinist jurisprudence" (West, 1988). It has also contributed to substantial law reform, namely in the areas of sexual assault/rape,

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<sup>5</sup> From, World Bank internet site.

domestic violence, sexual harassment, reproductive freedom and like MacKinnon's work in the early 1980's, begins with the data of real women's experiences and builds on the arguments put forth by feminist litigators to develop a legal theory and definition of violence against women.

## Chapter 5 METHODOLOGY

### 1. The Qualitative Research Design in Feminist Research

With the epistemological framework as the basis for the development of the research design, it was essential that the methodology was developed in a way that was consistent with the principles set out in the standpointist philosophy of social science enquiry. The research design employed, therefore, is qualitative. Bryman (1988) like many other 'methodologists', maintains that there are marked epistemological differences between qualitative and quantitative approaches and thus they operate with divergent principles regarding what is knowledge about the social world and how it can legitimately be produced. He (1988) describes the qualitative approach to research as "an approach to the study of the social world which seeks to describe and analyse the culture and behaviour of humans and their groups from the point of view of those being studied" (p.46). Schurink (1995) also argues that those who support qualitative research methodology are "humanistically oriented" and "try to reconstruct reality from the situational world of the subject" (p.168). The aim of this research, then, is to understand the conjuncture of a specific reality rather than to formulate a universal understanding of it. As Bryman (1988) explains it, the qualitative approach to this research is orientated to the concerns of the researched, as opposed to the specific concerns of the researcher when employing quantitative methods.

The reasons for selecting the qualitative research method, however, go beyond a strict adherence to the epistemological convictions as discussed in the epistemology section of this thesis. Firstly, the qualitative technique allowed for greater flexibility in the research design, permitting access to unexpectedly important issues which may not have come to light had a more structured strategy been used. Moreover, being a study of a more exploratory nature, the qualitative design also allowed changes in the direction of the course of the research as my understanding of rural women's experiences with violence became more refined. Secondly, the use of these methods invites in-depth exploration of the complexities of the questions at hand. The exploratory inclination of this research is essential in identifying problems and seeking solutions based on the theoretical and conceptual parameters guiding the research. Thirdly, qualitative research does not pretend to be replicable. As Marshall & Rossman (1989) explains, "the researcher purposefully avoids controlling research conditions and concentrates on recording the complexity of situational contexts and interrelations as they occur" (p.148). Finally, the qualitative design grants the research flexibility in triangulating data sources; bringing more than one source of data to bear on a single point to corroborate, elaborate and illuminate the research question (Marshall & Rossman, 1989). The triangulation of data in this research also incorporates elements of quantitative research in an attempt to develop a more comprehensive picture of violence against women in rural areas.

The use of quantitative methods as part of the research design's composition, does not need to be seen in contraposition to the fundamental tenets of the epistemological framework or qualitative techniques. A multi-faceted approach to analysing the results of this research not only fulfils traditional notions of 'validity' in

research, but also provides a different perspective of the results for different readers. The results, where appropriate and feasible, will indicate basic demographic characteristics of the communities as well as the level of frequency and extent of gender-based-violence within the communities.

## **2. The Field Research of this Study**

### **2.1 Accessing Participants**

This research enterprise in accessing rural women was a long and arduous process. The final outcome, however, proved to be worth the effort. One aspect of this problem involved the issue of ‘gatekeepers’ within the context of accessing participants. Like many community-based research initiatives, the importance of ensuring that the community members are privy to the precise nature of the research and the outcomes thereof cannot be more strongly emphasised. It becomes problematic, however, when particular community groups or organisations servicing those communities become the voice of the community without consulting with their constituencies. The most serious obstacle I faced was not with the community members themselves but with an organisation who felt that my presence would “collapse” the structures that “they had spent so many years developing”. These fears were unfounded, but caused serious debates about the role of organisations outside of the community speaking on behalf of the community. It also raised issues surrounding the legitimacy and accountability of academic research within communities: the element of race in community-based research, and the question of whose interests were being attended to when negotiating access to communities. It is

these very questions which initiated an in-depth and self-reflective examination of the principles of feminist research techniques.

During my attempts to gain access to rural women, I eventually approached the Southern Cape office of the Black Sash (Knysna). They were not only welcoming to the prospect of gender-based rural research, but provided me with an overwhelming amount of information about and access to the communities they serviced. A unique partnership developed between myself and the Black Sash. This organisation identified key areas of concern in exchange for facilitating access to rural structures and communities. The Black Sash facilitated access to 15 different communities in the Southern Cape and as a result I was able to interview 168 women on issues of access to justice during the research period. Interviews were also co-ordinated by the Black Sash with private and state welfare organisations, the police and justice departments and constituency offices. A less formal, group interview was also facilitate at the Knysna maintenance court at which 28 women were present.

## **2.2 Participant Observation as an Inherent Part of Community-Based Research**

There was an implicit participant-observer element built into the research process. This was both to acquaint myself with the area, as well as to experience a 'slice of life' account of the rural Southern Cape. This element also illustrated the importance of the induction process necessary to fulfil responsible fieldwork - watching, listening, meeting the community, its structures and the people within them. This orientation period also allowed me to reflect on whether my research topic was relevant, and indeed of importance, within the communities I was conducting the

research. It was a brief period in which I could assess whether my understanding of domestic violence was connected to the experiences of the responding communities. The fear was whether I was imposing a pre-ordained theoretical framework on the information gathering process. This fear was abated by ongoing dialogue with Black Sash members as well as other community members. It also became clear that community or participatory research may not only diminished the exploitative nature of some social science research, but “many social scientists would argue that one of the major thrusts and possibly the major responsibility of the social sciences in this country is to work for a re-distribution of power and wealth and to attempt to readdress the manifest inequalities which exist at present ... [and] this can only be done by working closely with people” (Preston-Whyte, 1990).

The participant-observation element of some non-research-related activities also exposed a wide spectrum of social and community activities. At times I became party to situations and discussions that were not directly related to my research activities, but were useful in understanding the ‘bigger picture’. It was here that serious thought needed to be given to “what may be reported, what should remain confidential, to the legitimate .. issue of certain types of information gained in the field and, above all, to preserving the confidentiality of research material and the anonymity of ... the communities to which they belong” (Preston-Whyte, 1990).

### **3. ETHICS AND ACCOUNTABILITY**

#### **3.1 Accountability**

Working with communities and non-governmental organisations brings to light the issue of accountability and the balance of power between the researcher and the researched. Fairbairn (1987) identifies 7 facets of accountability in her literature review<sup>6</sup>, three of which I believe are relevant to this research. These include:

1. Moral accountability (answerability to one's clients)
2. Professional accountability (responsibility to oneself and one's colleagues)
3. Political accountability (responsibility to your 'political' constituency).

The issue of accountability is often contentious and can be lead by personal interest or stake in any research process. It is a complex problem for feminist research, in that on the one hand we value consultation with 'the community' in the development of the research (i.e. identifying gaps, access to respondents), but on the other, we are committed to a broader feminist scholarship, that remains tied to scientific rules surrounding 'sound, objective' research. There is a tripartite accountability then in this kind of research: to ourselves as feminist scholars, our research institutes and our political objectives, to the organisations we work with and the women themselves. This is not to say that these are mutually exclusive categories - but they may be in some instances. There may be inequalities in the research process and these need to be kept in mind and continually reflected upon during each research phase. After all,

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<sup>6</sup> These facets of accountability are drawn from the work of the East Sussex Accountability Project (1980) called "Accountability and Evaluation" and from S. Walter's (1987) conference paper called "Who's the Boss? Accountability within Organisations".

it is 'the insiders knowledge' we are drawing from and the organisations and communities that we are working with should have access to it.

The issue of accountability also reared its head in relation to questions concerning whether the women in the communities were easily identifiable (unless they consented to having themselves recorded and documented) and whether it was in the best interests of the community to reveal the issues of gender-based violence (the difficulty again in determining who the 'gate-keepers' of the community were and the issue of advocacy for those who did not have a political voice within the community). This sparked what Preston-Whyte (1990) refers to as a contradictory ethical imperative: a balancing act of political/feminist contextualisation of the problem and the possibility of aggravating the problem. Because the communities we drew our information from were serviced by the Black Sash in some form, it was, after some discussion, established that the research, and its methods, did indeed assist Black Sash objectives and thus was not bending ethical boundaries of accountability or confidentiality. These organisational objectives include promoting equal access to justice for all, monitoring and developing awareness of women's socio-economic rights and campaigning for justice in legislation through gender-based research. Another key concern was the protection of the rights and the interests of the research participants. Berreman (1973) argues that:

In situations where there is widespread agreement that certain people and sections of communities are the recipients of unjust treatment, of continuing violence or of repeated intrusions upon individual freedom, many anthropologists argue that it is not merely a personal, but a professional duty to speak out against any such situations in which

they find themselves... (Berreman, 1973, in Preston-Whyte, 1990, p.253).

This research, and the manner in which I chose to disseminate the results could be justified in terms of its benefit to women in rural communities.

### **3.2 Feminist Ethics**

The qualitative method of research also raises the need to reflect on this kind of methodology in relation to the 'politics' and ethics of feminist research. It will be argued that one of the difficulties in establishing the ethical parameters of research in the gender arena is that the discussion of ethics of research are "commonly conducted within a framework which is drawn from the public domain of men" which is inappropriate in relation to research with women (Finch, 1984).

The dialogue surrounding ethics in research in South Africa appears relatively disorganised, particularly within the social sciences. Given that every social science department aligns itself with a different code of research ethics (i.e. American Sociological Association, American Psychiatric Association and other codes of ethics, such as those of the medical, anthropological and psychological associations of South Africa as well as the Research Code of the HSRC), it is difficult to 'name' the specific ethical guidelines from which this research drew its research ethics from. It did, however, acknowledge that each research situation presents its own, unique, set of ethical problems and attempted to formulate a basic philosophy of criminological research ethics, drawing from a variety of sources (including the tenets of feminist research).

According to the *Concise Oxford Dictionary* (1982), an ethic is a set of principles, morals or rules of conduct. The Nebraska Feminist Collective [NFC] (1983), however, maintains that little attention has been paid to the underlying patriarchal ethic which informs theory, method and substantive issues and suggests that “a feminist ethic orders these general issues in a specific perspective that recognises wimmin’s<sup>7</sup> continued oppression within a patriarchal social system and discipline” (p.535). Moreover, the debate around research ethics are formulated in terms of the rights to privacy and protection of those being researched and it implies a framework of formalised rights and obligations along with procedures of legal redress (Finch, 1984). The critical issue, however, is that women do not necessarily have access to these remedies. This thesis, however, proposes that the feminist ethic under which the research was undertaken, attempts to restore the balance between the means and ends of research.

In addition, due to a lack of literature on studies relating to the relationship of the gender of the interviewer to the research product, it is difficult to account, systematically, the impact of women vs. men interviewing women about their lives. There is, however, a distinguishing feature in women interviewing women which is not conducive to the methods set out in orthodox methodology texts (i.e. maintaining an unbiased and objective distance from the interviewees). Oakely (1981) is of the view that formal, survey-type interviewing is unsuited to the production of good sociological work on women. She adds that less-structured research strategies which avoid creating a hierarchical relationship between the interviewer and the interviewee

are a preferred method of interviewing women. I share Oakely's and Finch's penchant for this type of interview style on both political and methodological grounds. Firstly, my own research experience with working with women has illustrated that women tend to be quite open to talking about their experiences as women, even if they have initial concerns about how the information will be used and whether they will be identified in the final research product. Once the issues surrounding confidentiality, anonymity and the option of not answering questions that they feel are too invasive or difficult to speak about are established, the interviewees become open to the interview process. Secondly, by ensuring that women are involved in the research process - by providing additional information to that contained within the interview schedule or by inviting them to provide their own recommendations with respect to the issues at hand - women feel that they are part of social change and are more inclined to participating fully. They, therefore, become active voices, rather than the passive 'objects' of research.

The NFC (1983) also argues that,

... advocacy research has been relegated to the sidelines as 'non-academic' and the ties between theory and praxis have been denied. This divests feminist scholars from professional legitimation for their research which returns investments to wimmin and contributes to significant social change (p.538)

This challenge of the traditional order of social science methodology in taking a critical activist stance to our work, is another factor in the development of my methodology. The charge that in taking this stance we are not "serious"

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<sup>7</sup> Authors' spelling.

criminologists/sociologists, but instead are using our work to promote our politics is a serious indictment on feminist research. In this regard, the challenge is, as Roberts (1981) points out, that “a commitment to taking people’s experiences seriously is essentially a political activity but is not peculiar to feminist sociologists, nor do we become less professional or rigorous as a result” (Finch, 1984). Moreover, as Cain and Finch (1981) have argued, the fact that research is undertaken from a standpoint which embodies a political interest or motivation, does not mean that the knowledge produced cannot be evaluated and scrutinised by others. Indeed, “if recognising the intrinsically political nature of both theory and data mean that the sociologist has a great responsibility to be open and scholarly about her procedures and her conclusions” (Cain and Finch, 1981 in Finch 1984, p.170).

The NFC (1983) also poses the following question which this research attempts to address through its methodology: To what extent are women exploited on the grounds of enlightened academic self-interest? It is argued that this research recognises it’s ‘feminist’ role in engaging in a research dialogue that is empowering to women by (i) utilising qualitative and socially-historic relevant methods of inquiry and analysis; (ii) engaging in reflective and critical research; (iii) being accountable to respondent communities; (iv) conducting research that is socially, personally or politically liberating for women; and (v) making research results accessible to non-academic readers.

### **3.3 Informed Consent**

All respondents were assured strict confidentiality of what was discussed in the interviews and the names were not recorded. Each respondent was made aware of the full nature and intent of the research inquiry. Once the respondents had been informed of the procedures and purpose of the interview, they were informed that their participation was voluntary and they were free to withdraw consent or discontinue participation at any time. Because of the issues of semi-literacy and illiteracy, the respondents were not required to sign a consent form. The respondents were also not required to answer questions they were uncomfortable answering. Additionally, they were reminded that I would answer any inquiries concerning the interview procedures or the content of the questions at any time during the interviews and were also given information with respect to accessing the final results of the research. Finally, the women were informed that the information they provided were for the purposes of both research and advocacy.

## **4. Operationalising Domestic Violence**

The operational definition of domestic violence has produced a variety of results in relation to the etiology, epidemiology, patterns and effects of domestic violence. The lack of a widely accepted definition of domestic violence has also resulted in a diverse set of estimates and theories depending on how broadly or narrowly this form of intimate violation is defined. Naturally, a broader definition of domestic violence will positively influence reported incident rates within this body of domestic violence research and literature. The development of indicators or criteria for understanding

domestic violence was, in my mind, not a difficult one, but proved problematic when attempting to compare the results of this research with other existing research on this phenomena. Moreover, whilst the definition of domestic violence was set out in the beginning of this research, consultation with rural organisations and rural women demonstrated that my working definition was not as salient or comprehensive as I had expected.

The original operational definition that I had developed was in reference to a specific form of violence: that is 'violence against an intimate'. More specifically it was defined as violence perpetrated by husbands and male partners against their female partners in their homes. It was further conceptualised that the violence may be actual, attempted or threatened physical harm, sexual assault or mental or psychological abuse. The reasons for this definition were twofold: (i) to specifically concentrate the research on violence against women as the most common form of family violence and (ii) to limit the scope of inquiry in order to generate meaningful focused results on partner assault. I also contemplated Hansson's (1993a) argument that the term "violence in the home" is preferable to "domestic violence". Hansson argued that:

Violence committed in the home is still violence - calling it domestic violence negates this fact and implicitly perpetuates the notion that violence in the home is somehow less serious and less worthy of intervention, than violence in the so-called 'public' sphere (p.2,3).

While I found this argument very persuasive, it was decided that the term 'domestic' violence was a more workable definition in that it made a clear distinction between violence against a woman by her partner and other forms of family violence (i.e. child

abuse, elder abuse, wife-on-husband abuse, etc.). It was felt that the term 'family violence' would only create operational difficulties both in the interviews and in the discussion section of this report.

I did not make any distinctions in this research as to the exact nature of the relationship (whether the couple was married, co-habiting, separated or divorced) of the partners involved, nor established any criteria with respect to the severity of the physical abuse involved. It was also important to not limit 'assault' to its legal meaning, so that it encompassed various other acts that may occur in the context of actual, attempted or threatened assaults, not necessarily captured by the legal definition.

I have used and adopted McLeod's (1987) definition of 'wife battering' in this and other research and found it to be one of the most comprehensive definitions, reflecting the multifaceted nature of domestic violence and will be employed for this study:

Wife battering is the loss of dignity, control and safety as well as the feeling of powerlessness and entrapment experienced by women who are the direct victims of **ongoing or repeated**<sup>8</sup> physical, psychological, economic, sexual and/or verbal violence or who are subjected to **persistent**<sup>9</sup> threats or the witnessing of such violence against their children, other relatives, friends, pets and/or cherished possessions by their boyfriends, husbands, live-in-lovers, ex-husbands or ex-lovers, whether male or female. The term "wife battering" [is] also understood to encompass the ramifications of the violence for the

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<sup>8</sup> Authors emphasis.

<sup>9</sup> Ibid.

woman, her children, her friends, and relatives, and for society as a whole.

There were, however, elements of domestic violence that I had not initially foreseen incorporating into the interview and analytical processes but which emerged during the interview process. This included other forms of economic abuse that I had not contemplated, including withholding money, requiring the victim to perform 'duties' before releasing money, stealing money earned by the victim and throwing victims and their children (or threatening to) out of their homes. Another form of domestic violence which was revealed during the interviews was the notion of "punishment" and "public humiliation" as justification for an abuser or his family for behaving violently towards his partner. Finally the measure of 'risk to health' via the transmission of STD's or HIV from abusers with multiple partners was also not considered within the original operational definition. However, meetings with Black Sash staff as well as other women within the community assisted in opening up the original definition to include these forms of violence against women. These definitions were then included in the design of the focus-group interviews.

Due to the more comprehensive definition of domestic violence that I employed to elicit information about domestic violence in rural areas, the quality of the results improved, but the comparability to other domestic violence research decreased substantially. My literature review on the area of domestic violence found that authors would exclude one or more facets of domestic violence in their definition. Some examples include:

1. Defining couples or partners through marital status.

2. Excluding economic abuse.
3. Focusing on actual violent behaviours and not threatened nor attempted ones.
4. Narrowly defining sexual abuse as rape vs. sexual intimidation, attempted rape or sexual harassment or not including sexual abuse at all.
5. Setting up a particular domestic violence paradigm that refers to respondents as “violent couples” (apportioning blame onto the victim or the suggestion of provocation).
6. Grading the severity of the abuse before considering it domestic violence<sup>10</sup>.

In terms of research design of domestic violence research, Geffner et al., (1988) argue that many of the early research initiatives on domestic violence were poorly constructed and ‘uncontrolled’ because “nonparametric or descriptive statistics were the rule and dramatic or shock value took the place of inferential statistics and experimental rigor” (p. 463). This masculinist and positivist construct of what sound family violence research design should look like, is only - though I propose this with caution - of any real merit in clinical or treatment outcome studies. Their statement, however, did spark some thoughts with respect to how I would set out the results of this research. For the most part, the research results are descriptive, but that is purely a result of my chosen methodology and not because of methodological unsoundness. In relation to Geffner et al.’s comment about the dramatic or shock value of domestic violence research, my response to them is “domestic violence is shocking as well as disturbing, brutal and lethal”. However, my second response was that in excerpting the transcribed interviews into the results section of this thesis, I took careful attention to the relevance of ‘shocking’ statements made by the participants to the issue at hand. However, there was also consideration towards ensuring that the severity and

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<sup>10</sup> There was also a considerable amount of debate - particularly within interventionist and social work literature - around whether to use the term ‘victim’ or survivor. It is the contention of this author that

prevalence of domestic violence was articulated and demonstrated clearly within the results.

## **5. Interviewing Techniques**

### **5.1 Focus Group Interviews**

The primary data collection technique of this research in the Southern Cape took the form of focus-group interviews (n=19) via a cross section of community structures such as medical clinics, constituency offices, social service delivery providers (private welfare organisations and a variety of community forums) libraries and word of mouth and took the form of 'workshops', in which an active exchange of information between the researcher and the researched took place. The focus-group interviews were also undertaken in tandem with one-on-one interviews with both rural women and rural service delivery providers. The Black Sash facilitated access to 15 different communities in the Southern Cape and 168 women in total were interviewed on issues of violence against women and access to justice during the research period. The aim of conducting workshops with a variety of communities was not necessarily to compare the differences in experiences amongst the groups, but to ensure the widest possible range of experiences of violence against women within the rural context. A less formal, group interview was also conducted at the Knysna maintenance court at which 28 women were present and discussed their problems in accessing maintenance.

The workshops on access to justice in relation to violence against women took from 2-5 hours to conduct. The response to the focus-group 'workshops' was overwhelming and in some communities, reaching numbers of up to 21 women. Due to the time constraints it was difficult to divide the larger groups into smaller ones, but levels of participation were high even in these larger groups. Follow-up meetings were conducted in three of the communities, on request of the women themselves.

The geographical areas and the number of women interviewed in each area follow:

**Table 1: Geographical Areas and Number of Women Interviewed in Each Area**

Area	No. of Women
Knysna, central	29 <sup>11</sup>
Goudveld, Rheenendal	21
Jootsekamp	17
Concordia	10
Keurhook, Rheenendal	21
The Craggs - Kurland Dorp	2
New Horizons, Plettenberg Bay	7
Smutsville, Sedgefield	21
Khayaletu	6
KwaNongaba, Mossel Bay	15
Lawaiikamp, George	16
Sedgefield, central	7
Nekkies	6
Witlokasie	6
Rosemond, George	12
<b>TOTAL</b>	<b>196</b>

Most of the communities visited during the course of this research were what might be referred to as 'informal settlements' and disadvantaged, with high rates of unemployment. There was a relatively equal distribution of black and coloured women who participated in the access to justice interviews, but only 7 white women

<sup>11</sup> Including Maintenance Court Interviews.

participated in the interviews. It is not clear at this point why this is the case, except perhaps a reflection of the kinds of communities that require the services and interventions of the Black Sash.

Whilst the method of focus-group interviews is often seen as a precursor or complementary to the next 'real' stages of research (Schurinck, 1995) - those which embark on more structured methods of research - I believe that these focus-group interviews yielded substantive information about violence against women in rural areas. Further, it was clear, even early on in the research, that the collective support of the groups gave women a great sense of confidence to discuss violence within their communities and provided women with a safe, non-threatening environment within which they could discuss 'women's issues' within the community. The effectiveness of in-depth focus group interviews, in this research, proved to be a great asset in creating sociological knowledge about women and their experiences. One of the limitations of conducting focus-group interviews, however, was getting accurate demographic information of the participants, particularly if the groups were large.

While the information gathered during these interviews have also been supplemented by the use of documentary sources (current policy, legislation and literature on violence against women) personal communication with relevant non-governmental organisations and state organisations in the analysis of the results and for purposes of the discussion section of this research, the bulk of the results are derived from the focus-group interviews conducted with the rural women.

## 5.2 The Interview Schedule

Semi-structured interview schedules were utilised during the focus-group interviews. Whilst it provided the workshop with guidance it also allowed considerable latitude for the interviewees to explore violence against women in their communities. This type of interview schedule departs from 'traditional' methods of interviewing not only in its format but in terms of its interest in the perspective of those being interviewed (Bryman, 1988). While interview groups were directed against the backdrop of an interview schedule and a sort of 'free association' was encouraged within the discussions, the author attempted to systematically cover the range of subjects set out by the schedule. It can be argued that semi-structured interviews coupled with focus-group interviewing techniques will obviously have their disadvantages. The main disadvantage is the fragmented and disconnect nature of the information amassed using these methods which can lead to biased interpretation of the events. This, however, can happen using qualitative, structured methods of research analysis. Moreover, this technique may yield ideas and parameters and provide understanding and knowledge of factors and issues that may not have previously been addressed by the researcher (Schurink, 1995).

The interview schedule was developed before the fieldwork took place. During the orientation week, I, with the Black Sash staff, reviewed the interview schedule and modified the schedule to ensure that the content was appropriate and that the needs of both organisations were met in the research. The Black Sash staff provided valuable insights and recommendations and the schedule was modified accordingly (see Appendix 1). The schedule was kept relatively simple in order to prevent potential

translation problems of the key concepts set out in the interview schedule.

The interview schedule was broken down into six sections: (1) general (information in relation to the type of community); (2) demographic information about the women; (3) issues pertaining to community violence; (4) issues pertaining to domestic violence and rape; (5) personal experiences with domestic violence and rape; and (6) access to basic services (i.e. healthcare, policing, daycare, electricity, water and so on). Issues relating to community violence and those specifically pertaining to women in the community were discussed separately for three reasons. Firstly, because of the exploratory nature of the research, it was important to contextualise issues that women felt were problematic in their communities, as these problems could serve as potential indicators towards understanding the problem of domestic violence in underdeveloped, rural communities. Secondly, by addressing broader issues within communities, the participants were under less pressure to engage with highly sensitive and personalised accounts of violence against women from the outset. Addressing issues that were more removed from personal experiences allowed adequate rapport and trust-building between the researcher and the participants. Finally, this method allowed women to steer the interview process based on their own time frames and levels of comfort towards disclosing personal experiences with violence.

The development of the interview schedule and the assessment of the results of the interviews required the development of indicators for domestic violence, which were based on an assessment of international perspectives and local experiences with family violence. These pre-interview indicators were established in order to

accurately code and interpret the results in the qualitative analysis of this research.

1. 'Traditional' attitudes and practices regarding: marriage, divorce, domestic assault, rape and incest.
2. Family violence indicators<sup>12</sup>: education, alcohol, stress, poverty, mental illness, provocation, infidelity and 'family offences'.
3. The domestic violence cycle in the community or family; including what constitutes domestic violence.
4. Social organisation: kinship, political organisation and community responses to violence.
5. Narratives: experiences with domestic violence.

The interview schedule served as a template during the focus-group interviewing process and required a great deal of flexibility in order to accommodate shifts in areas of focus on issues relevant to the women themselves. When questions are more or less open-ended, respondents tend to provide very valuable insights on issues the interviewer may have missed. This research was also exploratory and required versatility in order to address wider issues of women's development such as the social position of women living in rural communities and townships and women's status and access to decision making that were not directly addressed in the interview schedule. The quantitative results of this research were obtained by asking women, through the show of hands, how many experienced a specific phenomenon in relation to violence against women and in relation to responses by the criminal justice system. These 'lists' of experiences were derived from three sources: (i) through a mini-pilot of the interview schedule with three, individual Black Sash clients; (ii) through existing research and NGO reports that provided findings in relation to women's experiences with the South African criminal justice system; and (iii) from the experiences of

Black Sash staff who have assisted women in cases of domestic violence or sexual assault.

### **5.3 The Interview Phase**

In total, 168 respondents were interviewed on issues of access to justice and another 29 women were interviewed in relation to their experiences with the maintenance system. The Black Sash provided the researcher with interpreters in order that the interviews could be done in the women's home language. The interpreters, however, provided much more than interpretation services. Four interpreters were used (1 Black Sash staff member and 3 Black Sash volunteers) and each interpreter brought with her unique skills to the interviewing process. The interpreters acted as facilitators, motivators, para-legal advisors and counsellors, adding tremendous quality to the group dynamics and greatly improved the quality information expected from the interview process.

The focus-group interviews began with an introduction to the project, the project staff, the services of the Black Sash and a guarantee of confidentiality and anonymity with respect to the discussions that took place. The women were ensured that they would not, in any way, be identified in the write-up of the report. The workshops began with simple, factual, non-threatening questions as another means of establishing rapport. The interview environment was casual and treated like a learning process dependent on mutual learning between the interviewer and the respondent. Once the interviews were complete the women were encouraged to offer

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<sup>12</sup> Including indicators and variables that have been perpetuated by myths.

recommendations on improving justice-related services as well as to ask questions about the criminal justice process in relation to maintenance and violence against women. Information booklets on these issues developed by the Black Sash were also distributed at the end of each session.

Interviews were tape-recorded to ensure that all responses were recorded, translated and transcribed. Additionally, observational notes were taken during the course of the interview to note any behaviours or comments in reaction to the questions as extra insight for the analysis. Transcribed data from the interviews were later edited to make coding procedures more efficient, and to eliminate any responses that were not applicable to the issues in question.

Informal interviews with members of legal and social agencies that handle domestic violence cases and work with battered women were used to provide another perspective to the interviews conducted with the rural women. Correspondence with these individuals and agencies were also recorded in written form and served as 'tertiary' data, to confirm primary and secondary sources.

## **6. Analytical Procedure**

While some of the data was quantified to determine the extent of violence against women in rural communities, the interviews were also analysed to detect underlying themes. I then engaged in analytic induction to determine patterns and themes of rural women's experiences. The results are not, as Silverman (1985) would argue 'simple counting techniques' in surveying the data to support my arguments.

Though the data collected is nominal data, the level of statistical analysis was kept basic, utilising percentages to explain frequency and content of answers. The purpose of this descriptive, low level analysis is to simply highlight attitudinal patterns and themes of the respondents, to summarise and describe the data, and to show relationships between 'variables'.

The interviews were post-coded and the values of the responses were determined once all of the interviews were completed. Although the post-coding procedure has been criticised for introducing measurement error, each completed interview schedule was studied carefully and the development of classifications and indicators for classifications were subjected to an inter-rater reliability check, which was calculated at 81%.

Throughout the analysis care was taken to develop the narrative approach. Much of the discussion, then, is based on the 'voices' of the women and the recommendations and conclusions draw extensively from their experiences. The bulk of the results are a systematic description of rural women's experiences with violence and access to justice, based on the interview template. Secondary data, in the form of supporting documentation from other research was also utilised to contextualise the rural context. The greater part of this data is demographic in nature and was not meant to detract from the data collected during the fieldwork of this research. It was instead used to provide the necessary links in rounding out the socio-economic status of communities in the Southern Cape region.

## Chapter 6 RESEARCH FINDINGS

This chapter will provide a primarily descriptive analysis of the results of this research. Discussion in relation to the issues raised in the results will therefore be presented in detail in the following chapter.

This chapter begins with a socio-economic profile of rural communities in the Southern Cape then provides the results related specifically to the interview schedule. Demographic information related to the employment, levels of poverty, education, marital status and property ownership of the rural women interviewed are presented followed by a discussion on problems women faced in their communities in general. Community issues are discussed broadly at first in order to contextualise issues that women felt were problematic in their communities as potential indicators towards understanding the problem of domestic violence in rural communities; to adequately build rapport and trust-building between the researcher and the participants; and to allow the women to also steer the interview process at a pace they felt comfortable with in disclosing personal experiences with violence. This discussion also included other forms of violence against women including rape, harassment and intimidation. Problems related to domestic violence are then discussed in more detail, though issues such as alcoholism and community violence are revisited in specific reference to women's experiences of domestic violence. In addition to the extent and forms of domestic violence, the results provide a picture of criminal justice responses and the role of other state departments such as welfare and health in cases of domestic violence.

## **INTRODUCTION**

The experience of interviewing women on issues related to violence within their communities and in their homes, provided both clarity and disconcertment in relation to the range of issues that surround social development and violence in women's lives. Poverty, alcoholism and lack of opportunities for women in rural communities continue to have enormous implications for the levels of violence in their homes and in their communities.

In view of the indisputable link between women's socio-economic development and violence - as an obstacle to that development - this section begins with a socio-economic profile of rural communities in the Southern Cape and a breakdown of this profile from a gender perspective. The results of the focus-group interviews are then broken down into themes and are accompanied by recommendations for change, as proposed by the respondents.

### **1.1 A Socio-Economic Profile of Rural Communities in the Southern Cape**

Prior to engaging with the rural communities in the Southern Cape, some background research on the socio-economic profile of the communities was undertaken. Information regarding the specific townships and settlements where the interviews were held was not readily available. References to rural areas within the Western Cape and more specific developmental issues with respect to the geographical areas of George, Knysna, Plettenberg Bay and Mossel Bay were acquired through discussions with the local people, the Surplus People Project, an analysis of census reports as well as a variety of rural newspapers and information booklets.

Much of the socio-economic and regional development studies on communities in the Southern Cape concentrated on environmental and industry impact assessments. Though useful in their debates on 'urbanisation' in industrial rural towns, discussion on real social impact was limited to the possible improvement of housing conditions for labourers. Other sources<sup>13</sup>, however, revealed that the disadvantaged communities in George and Mossel Bay share many of the problems associated with industrial and business expansion. The areas have been developing their industries (natural gas, mining, metal, canning and processing, manufacturing) with little attention to developing formal linkages with disadvantaged communities, from where much of the semi-skilled labour is procured. After several decades of industrialisation these communities remain living in unfavourable, unserviced conditions. Like many underdeveloped communities in South Africa the settlements are marked by makeshift wood and iron homes, gravel roads and only minimal lighting and on-site water facilities, if any. Workers are vulnerable to external factors such as seasonal work, the boom and bust of small scale construction, relocation threats and cuts to services as well as general industry trends, with no prospect of re-deployment. The industries and businesses are run by a closed, interlocking elite group in these towns, who have little concern for applying a systematic approach for alleviating the destabilising effect of these rural economies (i.e. adopting a formal housing or pension policy).<sup>14</sup>

In addition to the lack of public amenities (water, electricity, waste removal, on-site clinics) these communities are under continual threat of fragmentation of their

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<sup>13</sup>Surplus People Project and informal discussions with local community members.

<sup>14</sup> Community member.

communities due to a competitive work force. One community member in Mossel Bay suggested that because these rural industrial towns are growing at such a rate, the influx of people looking for work has created further problems with crime and alcohol, that she feels is most pronounced during times of low economic activity. She added that “other *kinds* of people are moving in who have different habits and lifestyles” to those who have been living there for generations, resulting in a different level of cultural displacement.

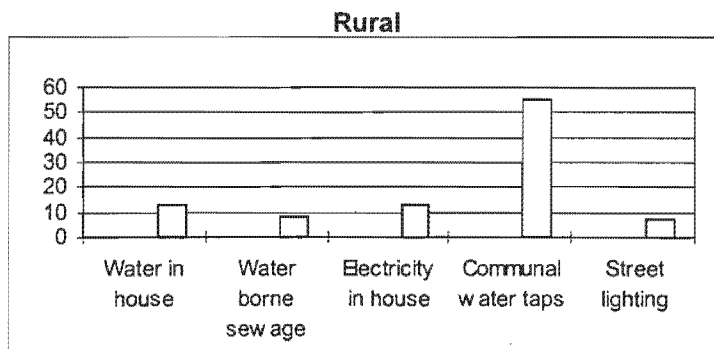
The other areas where interviews were conducted reveal a different economic profile to that of George and Mossel Bay. Plettenberg Bay and Knysna feature more prominently as tourism-based towns with smaller industries in timber, farming and fishing and a main secondary industry of furniture and wood work. The informal settlements and townships on the outskirts of these areas, however, fair no better than the examples of poor infrastructural development mentioned in the Mossel Bay-George region. The informal areas dotted around Knysna appear to have improved public services over the years, some boasting new schools, libraries, clinics and recreational buildings. The actual living conditions, however, are still tagged with problems concerning reliable services and facilities in relation to water, reticulated sanitation, roads, electricity and waste removal.

The Central Statistical Service’s 1994 Household Survey provides additional information on the environment and living conditions in rural areas in South Africa.

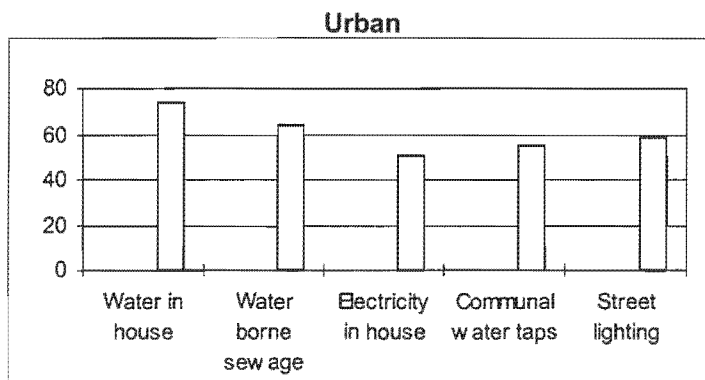
In relation to access to clean water it is estimated that over two-thirds (71%) of African households and over one-quarter (28%) of coloured households fetch water from sources outside their homes. The median time spent by women who collected water was reported to be 60 minutes. It was also estimated that over 30% of the population have to fetch wood for cooking and heating purposes (the majority of which are in non-urban settings) and that two-thirds (66%) of all those who spent time collecting wood were adult women and one fifth (20%) were young girls. The mean time spent each week fetching wood was calculated to be 5½ hours for adult women.

The Beijing Conference Report on South Africa (1994) also provides data on access to basic services in rural and urban areas found in Tables 2 and 3. In rural areas only 13% of houses have a water source in the house, 8% have waterborne sewage, 13% have electricity in the home, 55% have communal water taps and only 7% of communities have street lighting. The majority (74%) of urban homes, on the other hand, have water sources in the home, 65% have waterborne sewage, 51% have electricity in the home, 32% draw their water source from communal taps and 59% of communities have street lighting. There are currently no available assessments of access to basic services that have been done since the *Beijing* report.

**Table 2: Access to Basic Services in Rural Areas**



**Table 3: Access to Basic Services in Urban Areas**



Source: Beyond Inequalities: Women in South Africa (1997).

Tables 4 and 5 depict modes of transportation in rural areas by race and workers travelling to/from work in the dark in rural areas, by gender. Table 3 shows that even with the rapid growth of the taxi industry and the moderate extension of bus services within rural regions, the mode of transport that is used most frequently - presumably because of the accessibility and expense of these forms of transport - is by foot. Table 4 shows that almost 35% of women travel to or from work in the dark in the rural areas which - given the lack or absence of electricity and street lighting and the fact that roughly 54% of people from historically disadvantaged groups walk to and from work on foot - has serious implications for rural women's safety.

**Table 4: Modes of Transportation in Rural Areas by Race**

Mode of Transport	Black %	Coloured %	Asian %	White %
Bus	16.3	2.5	15	0.7
Taxi	19.8	2.7	9.0	1.2
Train	1.9	0.7	1.2	0.3
Bicycle	0.7	1.1	0.1	0.7
Car or Motorbicycle	10.0	15.8	29.6	68.7
On foot	47.5	69.6	45.0	22.9
Other	3.7	7.6	0.1	5.5

Source: Adopted and modified from Beyond Inequalities: Women in South Africa (1997).

**Table 5: Workers Travelling to/from Work in the Dark in Rural Areas, by Gender**

Gender	Number and Percentage
Male	653 256 (65.3%)
Female	347 283 (34.7%)
Total	1 000 539 (100%)

Source: Adopted and modified from Beyond Inequalities: Women in South Africa (1997).

In relation to the location of health care facilities, the Central Statistics Service document on Women and Men in South Africa (1998) found that only 18% of non-urban households and only just over a quarter (28%) of all African households were within 15 minutes of a health facility. They also reported that access to medical aid is poorest amongst Africans, where only 8% of women and 11% of men have medical aid (compared to whites of whom women accounted for 72%).

## 1.2 Socio-Economic Breakdown from a Gender Perspective

Table 6 provides information on the population, employment and education of South Africa and the Western Cape. It reveals a number of features about rural populations locally and nationally that are significant to the debate on access to justice. Firstly, it

indicates that nationally more people reside in rural areas than in urban centres, but only a small percentage of people live in rural areas in the Western Cape (13.5%). This means, however, that people who live in rural areas in the Western Cape are far more isolated than those in other provinces. Secondly, the official literacy figures appear relatively high, though they are deceptive in that they only reflect the most basic level of literacy - the percentage of people over the age of 18 who have completed Standard 5 (Dockda, 1997). Thirdly, the proportion of unemployed economically active women is far higher than the number of unemployed economically active men. What these statistics reveal is that rural women in the Western Cape are both isolated and economically disadvantaged. Without question, these factors, as well as inadequate educational opportunities contributes to rural women's disempowerment generally as well as in violent situations specifically.

The Development Action Group (DAG; 1994) also provides a broad picture of employment in the Southern Cape, that confirms these results. They found that in all subregions of the Western Cape: (i) Africans are the poorest; (ii) the poorest of this population group is women; and (iii) the percentage of women earning no income is consistently higher than the percentage of men. Within the Southern Cape 69.2% of African women do not earn any income, 12.1% earn less than R3000 per year and 11.8% earn between R3000-R10,000 per year. The statistics are similar in Coloured communities where 63.9% of Coloured women do not earn any income, 15.5% earn less than R3000 and 13.1% earn between R3000-10,000 per annum. DAG also reports that the Southern Cape shows a different pattern of employment from other sub-regions in the Western Cape in that the service industry is the biggest sector followed by construction - which is largely dominated by men.

**Table 6: Population, Employment and Education of South African and the Western Cape**

	South Africa	%	Western Cape	%
Area (km <sup>2</sup> )	1 219 090	100	129 370	10.6
Population Density	33.8 people/km <sup>2</sup>		28.8 people/km <sup>2</sup>	
Population				
Urban	19 636 000	48.3	3 178 000	86.5
Rural	21 012 000	51.7	498 000	13.5
Males		49.5		50.0
Females		50.5		50.0
Economically Active Population	14 297 000	35.2	1 719 000	46.8
Gender Participation of EAP	Male	64.3	Male	74.5
	Female	47.6	Female	53.7
Unemployment	Total	32.6	Total	17.3
	Male	26.2	Male	14.3
	Female	40.6	Female	21.5
Average Years of Schooling	6.86		7.63	
Adult Literacy		82.2		94.6

\*Figures from the Central Statistical Service, 1997

\*\*Adapted from Dockda (1997, p.7)

Drawing from the results of South Africa census data and development indicators, one can conclude that rural women, and particularly Black rural women, are critically disadvantaged on almost every level in relation to living conditions and development in the country. The combination of poverty, poor access to state services and facilities, underemployment and undereducation places an enormous burden on women's potential for independence and development and plays a significant role in the lacework of rural women's oppression.

The following section thematically sets out the results of focus-group interviews held in the 15 Southern Cape communities. The subsections lay out some statistical

information on violence against women as well as the more qualitative responses from the groups.

## **RESULTS FROM THE FOCUS-GROUP INTERVIEWS**

### **2. DEMOGRAPHIC INFORMATION**

#### **2.1 Employment**

Of the 168 women who participated in the study approximately 90% were unemployed (55% higher than the national average). It can be argued, however, that these figures are skewed, partially because of the types of communities that the author drew on for this research. For instance, in the Goudveld forestry camp in Rheenendal (approximately 30 km from central Knysna), women did not have any opportunities for employment. The forestry community was nestled several kilometres into Rheenendal forest and access to transport was limited<sup>15</sup>.

Another reason that this high unemployment figure may be skewed is that the focus-group interviews took place during working hours thus excluding the economically active. It was also difficult to distinguish between those who earned some income through work in the informal or subsistence sectors (i.e. self-employment) and those that considered themselves 'economically active'<sup>16</sup>.

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<sup>15</sup> The only transport provided for women to the nearest town only travelled to Knysna twice a month to allow the women to do their shopping for their families. If for any reason (including medical) the women required transport into town, the driver of the combi in the community charged R60 for a return trip. These women referred to themselves as 'just the wives of the forestry workers', completely dependent on their husbands for financial support.

<sup>16</sup> This and other demographic surveys also illustrate the invisibility of unpaid domestic labour and thus yield very conservative measures of employment of South African women. Estimations of women and work continue to operate within a conventional economic framework that only recognises work done in the context of markets as productive work; all activities outside of market-related work are considered to be leisure (Valodia, 1996). Budlender (1996) adds another dimension to this problem stating that

The women indicated that their husbands and partners do mostly casual work and the most lucrative mode of employment was owning a shebeen or a spaza shop, which were run predominately by men. Other, more prevalent, forms of employment included agricultural work, small construction, factory work and casual labour. The women that were employed were primarily domestic workers or in low-skilled occupations within small local businesses or factories. This is comparative to data from the 1995 National household survey that reports that approximately 30% of employed women work in the services sector and 20% in trade. Those that were unemployed worked in the home and were dependent on their partners for financial income<sup>17</sup>.

## 2.2 Living with Poverty

The economic conditions of all 15 communities were marked by high levels of unemployment and poverty. According to *Beyond Inequalities* (1997) poverty takes many forms, including: lack of money, hunger and malnutrition, general ill-health, inadequate housing, insufficient or no access to education, social discrimination, exclusion from decision-making and inadequate access to economic resources. All of these communities present some elements of poverty, but the most visible to an outsider is the poor condition of housing and the lack of basic amenities. The portrait of the disadvantaged rural community is marked by makeshift wood and iron homes,

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“apartheid prevented many women from moving to where jobs were available, particularly to urban areas [and that] even with the ending of formal apartheid there remain social, domestic and other impediments which restrict [women’s] mobility ...” (p.43).

<sup>17</sup> It was difficult to ascertain in most groups average level of family income, which is largely due to the dynamics of group interviews, the reluctance to reveal sources of income as well as the fact that many women do not know their partners’ level of income.

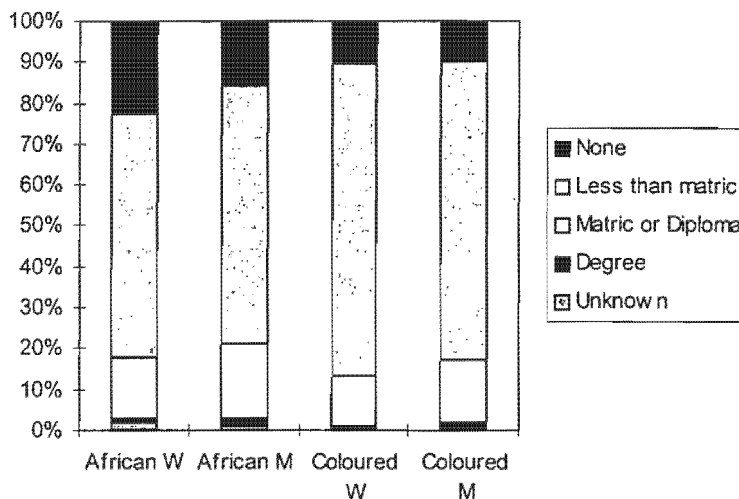
gravel roads and only minimal lighting and on-site water facilities, if any. The communities were severely underdeveloped, though a few showed some signs of infrastructural and environmental development. This, however, did not appear to be a significant indicator of the alleviation of poverty in these areas.

Women, however, were disadvantaged even further in that they tended not to either earn an income or have control over family income. The participants complained that many of the men in their communities neglected their families by not remitting enough money (or not remitting money on a regular basis) for women to provide for their families. Financial restrictions for low income women in the rural areas resulted in isolation, affecting every aspect of their daily lives. Financial considerations dictated their physical mobility, their access to education, recreation, where they could shop and what they could buy as well as access to each other. Lack of mobility (at all levels) was a central theme in their lives and seriously impacted on the quality of their lives. Poverty limited women's independence and created a serious burden and obstacles in relation to leaving abusive partners or families, upon whom many of them are financially dependent. Most women had no credit rating, no relationship with a bank and no cash to draw on in an emergency. Most women were reluctant to discuss whether they were the recipients of state or private grants/maintenance. Those receiving pensions were forward about their grants, but the younger women were generally unresponsive to this question.

### **2.3 Education**

Levels of education and literacy varied amongst the communities. Levels of literacy in the focus groups ranged from approximately 40% to 85% and many of those could only read in their home language. The communities that were more isolated, appeared to have higher illiteracy rates, but no conclusions can be drawn at this point. The question of illiteracy becomes more confusing when examining levels of education. Of the 130 women asked about level of education (several of the communities were unresponsive to questions relating to demographic information) 102 (78%) claimed to have completed standard 8. The coercive effect of group responses, however, may have also effected the reliability of this figure. Only 16 women (just under 15%) stated that they matriculated from high school.

National education figures show a similar pattern and reveal the educational differences with respect to both race and gender that the unequal access to education during the apartheid years left among people who were school-aged at the time (Central Statistics, 1998): 60% of African women and 76% of Coloured women have less than a matriculation certificate and 23% of African women received no formal education at all. Only 15% of African women and 12% of Coloured women have achieved a matriculation certificate or diploma.

**Table 7: Level of Education by Gender in the African and Coloured Populations**

Source: Central Statistics (1998): Men and Women in South Africa.

The reasons provided by the participants in this research for not completing school included transportation (for those communities who did not have on-site schools; or had on-site schools, but did not cater for secondary schooling), the need to support families/employment/care of siblings or other financial reasons, pregnancy, marriage and boredom<sup>18</sup>.

## 2.4 Marital Status and Children

Of the total number of women interviewed, 150 (89%) were married or in a 'permanent' relationship and 137 (82%) had children. Due to time constraints, it was difficult to establish how many children each women had or whether their children

<sup>18</sup> The October household survey confirms this problem at a national level, reporting that among South Africans who drop out of school (even though they want to continue their education) financial reasons were among the most important for both women and men. Pregnancy in this survey featured as a significant reason for dropping out of school for women (21% of women cited pregnancy as their reason for not continuing school). The problem of pregnancy was most severe among young African

were in their care. However, some indications of family size were given during the responses and will be incorporated at a later stage. The interviewer also had difficulty, due to translation problems, ascertaining whether women were married under customary, religious or civil arrangements. The 1995 household survey, however, gives some indication of the national marital status of South African women:

- a) South African women tend to marry at a younger age than men.
- b) African women are more likely to be married by traditional rites (92%), whereas women in other population groups are more likely to be married by civil or religious rites.
- c) A third (33%) of rural women who had given birth had not been married by either traditional, religious or civil rites.

## **2.5 Ownership of Property**

Exact figures relating to property ownership were also difficult to ascertain. Property ownership varied, however, and can be categorised in the following way: (i) husband as owner; (ii) son as owner; (iii) inherited by parents, but now 'owned' by husband; (iv) children as owners; (v) (forestry) management as owner; and (vi) 'not sure'. It was evident that very few, if any women, in the sample had direct ownership over their homes or properties. As will become clear in the discussion, housing is a significant dimension of women's security both in the community and within the home.

Within most of the communities, women feared for their personal safety after dark

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women (23%). It was not apparent whether adult education or literacy programmes were available in

and viewed their homes as a place of relative safety. It transpires, however, that the home for these women is a refuge only in the sense that fear of 'stranger' attacks are decreased. The phenomenon of domestic violence adds a different dimension to the home as a sanctuary from violence. For many rural women the home is the hub of social and economic activity, that is frequently disrupted by alcohol abuse and violence by their partners or other family members. The home then becomes a potentially dangerous place, but the choice between leaving the home after dark and staying at home and facing the violence often results in a kind 'involuntary confinement'. Because of the discriminatory housing and property systems of the apartheid area, slow moving new housing policies and complicated eviction processes, rural women have little choice but to stay in their homes. Those women who currently sit within one of many categories of housing ownership outlined above and who are underemployed, have few alternatives in relation to maintaining property ownership in the face of domestic violence.

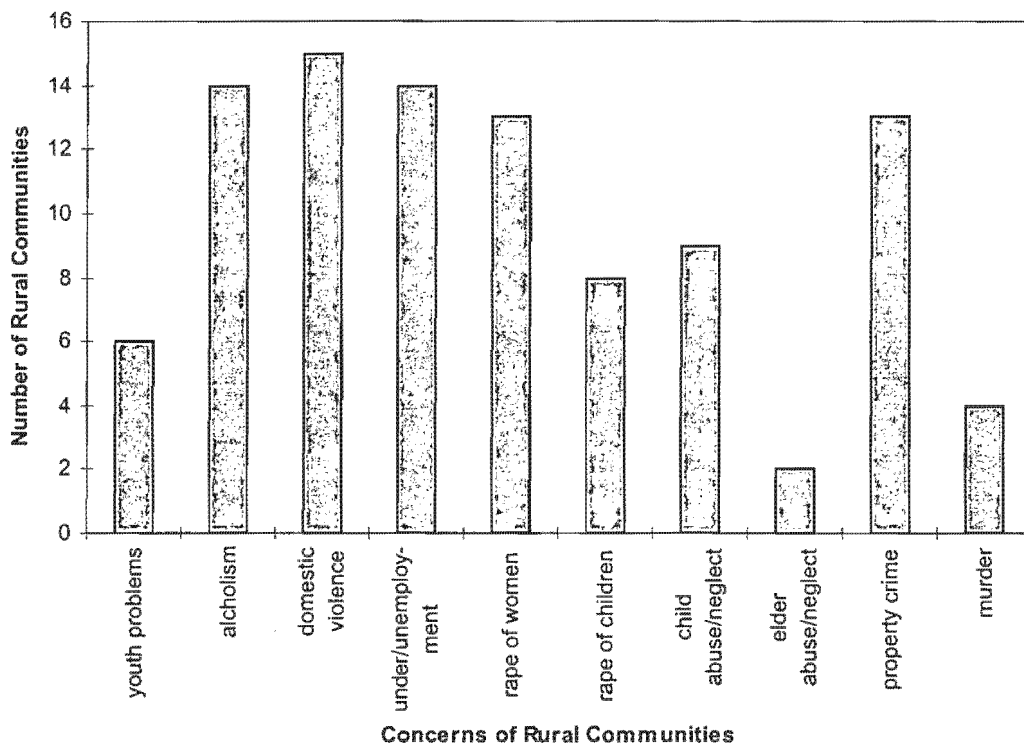
### **3. PROBLEMS WITHIN THE COMMUNITY**

#### **3.1 General**

This first set of questions put forth to the participants centered around problems that women faced within their communities in general. This was further broken down to include: (i) fears women had in and about their communities and (ii) general experiences with violence in their communities. Responses in relation to scarcity of employment and poverty lead many of the discussions and there was a strong trend towards associating links between unemployment, alcoholism and violence. All of

the community groups stated that domestic violence was a major problem in their communities, followed by high levels of alcoholism and under or unemployment (93%), rape of women and property crime (86%), child abuse or neglect (60%), youth or gang problems (40%), murder/violent deaths (40%) and elder abuse (13%). The results can be found in Table 8.

**Table 8: Problems Faced in Communities and Number of Communities who Experienced these Problems**



Statements in relation to the lack of income and the frustration that is caused in rural women's lives were not uncommon:

We have nothing. We cannot find work and our husbands do not support us. They go off during the day ... sometimes to work ... and come back with nothing. How must we feed our children? They go to school in torn clothing. They feel ashamed. We tell them they must go to school, but they want to get jobs. We know that without school they will not be employed. They don't go to school and sometimes they find alcohol and drink it all day. What can we teach them? What good can we teach them? [J]

Yes [the husband works], but he does not give his family the money. He gives us R50 for all of us a week and does not tell me how much he makes. He doesn't give the

money to me ...he gives to my son to go to the shop. My son does not know what to buy. But he is the son [L].

Within all communities, the alleviation of poverty and hardship is an ongoing struggle for rural women. The women believe that it also leads to a tremendous source of tension in their families, that may in turn lead to violence. Some insisted it is the lack of employment that lead their partners to drink and that drinking made them violent, while others made reference to drinking being 'a part of their culture':

It's what they do when they are troubled ... to solve their problems ... because they are unemployed [J].

Women repeated phrases like "we feel helpless", "we have no control of our lives" and "we don't know who to turn to". They were hungry for information on improving the quality of their lives through education, employment and basic information in relation to both financial and social support structures. In KwaNonqaba (Mossel Bay), for example, the women reported that the biggest problem in their community was the lack of employment or underemployment for themselves and their families. This, they stated, caused a tremendous amount of stress in families and that the issue of money was the cause of much conflict in families. Women were always under the pressure to "make do" with limited income and tended to prioritise supporting their children to keep them in school. The men in their community were the main breadwinners, but were "stingy" with money and put themselves first before wives and children. In Keurhook, the women also felt they were being "short cut" of family income in favour of their partners frequenting the shebeens.

### **3.2 The Role of Alcohol in Communities**

Alcohol abuse was cited as a major problem for rural women, within their communities. The abuse of alcohol, as one woman put it “can be seen, heard and felt everywhere”[NH]. Age restrictions for buying alcohol were said to be almost non-existent. Children, from early as 5 or 6 years old are modelling older children within the community that are regular substance abusers. Another stated that alcoholism and violence “is the norm of the day” and the children are also being adversely affected by their parents abuse.

The children get ashamed of the parents performing. They see the fighting, sometimes throwing boiling water and they run away. These are the images that the children have of the family. The young girls, especially, they get married to get out of the family and marry someone else who is abusing. And the cycle continues [NH].

The abuse of alcohol was spoken about with some despondency, but the dominant message of frustration came across most interview groups. Fourteen of the fifteen communities saw the problem of alcoholism as a debilitating one for women, their families and community development. Throughout the focus-group discussions, the link between alcohol abuse and violence against women was considered indisputable. Unlike international data on alcohol abuse and violence that report a 25%-50% use of alcohol in domestic violence situations<sup>19</sup>, the participants in this study provided figures of 75%-100% to explain the link between alcohol and violence in their communities. The general trend across these rural communities was the escalation of violence against women during the weekends:

Women experience a great deal of violence, both within and outside of the home. Domestic violence is a very big problem, especially on the weekend when the husbands have been paid their wages and drink their problems away. Because the men have the money it keeps women very silent about what is happening at home [Kw].

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<sup>19</sup> See Hague & Malos (1993) and Dobash & Dobash (1980).

In one specific community it was reported that because money for alcohol is not as readily available, some men resorted to concocting 'home brews' out of rotting fruit or vegetables as well as substances not fit for human consumption such as paraffin or metholated spirits, which apparently causes them to react violently and behave 'carelessly'. One woman explains:

[The severity of the violence] is because of the special kind of drink that the men here drink. There is a kind of alcohol, like beer, but stronger, that they drink that makes them very sick in the head and in their bodies ... and they get diseases and spread them to their families, their kids and anyone who is in contact with them [L].

When asked whether the stricter control of alcohol within their communities would control the violence, the answers varied. Some believed that alcohol was the sole cause of the "the evils of violence" within the community, whilst others suggested that it was only one in many of the factors that make men behave the way they do towards women, emphasising, however, that alcohol was certainly an 'aggravating' factor. In other cases, women refused to see alcohol as an excuse for violence and it was argued that men will always have a reason to batter women<sup>20</sup>.

Another related threat to women in their communities was the actual operation of shebeens. It was suggested that the highest levels of crimes against women and children, particularly sexual assault and rape, occurred in the close proximity to the shebeens. Shebeens were even connected with family violence:

If you report anything to the police ...if your husband was drinking at the shebeen and he beat you ...you will be attacked. A group of young people protect the shebeen owner and he doesn't want any trouble. This is the fear, so the auntie's keep the violence to themselves [K].

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<sup>20</sup> Some of these reasons include: jealousy, spending too much time outside the home, poor mothering/housekeeping, too independent, too dependent, accusations of infidelity, work stress, crying children, tradition, religion and so on.

### **3.3 Rape and Sexual Assault**

The threat of sexual violence was also a prominent feature in the discussions. Rape and the sexual molestation of children were seen as the biggest threat to women and girl children in the communities. This was due not only to the violation of women's physical and sexual integrity, but because of the implications that rape has for women within their own families and within the community as well as other consequences of rape such as death, injury, impregnation and sexually transmitted diseases. The women understood rape as forcible sexual intercourse without a woman's consent, but there was some doubt by some of the participants whether this form of violation within a marital situation can constitute a crime. Further probing, however, revealed that sexual assault is indeed a common feature of domestic violence cases, though few women were forthcoming about their own experiences.

The fear of rape, it was reported, made women feel vulnerable and restricted their movements and associations within their communities. Painful disclosures on the experiences of rape and the treatment by police, justice and health officials featured in 60% of the focus group interviews. These are just a few of the experiences women described about how they were treated by those who purport to support and assist victims of sexual assault and rape:

They made me wait for hours at the charge office before we went to the district surgeon. She [the police officer] was nice, but she asked me so many questions that I did not understand. I couldn't think. She kept on asking me over and over the same thing. I think she [thought] I was lying [Cr].

My daughter was shaking at the court ... I thought she would be sick again. They made us wait outside the court with him [the perpetrator]. He kept on staring at her [L].

I was still dirty and I could not change my clothes. He [the district surgeon] didn't even look at me when he was taking the samples ... I felt like I was out of my body and he

made me feel like I didn't even exist. No one spoke to me. I just went from one place to the next and did not know what was going on [S].

Fears of retaliation, community humiliation and being ostracised by family and friends were not uncommon elements of these disclosures. Only five of the fifteen communities spoke about rape at any length during the focus-group interviews. Several women from these communities, however, came to me after the focus-groups were finished and provided detailed stories of their or their children's experiences of rape, their community's responses to the rape and their experiences with the criminal justice system. During the course of the fieldwork, nine cases of rape were brought to my attention, two of which were gang or group rapes, but it was also reported by 14 of the 15 communities that rape was certainly not uncommon<sup>21</sup>.

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<sup>21</sup> In light of the number of women who were interviewed (n=168) this figure (n=9) seems small. However, the issues of rape and sexual assault were not the focus of this study, but rather a spin off of the focus-group discussions of violence against women in domestic situations. In order to contextualise the problem of rape in these communities, it is important to provide some indication of the levels of rape in South Africa, before proceeding with the results of this discussion. What we understand about the frequency and extent of rape in South Africa follows:

- a) The most recent CIMC Quarterly Report on Rape and Attempted Rape reports that between January and September of 1997, 36 137 rapes (including attempted rapes) were reported to the police nationally, a 19.4% increase from the first three quarters of the previous year. They also reported that "the incidence of rape is again<sup>21</sup> on the increase after showing signs of stabilisation during the first 6 months of 1997" and that South Africa remains in an "undisputed first place" as far as reported cases of rape in relation the 1994 Interpole ratios.
- b) It is estimated that 1 in every 20 cases of rape are reported to the police. (NICRO 1993)
- c) This estimation would bring national rape figures to approximately 722 740 for the January-September 1997 period.
- d) Other reports (SAPS, 1994) have estimated that only 1 out of every 35 rapes are reported to the police, increasing this estimate to 1 264 795 for same this period.
- e) While per capita figures resulting from reported cases would suggest this figure is "relatively low" (approximately 6.5% - 10% of women above the age of 18 years), many victim service organisations would argue that as many as one third of South African women have been raped or will be raped in their lifetime.
- f) Nedcor found that children and youth are two and a half times more likely to be raped than adults.
- g) An Interpol survey in 1994 found that South Africa has the highest incidence of reported rape in the world.
- h) Rape Crisis (1997) has also reported that (i) according to reported rape statistics a women is raped every 12 minutes in South Africa -- but according to other estimates 3 women are raped every minute; (ii) the Western Cape has the highest incidence of rape in the country; and (iii) approximately 53% of rape victims that come to Rape Crisis for counselling or legal assistance know their assailants. Roughly 30% of Rape Crisis clients are under the age of 18 and 75% under the age of 25.

When probed about the level of risk of rape in rural communities, the women suggested that the risk was “high”, but was increased in certain circumstances:

It depends. If you stay home at night, then there is a smaller chance of getting raped. If your husband is there or you are married, no one will come in at night and the chances are even less. If you are out at night, even with other people, your chances of being raped are good, especially around shebeens, where men have been drinking [Kr].

You must never walk alone at night. You always need a man in your life to protect you. The other men in the community must know that he will fight for your life [J].

The young girls are most at risk. They walk around at all times of the day and sometimes with bad characters. Sometimes that even doesn't matter. They are targets for men of all ages in the community. They need to be educated about the dangers, but they are too free willed [C].

The locations that the rapes took place included the following: in close proximity to a shebeen (2 cases), on route from work and school (2 cases), in a perpetrators home (1 case), in the victims home (1 case), behind a church (1 case which was a gang rape), on the beach (1 case) and in a friends home (1 case)<sup>22</sup>. The conclusion that we can draw from this sample is that both domestic or private and public locations are dangerous to women. Seven of the nine rapes reported in this research took place during the late afternoon or early evening, apart from one which took place late at night in the victims home and one which took place in the morning. In five of the nine reported rapes (55%), the victims knew the offender by name or by sight, bearing a similar trend to the figures in the Cape Town victimisation survey<sup>23</sup>. In only 2 of 9

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<sup>22</sup> The distribution of locations within this small sample of rape victims is not entirely consistent with a recent victimisation study in the Cape Town metropolitan area where 44 percent of the sexual assault incidents occurred within the victim's home, followed by attacks which occurred 'in the street in a residential area' (16%), and rapes that occurred in someone else's home, an open space and 'other areas' making up the other 40% of the attacks (see Camerer et al, 1998).

<sup>23</sup> The Cape Town survey reported that in 37 percent of the reported rape cases the victims did not know the offender, 20 percent of the cases the victims knew the offender by sight and 43 percent knew the offender by name.

the cases, more than one offender attacked the victim<sup>24</sup>. One of the victims was less than 10 years of age, three of the victims were between the ages of 15-20, one was between 20-25, two were between the ages of 25-35 and two were between 35-45.

In disclosing these cases of sexual assault, in all but one case, there was a feeling by the respondents of contributory guilt about the attack; a sort of suggestion that they could have prevented it and were thus consequently partially responsible for it. This was also true for the mother of the 10 year old girl who had been raped:

He was my boyfriend. I should have known he was that kind of man. He was so nice and generous and sometimes watched over [her] after she finished school. I trusted him. I don't know why I trusted a man like that. When I went to go pick my child up, I knew something was wrong, but my child did not want to speak about it. When we got home, I sat down to speak to my child in private, but my child could not sit down (she was in too much pain). I took my daughter to the clinic and the nurse sister confirmed that she had been raped, though initially, for some reason, the nurse sister did not want to admit that the child had been raped [Lw].

In the four cases of 'stranger' rape, the women reported that the attackers instilled the fear of death by threatening to kill the victims by beating them to death or strangulation or by threatening to use a weapon. In the remaining cases, more subtle forms of intimidation were used including threatening to retaliate if the victim reported the rape, threatening to attack the victims social respectability, threatening to inform the victims family of her suggestive or provocative behaviour or by threatening to abduct the victim. All the attacks were attacks of opportunity, in which the victims were either sleeping, walking alone, intoxicated or in the need of an 'escort' home; locations in which the rapist had little risk of being 'interrupted'. In all but one case (that of the 10 year old) the use of rough, physical behaviour such as forcibly removing the victims clothing, restraining the victim and blows to head,

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<sup>24</sup> Statistics, however, compiled by Rape Crisis counsellors (over a the period of 1994-1997) indicate

back, chest and stomach were tactics used by the offenders to maintain power, debase and intimidate their victims. In most cases, the victim did not passively accept the attack, but were cautious of their attackers potential for violence:

At first I tried to run away, but he caught me by the leg and dragged me back [with] my face in ground. I started kicking, but then he hit harder ... the more I fought back the more violent he got. Then he said he would kill me and no one would even know. He said no one would ever believe me because I'm a [slut/whore]. I was out of breath so I couldn't scream ... like in a dream when you try to scream and nothing comes out. We were so far away from the houses, no one would hear anyway. I just kept on thinking that I don't want to [fall] pregnant and I don't want to die. I covered my face ... and head ... but he said to stop it because he would not hit me there because if he did people might believe my story, so he punched me all over my stomach and breasts until I stopped [fighting back]. I told him I would keep quiet if he did not kill me [Sm].

These sort of responses to and strategies for resisting rape are not unfamiliar to rape victims/survivors<sup>25</sup>. What is unique, then, about the rape in rural areas if the statistics and dynamics of rape are similar to those in urban centres and developed countries? The answers lie in the experiences of rural women in accessing justice and support after the incident of sexual assault. Between Sedgefield and Plettenberg Bay only one organisation was in existence that specialised in support for rape survivors, but during the time of this fieldwork, it was inoperative. Other agents of support, such as family, provided some support to these women, but many were discouraged to take the issue any further by other family members. These reasons included: the reputation of the family, fear of retaliation, little faith in the police and courts and fear of humiliation by community members. The fear of reprisal and intimidation in rape cases is also

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that roughly 70% of rape cases involve one perpetrator and 30% involve more than one perpetrator.

<sup>25</sup> A study on rape victims' resistance strategies during rape, found that "eighteen percent [of victims] tried to determine possible alternatives, such as how to escape or wondering whether the assailant would panic; over half (57%) used a verbal tactic such as trying to talk themselves out of the situation, stalling for time, reasoning with the assailant by trying to change his mind, trying to gain sympathy from the assailant, using flattery, attempting to strike a bargain, feigning illness, threatening the assailant, trying to change the assailants perception of the woman, joking and using sarcasm; and 22% employed the physical techniques of attempting to flee the scene, or fighting with the assailant. Naturally, some victims used a combination of these strategies" (Psychiatric News, 1975; no page available).

borne out by the Cape Town Victimization Survey (1998).

Of the nine cases of rape identified in the author's research, 6 were reported to the police<sup>26</sup> - the nature of the relationship between the victim and the perpetrator appeared to be an important factor for non-reporting. The primary responses by rural women in reference to the police as helping agents were that the police were accusatory ("why did you go with him"; "you should not walk in that area alone"; "you know what happens at the shebeens, you shouldn't have been there"; "are you sure that he raped you?"), hostile ("you're wasting my time ... come back when you get your story straight"; "what do you want us to do about it?"; "why did you wash yourself?") and unco-operative ("find him and then come back to us"; "our hands are tied, we can't just arrest someone because you accused him of rape ... we need more evidence than just your story"; "sit there until a female officer arrives to help you"). Other difficult experiences with the police included having to repeatedly, and in detail, relay the incident to several different police officers (i.e. charge officer, female officer, investigating officer), lengthy interrogation about the incident, having a statement taken down in a language that was not the victim's first language and poor follow-up about the arrest, detention, or bail hearing of the accused<sup>27</sup>.

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<sup>26</sup> This figure is much higher than national estimated levels of reporting of rape. However, no conclusions can be drawn at this point as the women who participated in the focus-groups and who discussed their experiences of rape openly are possibly more likely to take the issue up within the criminal justice system than those who did not disclose their experiences.

<sup>27</sup> The Cape Town Victim Survey (1998) statistically confirms poor service delivery and inappropriate behaviour of police in sexual assault cases, reporting that almost 60% of victims are dissatisfied with the way police deal with reports of rape, with African women (67%) and Coloured women (60%) finding the police response completely unsympathetic and inappropriate. The survey also reports that twenty percent of these women felt that the police treated them as though they were criminals.

District surgeons, it was reported, were also slow to attending rape victims, but the hospitals seemed to be "getting better" [N]. Rural women were also severely affected by the distances they had to travel to get to the police and court, only to find their cases postponed, as well as the poor instruction, preparation and assistance they received from court officials (including both court clerks and prosecutors) before trial.

Other issues in relation to access to services for rape victims in rural areas included the location of police stations, operational telephones in the areas as well as the distances to clinics and hospitals for medical treatment. It was evident that the redeployment and redistribution of service personnel and resources within the South African Police Service since the elections was slow to reach the rural areas in the Southern Cape. The SAPS seemed to have done little in terms of redressing poorly resourced police stations and accessibility, retaining the old configuration of stations: namely, permanent police stations, satellite police stations and contact points (Artz & Levin, 1997). As shown in Table 9, permanent police stations feature in only 14% of historically 'black' areas and in 86% of 'white' areas. Satellite stations and contact points are the main service providers in black areas, making up 66% and 51% of service points, respectively, in these areas. Satellite stations and contact points tend to offer only very basic, reactive police services and it is doubtful whether these stations have the human resources to adequately deal with victims of crime and undertake thorough investigation into any criminal matter. Batchelor's (1996) study on policing in the Western Cape has also found that police stations in traditionally white areas have an average of 1.2 SAPS personnel per 1000 people, whilst in traditionally <sup>black</sup> white areas the ratio of police personnel to people is 0.3:1000.

According to human development indexes the distance and accessibility to policing and health services are good indicators of poverty and deprivation<sup>28</sup>.

**Table 9: Distribution of Police Stations in South Africa**

Station Type	White Areas	Percentage	Black Areas	Percentage	Total
Permanent Police Station	821	86.33%	130	13.67%	951
Satellite Police Station	70	33.82%	137	66.18%	207
Contact Points	53	49.53%	54	50.47%	107
<b>Total Stations</b>	<b>944</b>	<b>74.62%</b>	<b>321</b>	<b>25.38%</b>	<b>1265</b>

Source: Artz, L., & Levin, N. (1997). Policing. In S. Robinson and L. Biersteker's (eds.), *First Call: The South African's Children's Budget*, p. 199-238. Cape Town: IDASA.

The poor interface between the health, police and criminal justice system also adds to rural women's list of barriers in accessing appropriate justice after a sexual assault. Not surprisingly, the health care system in rural areas is also heavily biased in preference to white and 'town' centres; health care services are disproportionately concentrated in these areas, particularly in relation to hospitals. The Human Rights Watch (1997) reports that most district surgeons (who are responsible for the examination of rape victims) in the rural areas are part-time, combining their official duties with private practice. The lack of appropriate and accessible medical practitioners to examine rape victims contributes to the secondary victimisation and trauma of rape victims, justice delays and inadequate medico-legal examinations of victims that lead to poor conviction rates for rape. Coupled with the dearth of police vehicles to transport women to the few district surgeons that are available, long waiting periods to be examined (up to 6 hours, but in one case not until the next day)

<sup>28</sup>For example, the U.N. Human Development Index (1995).

and unspecialised/uninformed or insensitive police and district surgeons, rural women find themselves with little support after being sexually assaulted.

They (the police) were nice, but they made me wait for a long time ... in my clothes that I was raped in ... almost all night ... for the doctor. They kept on coming back and asking me more and more questions ... but I told them everything. I was so tired. I asked to go home, but they said I must stay because they cannot waste their time driving me around. The doctor was not on duty. He phoned back at about 6 am then they took me to the hospital. I took off my clothes and they put it in a bag. I sat for more time in the doctors office in the gown, but the police woman stayed with me this time because they would not let my mother in with me. The doctor came in and was asking me a lot of questions like whether I had lots of boyfriends. He made some tests on me. When she (the police woman) asked whether he would give me medicine for pregnancy and diseases, he said it wasn't necessary and that if I had a problem, I should come back next week.

Young women who are sexually assaulted face additional difficulties with their families and schools after being sexually assaulted. Schools are reluctant to deal with sexual assault and see rape as a 'police issue' (personal communication: social worker) while families tend to 'hide' the problem:

When young women are raped either on their way to school, or even at the school, the teachers are not very helpful. [The teachers] have made the girls feel ashamed of what happened. In one case the girl was pregnant from the rape and she was told to leave school. The boys at the school were not punished and she was. She was told that she was not good for marriage and that she could come back when 'she fixes her problem'. She was also told that if she did not lay a criminal charge, their 'hands were tied', but even when charges were laid the boys remained in school. When we asked the school why they were not suspending the boys they said they could not kick children out of school just because they had criminal records [Cr].

When young women are raped, it is a different story. Sometimes the person who raped her is her friend or someone in the family and she is too afraid to tell anyone. Maybe she was out too late or drinking or with people she should not have been with, so she is afraid of being blamed for being raped [NH].

A nurse sister in another community explained that:

Sometimes they come to the clinic, but they don't say what happened. They [their family] just want us to 'fix them up'. It is easy to tell if a virgin has been raped, but it is hard to tell if she is not ... but we cannot examine her fully without her co-operation or consent, unless she is under 18 and we suspect abuse. Many of them just want to make sure that they are not pregnant, so we help them with family planning and refer them to hospital if she needs treatment for STD's or an HIV test. We do not have the

capacity to do counselling with these girls and the schools are not interested in the problem because it is a criminal matter and does not fall under their jurisdiction [W].

Young women, however, are not the only victims of sexual assault and rape in these communities. The elderly have also recently been victims of rape. An official of an ANC constituency office in the Southern Cape reported that no women in her constituency were immune from sexual assault: "women live in constant fear of rape and the uncertainty of whether their children, no matter what age or gender, are safe from these abuses" [Nh]. Her focus group added that violence is a big part of their lives and that their biggest fear was of men in their community, as they are the 'biggest cause' of violence against women and children. Another community complained that rapists in their community are generally not arrested, even if they have been identified:

If they are arrested, they spend no more than one night in jail. The victims of these men are often very young girls - under 5 years old - which makes it difficult for them to testify or give a proper statement. The men know that and that is why these children are easy targets for them [Nh].

A nurse sister also explains her frustration with the treatment of victims and offenders by the medico-legal system:

Rapists are treated with respect by the law and victims are treated with none. They (the sexual offenders) have a Constitutional right not to be tested for HIV/AIDS because it violated their right to privacy. If it is acknowledged that the offender is HIV+, they (prosecutors) do not bring that evidence into court or raise charges of attempted murder. The victims, on the other hand, have to fight for appropriate medical care if they are HIV+ as a result of the rape. Most of these women and children die without care, at home, but the state does not sympathise with that [Kr].

## **4. DOMESTIC VIOLENCE**

### **4.1 The Incidence of Domestic Violence in Rural Areas**

Evidence of high levels of domestic violence in the rural communities was immediately unearthed in the discussions surrounding general problems women faced in rural communities. When asked specifically how many women in the community were victims of domestic violence, the women (in all but one community) indicated that an average of 80% women are victims of ongoing domestic violence in their communities. Some women found the question amusing and reported they did not know of anyone that was not being battered by her partner while others described domestic violence as “a way of life” and “the rule not the exception”.

There was an air of complacency about domestic violence, in that at times the content of the discussions paled in relation to those around alcohol abuse, unemployment and rape. However, persistent reference was made to domestic violence as the main source of the disempowerment of women in relation to their general safety and well-being in their communities. The precise frequency of domestic violence was difficult to capture, given the methodology that was employed, but nationally studies on domestic violence estimate that:

- Domestic violence is the leading cause of female injury in almost every country in the world (World Bank, 1995).
- One out of every six women in South Africa are regularly beaten by their partners (NICRO, 1993).
- In at least 46% of these cases, the men involved also abuse the children who live with the women concerned (RAPCAN, 1996).

- A women is killed by her partner every six days (Vetton, 1995).
- Domestic violence is the most under-reported crime in the country.

A common theme in domestic violence research is the difficulty of securing accurate estimates regarding the incidence of frequency of this problem. Although there is an absence of conclusive and reliable estimates of domestic violence in South Africa, the results of this thesis show that women's estimations of this violence in their communities was comparable to small scale surveys of the problem. The many narratives of domestic violence by rural women were characterised by a disturbing familiarity by other group members participating in the discussions and by a sort of disillusionment surrounding the alleviation of the problem in the communities. Of particular concern was the pattern of responses in relation to the levels of domestic violence. Domestic violence was seen as a 'normal' male response to stress and alcohol and 'beating', it was reported, was commonly used in families as a strategy for punishment. Acceptance of so-called 'normal violence' or the failure to treat violent incidents against women as serious was also a feature in the interviews. Moreover, domestic violence was acknowledged as commonplace, rarely reproached by other community members or extended family members. In some instances, domestic violence was not seen as a problem, but a way of life for the majority of women in their communities. When asked about what they perceived were the causes of violence against women in their homes, in no particular order, the women cited the following:

1. Lack of respect for women
2. Problems with the children (children misbehave; or are 'neglected')
3. Alcohol abuse
4. Unemployment (linked with alcohol abuse; frequenting shebeens)

5. Suspicion or jealousy; accusations of infidelity or conspiracy
6. Culture (referring specifically to the lobola marriage)

The debates surrounding prevalence of abuse focused less on the incidents within communities - as it was taken as a 'given' in most domestic situations - and more on the experiences of victims of domestic violence. Demographic variables surrounding socio-economic and environmental conditions of abuse were treated with little importance by the participants, who instead focused on the problems women faced in attempting to decrease incidents of violence, the patterns of violence and the problems women faced in securing assistance or support when domestic violence occurred. Also of importance was the total complex of violence against women in rural communities, the role of kinship and community structures in silencing domestic violence victims, the grip of 'tradition' and poverty, access to services and the general under-development and instability of rural women. A community worker described the importance of these issues for rural women in the following way:

We are not talking about domestic violence in the same way as you would in white population. These women don't want programmes and psychological help, they want the violence to stop. Simple. They want enough money to care for their children, or to leave their husbands if it gets unbearable for them. Yes, tradition and culture is a major factor in stopping women from fighting back, but if they had the means, the financial means and the information to equip them to do something about it, the cultural factor would not be an issue. Of course it is now, because they have nothing else to turn to. They are economically powerless to do anything but follow their traditions. Tradition is the only support they have, if you want to call it support. They are hungry for information about their rights, but also need support from people like you and other agencies to take up their rights, without fear of losing everything ... their homes, their families, their lives. It is about opening the door to education, job creation and self-reliance ... to empower themselves. External help is important, yes, but internally women need strength and opportunity. Only these options can help them. The other things [are] second best for them [Kh].

## **4.2 Forms of Domestic Violence**

While the women unanimously responded that it was not acceptable for men to batter their partners and wives, under any circumstances, little indication of 'community' intolerance of domestic violence was reflected in the interviews. The rural women experienced and witnessed injuries that ranged from burns from boiling water to severe head injuries, resulting in the loss of hearing and sight. The types of weapons used on the women (or other women in their communities) included: steel pipes, sticks, knives, pieces of furniture, boiling water, fists, pieces of timber and kitchen utensils. Dental injuries were also prevalent and included: missing or broken teeth, fractures of the jaw and bruised or lacerated lips. One women reported that in her community women only go to the hospital if they are hit on the head and cannot see or are spitting blood: "if they are just hit on the legs or the arm, there is no need for the hospital because she can still do her work the next day" [W]. Other participants stated that in their community, men are "professionals" in domestic violence: that they often beat a woman's body and not her face, so that the injuries are not too identifiable to the police or the community, but that when a woman has been accused of infidelity, women sustain a lot of head and facial injuries "so to make her ugly to other men" [Rd; Kh].

Emotional or psychological abuse - threats of further abuse, degrading and abusive comments, 'warnings' that violence was imminent and threatening gestures - was described as 'part of the pattern' of domestic violence:

Women know when the violence is going to happen. They wait for it and sometimes

remove things from the home that they know the husband will use to beat her with or will throw at her. But you can never protect yourself enough. There will always be something for them to use. Even going to sleep does not protect them, because he will want to cause a fight and wake them up [Kh].

It's always present. You never know when it is coming. There are times when you do and you have to just wait until he gets home and just does it. Then it is over and you are relieved. The waiting is the worst part [Kr].

We know the cycle well. No one has to explain it to us. You see the mood rising ... he is anxious or angry or drunk or just showing his manliness to his friends ... it can be anything. You are never prepared and you are always prepared for it. You never believe it when it happens even if it happens everyday. He says he is sorry and will not do it again and you feel relief, but you know the calm before another storm [C].

Economic abuse was also a notable feature in domestic violence cases. The various forms of economic abuse included withholding money, requiring the victim to perform 'duties' before releasing money, stealing money earned by the victim and throwing victims and their children (or threatening to) out of their homes. Another form of economic abuse that one woman described was a problem for African families in her community was that some husbands only remit money to the eldest son, regardless of his age, for supporting the family. Women, she stated, were seen as irresponsible and "low on the family food chain". This practice was particularly problematic when the eldest son was at 'a drinking age', in that the family income would be spent at the shebeens and whatever was left over stretched to meet the needs of other family members. Women were subsequently beaten if the husband found her contribution to the meals or home unsatisfactory.

The most common form of economic abuse reported by the participants, however, was the irregular remittance of money for women to provide for their families, when they were aware that their partners had money to support the family. One participant described this as 'punishment' while another suggested that it was a way in which her husband enforced "control and discipline over her" [Sm]. Most women in the focus-

groups had no credit rating, no relationship with a bank, nor cash to draw on in an emergency. The financial restrictions that low income women in the rural areas suffer, resulted in both isolation and domestic 'confinement'. Financial considerations dictated their physical mobility, their access to education, recreation, where they could shop and what they could buy as well as access to each other. Restriction was a central theme in their lives and seriously impacted on the quality of their lives, their access to any social justice, equality and freedoms. More generally, the physical and emotional costs of poverty make it extremely difficult to make even basic ends meet, let alone make changes in their lives. Both poverty and limited access to family income, limits women's independence and makes it difficult for them to leave an abusive partner.

Sexual assault was also seen as another form of domestic violence, but very few women were forthcoming about their experiences of it in their relationships. The question of rape in marriage was met with silence in most interview groups, though there were a few vocal women who gave some perspective on the problem. Understandably, the focus-group environment did not lend itself to deal appropriately with this particular form of intimate violence, nor did the workshop style of the groups allow for adequate post-discussion debriefing. Sexual assault, in most instances, is an incredibly painful and difficult issue to discuss and within the family context, women have the added burden of societal and family pressures to 'save face' and to remain committed; of feeling betrayed; and of feeling inadequate as wives and girlfriends as a result of this form of intimate violence. One participant describes the sexual abuse that her sister experiences, but at the same time seemed to have captured the thoughts of the women in her group:

What can she do if he comes home, drunk, kicking the door, the children and everything has gone mad? When she is sleeping, he turns up the music loud and come to her and makes her sleep with him. And she only wants to please her husband but she does not like it. He is very aggressive in their bed with her. She does not believe it's really rape when it is her husband. Neither does he. He says "you're my wife, I can do what I want to do".

Even if she says no, her husband gets cross and hits her and keeps doing what he wants to do. It is very painful, but she cannot scream because her children are there. That is why he turns on the music. But, she says her children know what is happening. She can hear them crying.

She reports him to his family. His family says "what's wrong with you that your don't want to please your husband" or "what are we supposed to do ... you must have sex with your husband".

Sometimes husbands listen but they mostly say it is nonsense and if the women do not like it, they must leave the house. What must we do? Go to the police? Even if you are raped by a stranger they don't believe you and now you must tell them your husband is raping you? They are just as bad as the husbands. They ridicule you too and tell you that you are full of shit and you are wasting their time. You can have scars on your face ... bleeding ... and the police will send you home to 'sort it out with him'. Rape by your husband is only real in the law [Lw].

Stalking and harassment were also seen as problems for women who attempted to leave violent domestic situations; the small and isolated nature of these rural communities as well as the poor visibility and accessibility of the police exacerbated the problem. Women's shelters in rural areas are non-existent, police are indifferent and welfare organisations do not have the facilities to house women in danger. As will be discussed in more detail later, family and friends are also reluctant to get involved in these situations. It was reported that harassment and intimidation was a particularly serious problem for young women who refused relationships with young men or attempted to leave them. Even their families were vulnerable to attacks by groups of young men from the community if their daughters/sisters did not engage in relationships with a boy who demanded it. Violence and sexual coercion was characteristic of young women's lives in these communities and there appeared to be little support by educators, health professionals or the police in protecting young

women from violence, harassment, sexual assault, pregnancy and sexually transmitted diseases. Even families are powerless to protect young women from these abuses.

Alcohol abuse was also cited as a critical factor in the profile of domestic violence in these communities. While it was recognised by the participants that domestic violence occurs both with and without the element of alcohol abuse, there was a strong contention that alcohol affected the severity and prevalence of domestic violence, especially during the weekends. Women became much more vulnerable to more violent attacks by their partners and the violence was much more “visible” [Sm].

The shebeens, in particular, were seen as problematic for families:

Family violence is most common during the weekend. The men drink the entire weekend and come home and make demands on their wives. The men don't have much money, but they abuse the alcohol. The shebeen owners get violent over their money and the men must pay up. The shebeen owner gets his money first, then the family [Kr].

The shebeens are very attractive to the children because of the games inside. The shebeens are one of the biggest problems in that both alcohol and violence against women takes place there. They cannot regulate the shebeens because the police in their area have an interest in them and because of that, it is impossible to transform what happens in and around them. The shebeen owners also take advantage of the children [Nh].

Alcohol was seen as the single, most difficult social problem to deal with, as alcohol abuse permeated and manifested every aspect of women's lives in these communities, including: employability of their partners; domestic violence; community violence; sexual assaults and harassment; financial hardship; and general community safety and development. In several of the communities, shebeen owners were seen as very powerful and difficult to confront on issues of underaged drinking, harassment/abuse of women, allowing “family men” to drink on credit and the attraction of troubled youth or gangs.

If you report to the police, then youngsters in the community victimise you and attack you, that is why the aunties are so afraid to come out [about their problems]. There is a group of young people that are protecting the shebeen owner. If you report something to the police, the kids will attack your house or someone in your house. That is the fear, so [the women] would rather keep it to themselves.

Another participant (from a 'mixed' community) added what she thought was a further dimension in relation to the abuse of alcohol, race and violence in her community:

The African men are much more violent than coloured men, because most of the abuse in the coloured community is because they are under the influence. You don't see African men as drunk as coloured men, but the violence is much more in the African community. It seems like they want to rectify everything with violence. They are also poorer than us. Sober African men beat their wives, but in the coloured part of our community, sober coloured men do not beat their wives nearly as much [J].

Another group member adds:

Coloured women also defend themselves, whereas African women will just receive the beating. The coloured women are also put in a position where they have to work, because many of our men don't want to ... you must be the bread winner. This makes the relationship more equal. In the African community it seems that the younger generation is changing these things but most traditional women feel it is their duty to support their husbands and it does not make them any more equal. Women in African communities will never be capable enough in their men's eyes and will always be second class citizens. That gives the men the right to beat them no matter if they are drunk or not [J].

Alcohol abuse manifested itself in other ways. Some groups reported that they know of women who resort to alcohol to "cope" with the violence in their homes, but that this coping mechanism tends to backfire: women become more vulnerable to abuse and other community members and family begin to disrespect them. It was also explained that when both parents drink, children are often neglected, resulting in even greater ostracisation by community members. The children of alcoholic parents:

... go without food and stay away from the home because they are both afraid and ashamed of their parents behaviour. Community people sympathise and try to feed them, but there is much anger towards the family that is neglecting them. To get out of a violent family, young girls marry, often into violent relationships, and the violence continues. But this time, she is the sole victim of the abuse.

The combination of 'boredom' and alcohol was also seen as a lethal combination for the safety of women, but it was suggested that only employment of men in the community would pull them out of this collective cycle of boredom, alcoholism and violence.

### **4.3 Community Responses to Domestic Violence**

It was reported that violence against women in the streets was a common sight, but few people interfered for fear of retaliation. Assisting a woman who has been battered is uncommon and violence against women in their homes continues to be seen as a 'marriage problem' rather than a community one. Women are afraid to intervene if they see another woman in a domestic violence incident or relationship. This includes providing moral support, for fear of retaliation by the victim's abuser or because of her own partner's accusations of betraying or conspiring against him. It was argued that because men have little respect for women, they also do not intervene. Neighbours, therefore, keep quiet and wait until domestic violence incidents "blow over" [Nh].

There is no one to go to. No one wants to be involved. It's too dangerous. Maybe the next day, make her tea and listen, but our husbands also don't want us involved. If we do, then they will beat us too [K].

It is all over the place. No one gets involved. It is too dangerous. You leave it up to them to sort it out, because you cannot save everyone. You have your own problems and you needn't make more for yourself. Your man won't say anything either because he is donnering you too. The women are banged up all the time and keep going back, keep going back. What choice do they have? [W].

... but if the friend's husband is friends with her husband, it is not such a good idea ... because the abuser will pick a fight with the other man for not 'controlling his wife'. That's why other women do not get involved. They also don't want to cause trouble in other families [Kw].

Though domestic violence is common-place in many of these communities, it is virtually ignored by community members. It was stated that the rural communities were close 'in some ways' but not in other ways, like protecting women from violence. Women underplay the violence in their homes and even with the nurse sisters at community clinics. The women in two of the communities were initially hesitant to even talk about domestic violence or even acknowledge it as a problem, for fear of our discussions getting back to other community members [J; Rh]. One community group in particular was hesitant to discuss issues of domestic violence because of the fear that it would get back to the 'management' in the community. The community, a forestry camp, had in place a community representative who also served as the community's counsellor and project manager and who was responsible for liaising between the community and the forestry management company. He was, they reported, under a great deal of pressure to keep the community 'under control' and that certain things - such as alcohol abuse and domestic violence - "would not be tolerated" [R]. The women, instead, referred to "punishments" inflicted on them by their husbands, rather than 'domestic violence'.

Support for women who are victims of both domestic violence and rape from members of the community is virtually non-existent. Added to the lack of community understanding and support, violence against women remains cloaked in silence and retreat. Even small initiatives in a variety of communities (Concordia, New Horizons, Sedgefield, KwaNonqaba, Nekkies) to develop quasi-support structures for women

have had very positive responses by women in the communities, but are rarely sustainable. Instead of looking to family and friends for support and advice many women retreat themselves even further into their homes, for fear of being humiliated, 'gossiped about' or ostracised by community members. Others fear going to the police as they do not want to be seen as an *impimpi* (informer or stool pigeon) of the police. When probed about why women in the community do not support other women who have been physically or sexually assaulted, the most common response was "you just don't get involved in other people's problems". These same women, however, felt strongly that women should indeed support and offer assistance to victims of violence, but did not know how to begin this 'culture of caring'.

Communities make women ashamed. People make them ashamed. If they talk about it people will say bad things about this victim and talk about her. They make it hard for her to show her face because people make a judgement about her [J].

Yes, many women are victims of it (domestic violence), but it is not something that we are afraid of ... it just happens. We are all aware that it happens to a lot of us, but we don't ever talk about it. *Why?* People gossip about you ... that you are a bad mother, or a drunk or are a bad wife - you become the shame of the family (both immediate and extended). If you tell other people, your man will become very humiliated and beat you up some more. There is no point in telling anyone [Kw].

In this community, if there is a problem between a husband and a wife, you ignore it. You mustn't intervene, because if you tell someone about someone else's abuse, the abuser will come after you [K].

Women in black communities, in particular, explained that divorce is unthinkable and that family matters are to remain within the family. Shunning of battered women who complained was prevalent, which left women feeling even more isolated, vulnerable and depressed. Because the integrity of their being can only be established through a relationship with a man as his daughter or husband (particularly in *lobola* marriages) women become particularly vulnerable to abuse in relation to rights concerning their safety, their children, property and integrity of person. McFadden (1996) suggests

that tradition and ritual also excludes women from certain sites and processes of power, and in the reinvention of their identity, for the purpose of control.

Women also feared being 'punished' by their abusive partners if they tried to get help from their families or the police. Women 'knew' they would not be protected by the police and did not want to burden their families with 'their marital matters'. Other women stated that "it's weekend stuff, when the men are drinking" and the abuse does not continue during the week, especially if the husband is employed. It was not uncommon, however, for women to be treated badly by community members if they called the police:

[If you go to the police the community] treats you very badly. They see you as an impimpi. The attitude is not bearable. They don't see that they should impose on someone else's problems. They just label you as an impimpi and stand back and watch. It goes around. The women don't give each other support, rather they gossip about you. It's easier than to be beaten, then for the community to go against you [Kr].

They (the community) do not trust your intentions. They say that if you get your husband arrested or call the police, that you are up to no good - like you are moving in on another man or something. They are very judgmental, but it is happening in their own homes. They feel better about judging other people, so that they don't have to think about what is happening in their own homes [Khy].

#### 4.4 Support Provided by Families for Victims of Domestic Violence

##### A Woman's Story

"Mary" a 37 year old single mother explains her experiences with domestic violence in a rural community:

I was raised here, but moved from ---- township to this place when I was 21. I moved because I was getting married. I was pregnant and my family could not help me support my child so I moved in with my boyfriend's family. It was very hard from the beginning. Even when I was 8 months pregnant they made me work. I worked in a small shop here cleaning and stocking. But it got most worst [sic] when the baby came. When the child cried too much my husband would hit me and tell me that I did not know what I was doing ... that I was a terrible mother.

His family would also be abusive. They would tell me to take my child outside ... even when it was very very cold and late at night until the child would stop. They would never say anything to him when he abused me. They would tell me that if I could stop my baby from crying all the time he would stop bashing me. The more I was hit the more the child cried and the more I was hit again and so it goes on. This happened for a very long time. My child was very nervous all the time.

I got pregnant again three years later, but this time we had our own place to stay. It was small, but at least I only had to deal with my husband. He was drinking more and more at this time. When the new baby was 7 months old he beat me very badly. I can't even remember why. Too much happened that day. He picked up my first child and said take the other one because he accused me of having the second child with someone else. He said to get out of the house and to find the father of child and for this man to pay for the child. There was no other man. It was in July I remember and very cold. I went to his parents place and they said I was a bad and expensive wife and to go to my parents. It was late so I couldn't go there.

So I just walked and walked. I found something like an old mattress -- a foam piece -- near the rubbish and took it and my child to the field. She was very cold and cried and cried so I covered her with my body.

When I woke up she was very still. I knew she had passed. My husband and his family blamed me for killing her. I felt very alone because there was no one to go to. They [gossiped] about me for a long time.

Rural women's experiences of the family as agents of support in domestic violence situations was only marginally better than that of friends and community members. They emphasised the complexity of family intervention and spoke less of the general avoidance responses they found in the community. A common theme throughout women's descriptions of family support in these cases was the inability of family members to provide financial support and adequate shelter for women who were in need of temporary relief. Family responses to domestic violence were defined as "traditional" and "reserved". Though victims' families were sympathetic to battered

women's problems, traditional assumptions about kinship structures and the role of women in the family somehow contributed to further isolating women in these situations. It was suggested that because of the lack of adequate support from families, women internalised and silenced their own experiences of domestic violence.

Sometimes you go to your family, but the result is the same: "go home and talk to your husband" or "find out what you are doing wrong". There is nothing your family can do for you. They have no money, no room for you and your children. What can they do? If they approach his family it might cause a fight between the families and that does not help women. The women then go back home and try to fix the problem, but they know that it will continue [Kw].

A notable feature of the kinship structure in African families, was the pressure for women to approach their husbands' families for advice and assistance when women experience marital problems. The subservient position of women within customary marriages renders African women silent about the abuses they experience, particularly if the husband's family does not see the abuse as a problem:

So now, she is expected to go to his family. They talk and nothing happens. They sometimes say that she is disobedient or difficult to the son. If she was good to him or left him alone when she should, she would not have those bruises on her face [J].

Within this structure, there is an illusion of normality of the violence, coined as punishment for disobedience and there are different understandings about what is threatening and what is considered potentially violent between the victim and her partner's family. African women reported that in many cases women experience even further victimisation after consulting with their in-laws and as a consequence feel shame, humiliation and responsible for the violence in their homes. Both coloured women and African women find themselves in sort of a situational helplessness because despite the violence, they feel responsible for keeping families together. An

added burden is that they rely on their partners for financial support, shelter and childcare. Women's limited participation in family decision-making appears to maintain their vulnerability to violence. It was suggested that when men feel like they are being rejected, or not obeyed, they fight for what they want and that women are not "entitled" to make decisions about their own lives. Some reported that even when families attempted to intervene in domestic violence situations, the partners of the victims "abuse the women even further for humiliating them by approaching their families" [J]. Some men, however, do apologise for their behaviour and "beg women" to come back with the children:

It is a very difficult decision to make, but most women do not have any choice. The pressure is greater when men beg women to come back because even their own family members will begin to pressure them to go back in that instance. The women's own families cannot afford to take care of her children and the only way to afford to is through their husbands [Kh].

Even approaching churches or "wisemen" in the community leaves women feeling responsible for the abuse. One woman explains:

We don't have the same custom as the Africans, so sometimes we go to the church for help. The minister told me that I shouldn't worry about the abuse and not to feel bad because abuse of women is very common. He told me to keep praying and to help my husband to be a good man ... to show them the way and to think about the children [Rd].

The rural women felt that the church did play a positive role in their lives, but did not feel that the church was 'effective' in dealing with issues of violence against women. Church sermons spoke to the issues of drugs, alcohol and child abuse, but none of the participants could recall their church leaders referring to domestic violence as a 'social ill'. However, one church provided an overnight haven for victims of violent

crimes, including domestic violence victims, though little was put in place with respect to counselling or support services for these victims.

#### **4.5 The Role of State and Private Welfare Organisations**

During the apartheid era, the rural areas in the Southern Cape were divided into two distinct districts in relation to the provision of welfare services. The African and coloured communities were generally serviced by Christelike Maatskaplike Raad [CMR] - a Dutch Reformed Church welfare organisation - and the white communities fell under the jurisdiction of state welfare services. Little appears to have changed in the Southern Cape as CMR continues to be the primary welfare service agency in African communities. Interviews with four social workers at both CMR and the Department of Welfare revealed divergent viewpoints on the crisis of domestic violence in rural communities as well as the lack of appropriate services dedicated to battered women.

On the causes of domestic violence in rural communities, state social workers submitted that their experiences of violence against women was firstly poverty-related and secondly, dependent on a woman's economic status within the family. Poverty, it was maintained, was not the cause of domestic violence, but was exacerbated by the socio-economic positions that women find themselves in poorer communities. This understanding has led the Welfare Department in the Southern Cape to believe that the primary objective of Welfare in domestic violence cases was that of 'poverty alleviation' and economic assistance. Direct service delivery, in the form of counselling, referrals and legal advice for women and their children who

experience domestic violence, was not a priority for social workers. Social workers were of the opinion that Welfare was the 'dumping ground' for all family issues and that they experienced great difficulty in prioritising matters relating to the family. Child abuse was therefore seen as paramount to welfare work and domestic violence could only be dealt with peripherally to this issue. It was recognised, however, that the consequence of the failure of the welfare system to ensure that victims of domestic violence are provided social support in addition to financial assistance, is that the few non-governmental organisations that support women who are victims of domestic violence, are placed under enormous pressure to provide assistance. This, they suggested, resulted in unbearably high case loads, long waiting periods for assistance and less than comprehensive service delivery by the NGO sector, which inevitably resulted in women returning to social workers for assistance.

When reference was made to the commitments of White Paper for Social Development to address the needs of women by developing strategies "to counteract abuse and violence" and to provide "supportive services for individuals and families" who are victims of violence, the response was less than sympathetic. I was informed that my knowledge of the complex dynamics of alcoholism, poverty and violence was clearly deficient and that if I had any understanding of "how development works" I would understand that one cannot provide adequate support for battered women without "empowering them economically first". Further, at a practical level, a number of problems arise with the administration of Welfare services. One of the difficulties for social workers was the cumbersome reports and paper work they were required to do, which takes up at least half of their workload. Direct community work was greatly affected by this problem. However, the underlying problem with the

Welfare system seems to be more of an attitudinal one in that there is no clear commitment on the part of Welfare to dedicate programmes and services that specifically target victims of domestic violence, though they have been prioritised in national policy. The primary concern of state welfare services was with the effective administration of pension and maintenance grants, social assistance grants and child abuse.

CMR was more of the view that domestic violence was alcohol-related and that intervention in domestic violence must first begin with addressing the problem of alcohol within communities. What became clear during the interviews was the commitment that social workers had to the traditional view of the family and thus emphasised maintenance of the family system and reconciliation. There was also a reluctance to see domestic violence as a crime in which women do not play a role in inciting. The CMR welfare approach to domestic violence was predicated upon restoring the family structure, rather than ensuring women's safety. Social workers, they explained "are trained to work with families and to seek solutions that restore 'balance' within families". Like state social services, the CMR also prioritised child abuse in their work and felt that in managing child abuse cases there would somehow be some beneficial spin-off for battered women. The social workers, however, did draw attention to the fact that one of the major inadequacies of welfare services is that they do not provide places of safety for battered women and their children.

Social workers from both agencies felt solely responsible for developmental work in rural communities and argued that other government departments were not prioritising development for disadvantaged communities. The Welfare department saw development work as crucial to social work, but felt strongly that they should be moving more towards preventative work in families. The Welfare Department also reported that they have made attempts at developing more strategic partnerships with the Departments of Education and Public Works, but administratively, co-operation has been difficult. The meaning that the Welfare Department attached to development, however, was difficult to unpack. While there was persistent reference to the concept, welfare officials were at a loss to provide concrete examples of their role and understanding of it. The establishment of registered creches, however, was one tangible example of the Department of Welfare's goals in relation to the 'developmental nature' of their work with families.

Interviews with rural women, provided a different picture of the role of the both CMR and the Department of Welfare. They too stated that interventions by these welfare organisations did take place, but only in the case of child abuse or neglect in the community. They were adamant, however, that there were no 'spin-offs' for women in the management of child abuse/ neglect cases and that social workers were more damaging to families than helpful. Even in cases of "obvious" violence in families, against both women and children, social workers, they claim, operated more like police than social workers. It was not uncommon for women who approach the Welfare Department with their problems with violence to be interrogated by social workers. One participant described her experience of approaching a social worker for assistance:

She told me that I was wasting her time ... that if I had been a good mother I would not [expose] my children to the problems of my husband (alcohol abuse and use of violence). When I asked her what to do, she said leave him and then you can get maintenance from him. When I said I could not leave him she said "well then it is not my problem ... go to the police". When I asked her what to do about his drinking, she said "pray for him". When I said I was afraid for my children, she said I should be careful because they can take the children away if they see a problem [W].

Close to 80% of the participants were aware of the Welfare Department or CMR, but were hesitant to approach them because they were of little assistance in cases of violence against women. Women complained that Welfare "does nothing" and "just tells [them] to go to the police". Legal advice was not provided to women who approached social workers, nor was the referral to appropriate organisations to assist women with securing maintenance, counselling or financial advice. Rural women felt that the range of services offered by the Welfare Department and CMR were extremely limited. They suggested that welfare services be extended to include counselling and referral services to other social welfare agents or community legal advisors. Attitudinal shifts were also a key feature in their recommendations. Welfare, it was suggested, requires "a new face, where they are trained to be sensitive to the range of problems that women experience in domestic violence situations" as well as "a more community based approach to welfare services" [S;C]. Counselling centres as well as the establishment of shelters was also seen as an absolutely essential service that Welfare needs to consider.

In addition to the abrasive and interrogatory treatment they received by social workers and maintenance officers, rural women also complained of the dearth of welfare and maintenance facilities and offices available in the region; long queues for assistance; time delays in receiving report-backs or assessments of their cases; and the "mixed

messages” they received by social workers about the maintenance and criminal justice processes were some of this issues mentioned.

Though not directly linked to the interview schedule itself, the issue of maintenance was also one that came up consistently in every community<sup>29</sup>. Women who were abandoned by their partners or who required state support fell into three camps: (i) those who got support from friends and family, (ii) those who “took on another man”; and (iii) those who felt alienated because friends and family could not assist and in some instances therefore avoided contact. Women complained about the difficulties of not only accessing and exacting payment from the state and the fathers of their children, but also of the time and expense it took to even get to the courts themselves. Appendix 2 of this thesis provides a description of a visit to the Knysna Maintenance Court by the author that revealed numerous systemic, logistical and human resource problems that many rural and semi-rural women face at the maintenance court. The objective of the visit was to draw on the experiences of women who have applied for maintenance, and to determine what their concerns and problems were with the maintenance process. The problems women experience with accessing maintenance is extensive in the rural areas and requires critical attention, though it is unfortunate that such an analysis is beyond the scope of this paper. It is hoped, however, that the results and recommendations from the authors mini-study found in Appendix 2 can be used to springboard further research and discussion<sup>30</sup>.

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<sup>29</sup> In 1997, Black Sash in Knysna dealt with 291 cases for state maintenance; 122 cases for private, non-support maintenance; 62 cases of domestic violence; 23 cases for rape; and 31 for divorce.

#### 4.6 Clinics and District Surgeons

The issue of clinics was raised in relation to several areas of concern, including health education, alcoholism and support services. For the most part, clinics appeared to offer services that were well within the primary health care scheme, including medico-legal services. However, a nurse sister at one of the clinics reported that the provision of services in clinics for women who are victims of domestic violence have not been made explicit to health care workers by the Health Department. She further stated that much of medico-legal service provision within the clinics is guided by “common sense” [kn] and that no strategies to address the specific healthcare needs of women have been developed. This includes protocols that set out the nature of medical examinations for battered women and necessary treatments. Clinics provided information on STD’s and HIV/AIDS, but few had the facilities to deal with the problem of alcohol abuse that was so rampant in many of these communities, and were even less able to cope with domestic violence. This lack of direction and protocol in relation to victims of domestic violence in health care settings was confirmed by rural women’s experiences within the clinics.

Perhaps one of the most disturbing results of this study was the lack of professional health services available to women in rural communities, including sensitive and reliable health care. Women complained that the clinics were often dismissive and insensitive to battered women and that long waiting periods for examination were not uncommon. Services were referred to as “basic” and attended to only the

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<sup>30</sup> *Child Support in Small Towns in the Eastern Cape*, Conducted by the Black Sash Office in Port Elizabeth in 1995, is possibly the most comprehensive piece of research on maintenance in the rural areas. It is highly recommended for its descriptive results and recommendations.

symptoms/injuries of violence against women, with no real attempt to even establishing whether injuries were a result of abuse. One community in particular, complained that even basic services were lacking -- the clinic was open irregular hours and the nurse sisters treated the women inappropriately:

We don't get help from the clinic. For example, if the child is sick, the clinic is not open when it should be. If it is, they say, it's not a problem, take the child home. And the child is crying and the mothers do not know what to do. The nurses say that they worry too much and not to bother them with such small things ...the child will get over it [L].

I went there with my bruises and asked her [the nurse sister] what should I do? She said "I'll fix you up and then you go home" [L].

She knew what the swells were from, but she didn't ask. She just asked me what she would like me to do about it. I think she was drunk on duty ... but it was hours before she saw me and now I was cross. I told her to examine me and she said that I was too pushy and that I must have pushed someone too far and that's why I was swollen up. She threw some plasters at me after she put [the ointment] on and told me to finish up myself [L].

The rural women also stated that they often had to travel long distances to obtain medical treatment and because of this were reluctant to seek medical attention unless it was an emergency. Though the police are required to transport women to obtain medical care, they seldomly do so because of vehicle shortages and as a result, women do not get examined in domestic violence cases. In other cases, it was reported that police officers used their discretion as to the severity of the injuries (for example, did not see any 'physical sign' of injury or dismissed the injury as not severe enough to warrant medical care). As a consequence some women are not referred to a District Surgeon nor encouraged to seek medical attention at a clinic at all.

Other complaints about both hospitals and clinics included long waiting periods before being examined or treated, insensitivity during examinations, allowing police

or other unauthorised people into the examination room and not explaining the procedures or not answering questions about the procedures. Professional multi-disciplinary counselling, crisis and legal intervention services and programmes were non-existent and even basic preventative and educational work was seen as peripheral to primary health care measures. There was also concern from clinics themselves, that no sustainable network of accessible facilities for emergency treatment and temporary accommodation for women at risk and their children [kn].

#### **4.7 The Role of Police in Domestic Violence Situations**

The role of police in cases of domestic violence in South Africa is dependant on whether the victim of domestic violence lays an assault charge or applies for an interdict (now called a protection order<sup>31</sup>) or both. The first is criminal process and the second is a civil one. Although these are two separate remedies for women, there is nothing precluding a woman of laying an assault charge and obtaining an interdict/protection order. Theoretically, if a woman has been assaulted by her partner, she may go to the nearest police station and lay a criminal charge against her partner. The accused may be charged with *assault* or with *assault with intent to do grievous bodily harm* (also referred to as assault GBH). Assault consists of unlawfully and intentionally (a) applying force, directly or indirectly, to the person or another or (b) threatening another with immediate personal violence in circumstances which leads the threatened person to believe that the other intends and has the power

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<sup>31</sup> The new Domestic Violence Act (116 of 1998) refers to the interdict as a protection order. The act, however, is not yet operational.

to carry out the threat<sup>32</sup>. Assault includes the application of force as well as the threat to do force (i.e. the threats of violence). “Ordinary assault” is different from assault GBH and is also known as common assault. Assault GBH, on the other hand, is a “qualified” form of assault. It is a separate substantive form of assault and not merely an aggravated form of assault. This means that while common assault sets out the above requirements (a and b), assault GBH has an extra requirement and that is the *intent* to do grievous bodily harm. Factors which may indicate intention to do grievous bodily harm include, for example (i) the type of weapon or instrument used, (ii) the way in which it was used, (iii) the degree of violence, (iv) the parts of the body aimed at and (v) the nature of the injuries inflicted, if any. The crime of assault GBH may be committed even if injuries are slight<sup>33</sup>. Whether grievous bodily harm was in fact inflicted is immaterial in determining guilt, although it is usually of great importance for the purposes of sentencing. Whether the person did or did not inflict injury is irrelevant, but whether he intended to is. The intent to do grievous bodily harm is determined by whether it was foreseeable that the persons actions could have resulted in harm.

Even with the newly adopted Domestic Violence Act (116 of 1998), South African criminal law does not contain a specific criminal category of ‘domestic violence’ or ‘family violence’. Domestic violence falls under the two aforementioned categories of common assault or assault GBH. Victims of domestic violence, however, may also lay a charge of rape (in the case of marital rape) or *crimin injuria*, though assault and

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<sup>32</sup> Snyman *Criminal Law* (1989) 438

<sup>33</sup> Snyman *Criminal Law* (1989) 442-443.

assault GBH are the two most common charges laid against perpetrators of domestic violence.

This section will provide a picture of rural women's experiences with the police in reporting cases of domestic violence. As the Domestic Violence Bill (1998) is not operational yet, the role of the police as contained in the previous Prevention of Family Violence Act (1993) will be used as a point of reference in the following discussion.

The interviews support a nation wide concern that there is a critical urgency to ameliorate policing responses for victims of domestic violence. Even with provisions set out in the *Prevention of Family Violence Act* -which has been in operation for over six years - to protect women from domestic violence, the police continue to be the most discouraging contact for women within the criminal justice system. Though the Act provides an additional legal measure to protect women - via the interdict - who have been assaulted, this legislation only provides protection when it is enforced. The same applies to the new provisions set out in the most recent Domestic Violence Act (116 of 1998), to be discussed in the next chapter.

While it is widely accepted that when a man assaults a stranger, he should be held accountable for his actions, an assault by the same individual directed at his intimate is somehow different and does not merit a similar response by law enforcement agents. Rural women have learned that police are reluctant to intervene in domestic violence cases. Women thus have little other option but to confront issues of domestic violence through their own support structures, as limited as they are.

Women that do approach police for assistance continue to be subjected to inappropriate responses by the police or are not provided any assistance at all. Fourteen of the fifteen communities complained about poor police service and many women complained about the futility of going to the police for help and exercising their rights, especially in relation to domestic violence. Approximately 40% of the women interviewed felt that the police were ‘helpful’ and ‘co-operative’, but closer scrutiny of the interviews reveals that women who have gone to the police for assistance were met with disbelief and were discouraged or prevented from laying charges. Of those women who have gone to the police for assistance (65%), 67% had indicated that they experienced difficulties in convincing the police that they were in danger or in need of protection or were not treated seriously by the police. Table 10 reflects the nature and extent (by percentage of women) of rural womens experiences of police in domestic violence matters.

**Table 10: Experiences of Women in Reporting Domestic Violence to Police (n=109)**

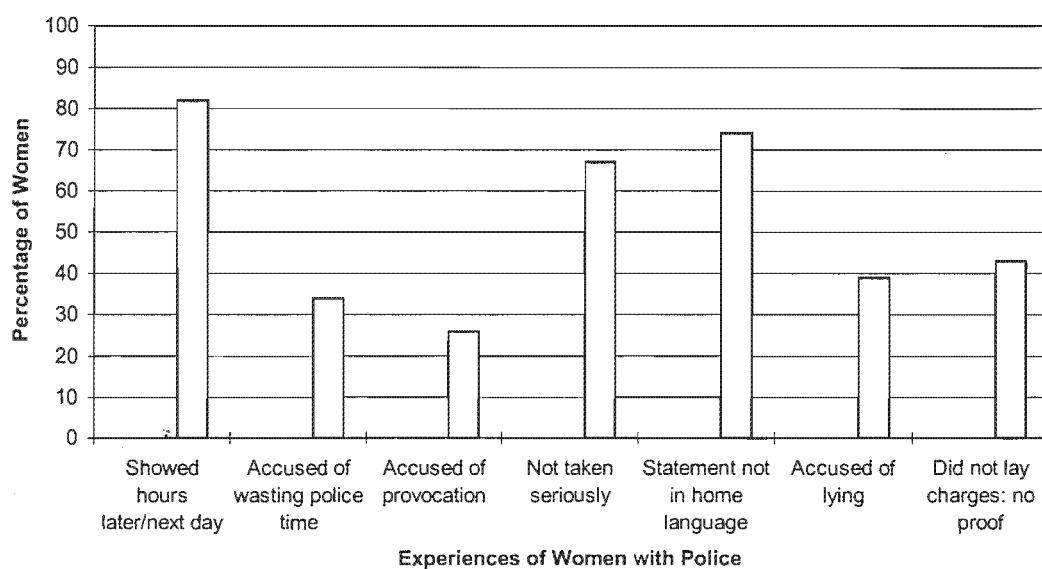


Table 10 illustrates several common features of policing domestic violence in South Africa. The first is the response time of police in both domestic violence and sexual assault cases. While approximately three quarters of the women interviewed reported their matters to the police directly at their nearest charge office, others called the police to attend to the scene of the incident. In these cases, just over 80% of the women reported that the police would only attend to scene hours later or the next day. Previous research (Artz, 1995) on the subject of police management of domestic violence cases, as well as interviews with members of the SAPS in this research, found that the police tend to 're-prioritise' domestic violence calls because of the lack of vehicles and personnel available to attend to such situations. The police maintain that because (a) domestic violence in their jurisdiction is characteristically "not so violent" to warrant sending vehicles out to the communities; (b) "by the time they get to the scene everyone has made up"; and (c) "women drop charges anyway", attending domestic violence scenes is generally not "worth the effort" or the resources [Pl; Kn; G]. These responses show how police underestimate the nature and lethality of domestic violence as well as the probability that battered women can be severely injured or killed while waiting for police protection.

Other complaints by rural women referred to the attitude of the police when attempting to report cases of domestic violence. Of those women who reported their cases to the police 34% were told to "stop wasting their time"; 26% were accused of somehow provoking the violence; 39% were accused of lying or were treated with disbelief; 43% were told that they could not lay charges because of the lack of evidence provided by the victims; and in 74% of the cases, the police would not take victim's statements in their home language or no effort was made to appropriate

another police member to assist women with their statements. Included in this category were women who stated that they were treated as though they were “stupid” because they could not explain their stories “properly” in English or Afrikaans. The interviews also revealed that the police failed to provide women with information on procedures, did not update women on the progress of the investigations, put minimal time into investigations, did not include women in the investigations and used very arbitrary discretion and criteria on whether the case was worthwhile pursuing. Table 11 also provides other experiences women had when approaching police for assistance.

**Table 11: Police Responses to Domestic Violence Cases**

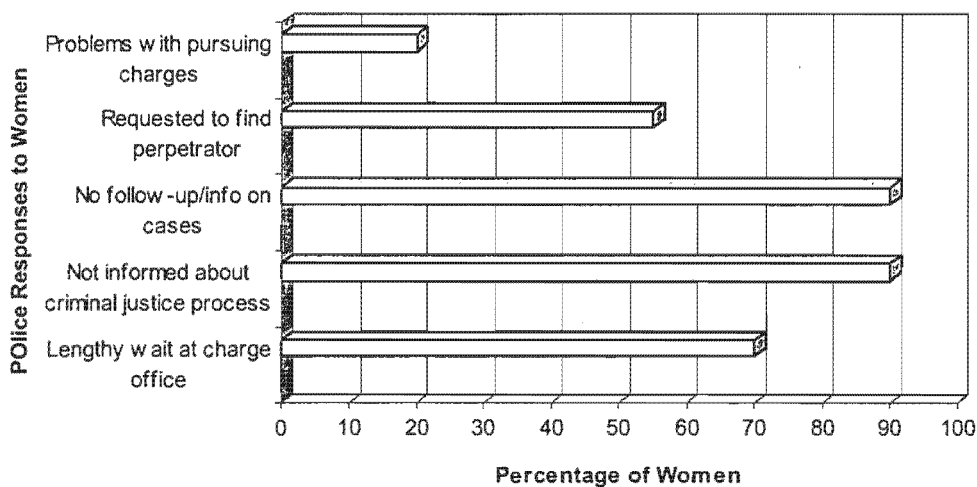


Table 11 shows that the vast majority of women (90%) who report cases of domestic violence are not adequately informed about the criminal justice process (i.e. that they are entitled by law to lay a charge or to obtain an interdict/protection order, or both; what the nature and consequences of the charges or interdict are; the full complement of criminal justice protections; and the nature of the criminal trial). Seventy percent

of the women who reported their cases to the police stated that they were required to wait lengthy periods at the charge office before they could obtain assistance and 20% reported that the police discouraged them from laying criminal charges unless they obtained an interdict. In some cases of domestic violence, but primarily in cases of sexual assault, 55% of women were requested to "find their attacker" before the police could arrest the perpetrator(s). Only a handful of women could recall being assisted by a female officer or in a private area away from the charge office and no one seemed to be informed that they could make supplementary statements to their original one. The frustration of approaching the police in cases of domestic violence was expressed by a community member who stated that:

The police are not here to protect us. They just make sure that the community does not look disorganised. Women know that the police are a waste of time. They wait for hours for them to come, but more likely they wait until the next day. Sometimes we cannot even call the police because the coin operated phones are always broken and the other phones [with the phone cards] are too expensive for women. So we walk to the station. They say to us "now what's the problem". So we tell them that our husbands are abusing us and they say "now what do you want us to do about it" and we cannot answer because we don't know what they can do. They say "get an interdict" but don't tell us how and where to go. There is always a problem if we ask them to go to the house. Either they don't have a vehicle or there is no one [available] to go or the radio isn't working. It is always something with them, so they don't have to think about it [domestic violence] [Sm].

A woman from another community explains that when the police do eventually arrive after a call for assistance, they sometimes put women into greater danger by handling the situation dismissively or aggressively:

When the police do come, they are not equipped to deal with the men. They either let them go by saying "don't do it again" or they fight with the men on the street. This is bad for the children to watch and it makes the men even more angry for being shamed in front of his family and friends. The police do as little as possible. They should bring documents with them so that [women] can get an interdict right there [Kh].

The majority of women 'understood' that the police would not protect them in any real way and therefore avoided using the police as agents of support in cases of domestic abuse. In discussing their experiences on attempting to secure information from police of their rights, the vast majority of women remonstrated the lack of effort police made to assist them. Following the problem of police reluctance to intervene or protect women from violence, receiving poor or incomplete advice concerning their legal rights was one of the biggest problems women faced when approaching police. Almost half of the women were not told they could obtain an interdict or were not told of the legal option of laying a charge of assault. Even those who did obtain interdicts (16%), did not have a complete understanding of how the interdict was meant to be used or the criminal process in relation to the breach of the interdict, despite obtaining the orders.

The general feeling about the interdict process, for those who acquired one, was that it was rather straight forward, but far too expensive. Others were aware of the interdict, but did not apply for one. Many women felt that the fees for issuing the interdict to their partners were far too expensive (equivalent to almost a full day's wages, for those who were employed). The interdict, for those who were unemployed was even more inaccessible as the women "would have to account" for the money they spent to their husbands or families. One particular woman had this to say about her experience with the interdict:

[I got an interdict]. But it was hard. The police and the clerk just sent me from here to there and did not even tell me why I must be doing all of these things. But I brought [the interdict] home and showed it to my husband. My husband treated me worse. He still beats me and I call the police, but sometimes it is so dark outside I am too afraid to walk to the phone [N].

Another explained that the police in her community do not assist women unless they have applied for or obtained an interdict and that even serving the interdict was problematic:

We can do that (go to the police), but they tell you to get an interdict and if you don't they get frustrated. They just don't want to hear about it if you don't. The problem is that [the interdict] cost me R42 (in sheriff's fees). To get the interdict to the abuser is not easy. The men also play hide and seek with the papers and [you are] in great danger because they (the abusers) know you have one and they hide from the sheriff. All the neighbours know about it because the sheriff goes all over to find him. The police do not help you to find him unless the sheriff asks them to and they say that they cannot protect you unless the interdict is served on him [Kh].

The rural communities repeatedly emphasised the importance of police visibility and the timeous response to domestic violence cases. The historic distrust and animosity between police and disadvantaged communities in the Southern Cape, however, was a governing feature in police responses to domestic violence in rural communities. The police, it was reported, were reluctant not only to enter into domestic violence situations, but were rarely visible in communities in general. One community complained that the police never attended complaints unless there was a murder in the community [Kr]. The women in this community described the interactions that take place between community members and police, that prevent women from reporting cases of domestic violence.

Before, when the police came into the town, the young people surrounded the vehicle and it left. This is because the only reason the police come to the community is because they are looking for an offender. Not to help us. The police must make good relationships with us, because we are all losing if this continues [Kr].

There is no way that you can call the police to come to your home. You must go to the station with a taxi or you must walk. They won't come near this place because they get so much grief from the young people. So it is up to you to get them, but then they don't show up. I think they decided that this community was too dangerous to attend to so they just don't bother [Kr].

A community worker in the Knysna region also explained that many police in rural areas do not know what the relevant laws pertaining to violence against women are or

do not care what the law is. She also was concerned that in virtually every community that she worked in, police had direct links with the community as either residents or businessmen and those ties appeared to override their concern with enforcing the law in relation to violence against women. The police were particularly reluctant to intervene, especially when they know both parties personally. The problem of domestic violence was therefore minimised through poor mediation approaches or by accusations of provocation towards the victim, further espousing the belief that police intervention crosses the boundary of the family. These traditional assumptions about the preservation of the family, however, are upheld and perpetuated by the police, whether they are linked to communities or not<sup>34</sup>.

The police that were interviewed in this study were not cognisant of the impact that their responses have on the levels of safety for victims and the perpetuation of domestic violence. Though recognising that domestic violence was unacceptable, their actions were marred by a myriad of reasons for non-intervention. These included: (i) women withdrawing charges; (ii) lack of resources; (iii) lack of transport; (iv) difficulties in securing convictions; (v) non-co-operation by victims to assist in investigations; (vi) the increasing number of 'false complaints' and the 'abuse' of the interdict; (vii) women not taking the criminal justice system seriously; as well as (viii) the poorly constructed laws which limit police in entering a respondents home, arrest procedures and rules of evidence.

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<sup>34</sup> An interview with an investigating officer during the fieldwork of this research supports this contention [PI]. He maintained that his station received very few complaints relating to domestic violence, which was an indication that domestic violence was not a great concern for his area. He felt that women were beginning to "take responsibility for their role in the abuse" and were better off dealing with these problems within the family unit before they came to the police. He suggested that the most appropriate way of dealing with domestic violence was through "mediation" between the parties, then "when all else fails" the acquisition of an interdict. His reason for this was that many women approach the police with complaints of domestic violence and want to lay charges or obtain an

#### 4.8. The Role of the Courts

Only 6 of the 15 focus groups addressed the role of the court in domestic violence cases. When discussions surrounded issues of sexual assault and rape, the participants had few positive experiences with the courts, which have been already been discussed in section 3.3 of this chapter. A summary of these experiences, however, include: (i) women were expected to wait in the same area as the accused (ii) prosecutors did not consult with women before the trial; (iii) the reasons whether to prosecute a case or not were not clearly explained to the women; and (iv) the preparation for the court case was inadequate and did not make use of witnesses.

Of the few women that did attend court in domestic violence cases, most felt that the court process was entirely unsupportive to victims. Women were inadequately prepared for the criminal trial by prosecutors and felt that many of the questions that the Magistrate or defence attorneys asked were leading and inappropriate. One woman describes her experience as a state witness in court:

He (the defence) asked me questions that I didn't understand what it had to do with him beating me and threatening to kill me and my children. He asked if I was a good mother and if I was a drinker. Then he asked whether I worked and how I took care of my husband. "What does that matter?" I thought to myself. But I could not say that because I did not want to get in a mess with the judge. I felt like the criminal and my husband was a victim ... the prosecutor just sat there and let him do it. He didn't care [Kn].

This brings to light the notion of the 'deserving' vs. the 'legitimate' victim in criminal trials of domestic violence. Women felt that they were treated unfairly and that offenders were provided with more legal assistance and information than they were.

Offenders were entitled to legal representation, whilst victims of domestic are merely at 'state witness' for the prosecution. Magistrates, it was reported, did not appear impartial and prosecutors appeared indifferent to proceedings. Even basic information concerning the structure of the court, the role of judicial officers and the trial procedures were not explained to victims. Another woman describes her experiences at the court:

The court is difficult. They have so many people waiting at the court and they push you though and you don't get to tell the whole story. When your husband is standing there, you become very careful about what you say to the judge. It is also difficult because you don't know what to do and who is who. They also let other people sit in at the court and it is very embarrassing telling your side of the story in front of other people so you don't say much, you only count on what is in the papers.

Only a few cases of women appearing in court in relation to domestic violence cases were brought to my attention, but the manner in which prosecutors and Magistrates dealt with these victims of domestic violence is reiterated in national violence against women research (Combrinck, 1996; Combrinck et. al, 1997; Stanton & Lochrenberg, 1997; Vetten, 1995 & 1996). A scan of this research reveals that women are (i) dealt with insensitively by court officials; (ii) are not informed about criminal procedures, are not adequately advised about their legal options; and (iii) are not informed about the progress or results of criminal trials, bail hearings or sentences. Rural women, of course, have the extra burden of having to travel long distances to attend court, despite repeated postponement of cases, and have limited access (i.e. telephones/transport) to ensure a direct line of communication between themselves and court officials. Moreover, the criminal justice system does little to ensure that rural women are adequately informed about trial dates and procedures. It is therefore at rural women's expense that they keep updated with criminal justice processes.

## 5. CONCLUSION

The results of this research have shown that despite increasing awareness surrounding the severity and frequency of domestic violence in South Africa, in both political and criminal justice domains, the levels of domestic violence remain high. Such levels of violence can be seen as a reliable barometer of the social and political dislocation of women in rural areas. At a developmental level, densely populated and underdeveloped communities, high levels of unemployment and alcoholism all appear to contribute to this pervasive phenomenon. The lack of basic amenities in rural areas also makes women vulnerable to both physical and sexual violence. What further complicates the problem of domestic violence in rural areas are, firstly, the dearth of appropriate support services and structures for victims of domestic violence and secondly, the absence of reliable and accessible criminal justice services.

The combination of largely underpoliced rural areas, maltreatment of domestic violence victims by law enforcement officials and police unfamiliarity with the complexity of domestic violence, perpetuates systemic discrimination against rural women. It is against this background that rural women are reluctant to seek legal remedy in the face of domestic violence. In addition, other factors such as economic dependence on abusive husbands and partners, fear of retaliation and costs of civil action also contribute to rural women's abandonment of criminal justice remedies.

In terms of the findings of this research, rural women argue that the police and the judiciary treat women differently. Differential treatment implies that they are not afforded equal protection and enforcement under the law entitled to other victims of

violence. Both Welfare and policing officials, in particular, see and treat domestic violence in a way that that reflects the conventional family systems and resource approaches adopted in mainstream criminological theory. These approaches infer that women play a role in (through 'positive feedback') and can control the levels of violence in their homes. More specifically, these agents do not consider the power imbalances within domestic violence situations which affects a woman's ability to leave a violent partner. The result of this approach is the implementation of social and security services that ignore the severity and lethality of domestic violence situations.

Medico-legal services are also substandard, and generally do not see domestic violence as a medico-legal issue and prosecutors rarely prosecute domestic violence cases, preferring women to take civil action. This diversion of domestic violence cases into civil courts reinforces the belief that domestic violence is different from other violent crimes and is best suited to systems outside of the criminal justice system. This approach to domestic violence cases also reflects a 'social control' approach to domestic violence in that in the absence of social controls (negative community sanctions and even policing) domestic violence will occur. The civil remedy, for prosecutors, thus provides an 'easy' and relatively enforceable tool, to bind abusers to the social, or at least the legal order.

The results of this study suggest that the problem of access to justice is both systemic as well as related to attitudes shaped by patriarchal relations. For police, the health sector and the judiciary, domestic violence remains a non-criminal matter. In the absence of a more informed perspective of domestic violence, economic, social and

legal conditions will continue to foster and maintain gender-based violence. The phenomenon of domestic violence thus requires a new paradigm - one which sees it as a form of “domestic terrorism” and a serious infringement of woman’s fundamental human rights to safety and freedom from violence.

## Chapter 7: DISCUSSION AND ANALYSIS

The following chapter will attempt to develop an integrated analytical framework for the discussion of domestic violence in rural areas by utilising debates surrounding development and access to justice through a feminist jurisprudence framework. The issue of development, in particular, will provide the platform from which current policy and legislation on violence against women will be addressed. Following this review, specific conclusions and recommendations will be drawn on the reformulation of the criminal justice system as it pertains to domestic violence.

### 1. INTRODUCTION

While it is undeniable that all abused women face multiple obstacles in accessing justice in South Africa, this study has shown that rural women face additional barriers both within their communities and with the legal system. To reiterate just a few, (i) women in rural areas lack nearby services and the cost of transportation decreases a woman's ability to leave violent situations or even seek information or assistance to deal with the problem; (ii) women in small rural communities articulate fears of community gossip or alienation if they seek assistance; (iii) women in rural areas have little option but to remain in the home with the offender because there are no accessible safe houses or shelters -- even churches involve travelling great distances; (iv) women remain powerless over alcoholism within their communities; (v) rural women remain in abusive relationships because they have little access to economic resources; (vi) limited access to state and private health, welfare and justice services, results in systemic discrimination by the state in almost every area of rural women's lives; (vii) distances to basic public services are great and child care is a problem if travel is necessary; (viii) very few development services exist in rural communities;

(ix) there are no or limited taxi and bus services and if they do exist they are expensive; (x) and (xi) the combined effects of poverty and violence for rural women in the Southern Cape creates formidable barriers to women's equality, mental and physical health, and their full participation in civil society.

Violence against women in South African rural communities cannot therefore be seen in isolation from developmental issues. Within the South African context, where apartheid policies were designed to reinforce strict spatial segregation through influx control and regulations barring retail and industrial development in 'black' areas which fostered economic exclusion of black communities, the imprint of underdevelopment continues to permeate rural communities. The perpetuation of inequity that limited the extent to which access to political, institutional and economic systems was obtained has not changed substantially and thus historical divisions within these establishments remains. Within the current political climate, however, rural women are met with other, more subtle forms of political, economic and social exclusion, namely 'tradition' and patriarchy. In light of these inequalities, South African criminology requires a critical reorientation. The role of criminology in advancing women's equality and access to justice must be grounded in a sound understanding of women's socio-economic positions within these communities. This developmental position demands an in-depth assessment of women's economic, social and political status in order to define precisely what equitable and sustainable development as well as crime prevention means for women within the rural context. Until recently, criminology seems to have adopted a blanket approach to developmentalist ideology, presenting poor socio-economic conditions as a mere factor or variable that contributes to violence in communities. There is an urgent

need, therefore, to draw fundamental links between violence against women, development and the South African criminal justice system.

The following section will provide an abbreviated discussion of models of development and advance the current debate surrounding 'women and development' as it pertains to violence against women. It will on the one hand, argue that broad development perspectives in criminological research are important in understanding violence against women, and on the other, argue that current development theory and models fall short in their acknowledgement of violence against women as an obstacle to development. In essence, the primary principle that follows is that we can indeed broaden the scope of criminological debate to include issues of access, development and women's socio-political status in constructing a workable framework from which to ground the analysis of violence against women in South Africa, but we must advance this debate beyond traditional (economic) development theory, with a view to seeing violence against women as a key inhibitor to development. In other words, the economic development or empowerment of women will not reduce violence against women unless development is seen to include issues of equality and socio-political advancement in society, and further, criminological research on violence against women cannot make a pragmatic contribution without considering this more substantive definition of development in its analysis of violence against women.

## 2. VIOLENCE AS AN OBSTACLE TO DEVELOPMENT

A review of the current gender development debate finds that women's development continues to fall into the trap of *economic determinism*. Consequently, it does not see violence against women nor women's inability to access social, political and state structures as an issue towards hampering women's development and substantive equality. Over the past two decades development debate has gone through many shifts including (i) human capital development; (ii) technological development; (iii) basic needs approach; (iv) women's participation in development; to (v) environmental development (Rathgeber, 1991), but there remains a void in relation to women's oppression and violence as an obstacle to development. The first three approaches, in particular, see development as economic empowerment and are under the erroneous assumption that women's needs are identical to those of men and they respond similarly to create opportunities. Whilst these models have shifted slightly to include the role of women in development (approaches iv and v), the emphasis remains on economic empowerment to the exclusion of social and political empowerment.

South African developmental and criminological debates have not shifted substantially from these types of developmental discourses, nor have these approaches been questioned very systematically. Both of these disciplines require a radical shift towards a model of gender empowerment which provides women with the opportunities to participate in male-dominated social and economic structures and one that sees woman as agents in social change, rather than as passive recipients. Development in South African policy documents such as GEAR (Growth,

Employment and Redistribution), the White Paper on Welfare and even the National Crime Prevention Strategy, continues to be defined narrowly in terms of economic growth and job creation. In order for development for women to be realised, however, it is crucial that power imbalances (both race and gender) are addressed.

In 1976, the International Labour Organisation adopted a “basic needs” approach in Southern Africa which is still in effect (Rathgeber, 1991). It was designed to enable women to provide more effectively for their families’ most fundamental needs and by easing women’s work burdens, enabling them to become more independent economically and to participate more actively in community affairs. Whilst the basic needs approach attempts to alleviate familial hardships, and has adopted a ‘woman-centered’ approach to development, it too buys into economic determinism and ignores the issues of violence within communities and women’s continued socio-political oppression. More importantly, however, the basic needs approach does not address the feminisation of poverty and, it can be argued, maintains women’s social standing as ‘domestic worker’ within the community domain.

In South Africa specifically, the primary development approach that has been adopted to improve women’s lives is based on imported ‘Women in Development’ (WID) and ‘Gender and Development’ (GAD) models<sup>35</sup>. GAD, for instance, focuses on the relationship between men and women, promoting their integration into a patriarchal system that remains unchallenged. The attraction of GAD for South African policy

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<sup>35</sup> Debates concerning development approaches such as GAD, WID and WAD (Women and Development) have not been widely debated in either sociological or legal scholarship. The debates remain located within the international development agency domain. Increasingly, however these debates are being put on international human rights agendas (see Bunch, C. (1991) *Gender Violence: A Development and Human Rights Issue*).

makers is the view that both the family and communities are healthy sites from which development can take place. This approach, however, has only succeeded in perpetuating the disguising of abusers and the silencing of victims. Development initiatives implemented under the GAD model risks exploiting women even further by not recognising their specific needs, such as the Constitutionally guaranteed right to be free from all forms of violence. Development then remains gender-neutral and therefore unattainable for women. Without challenging violence against women and its relationship to poverty, the feminisation of poverty continues. Development theory and practice, therefore, should ultimately mean that women reclaim control over their own lives, make decisions based on their own needs and have the choice to make those decisions.

An example of the exclusion of real indicators of gender equality in government programmes is the Department of Finance's macro-economic strategy, GEAR. In a report submitted to the Parliamentary Committee on the Improvement of the Quality of Life and Status of Women<sup>36</sup> (1998) the Department of Finance states that:

Gear is the government's strategy for rebuilding and restructuring the economy in line with the goals set in the Reconstruction and Development Programme (RDP). The strategy aims to achieve rapid economic growth which is employment generating, income redistribution, access for all to health, education and other services and a safe and secure environment. This provides a framework within which poverty can be attacked and gender based inequality reduced in a context of sustainable growth.

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<sup>36</sup>The Ministry of Finance's Report was presented to the Committee at a public hearing hosted by the Committee on 17 March 1998. The hearings focused on the impact of the government's macro economic policy, budgetary reform and the budget on women in terms of their gendered roles and as the majority of the poor in South Africa.

The document, however, does not provide indicators or indexes for development and does not see violence as an obstacle for the development for certain members of South African society. Nor does the document engage with gender development and discrimination that the previous Reconstruction and Development Programme (RDP) took into consideration. Development programmes such as GEAR, fail to consider the role of violence as an inhibitor to sustainable growth and development within local communities. The current socio-economic status of women in rural areas, however, does provide an important indicator of the ways in which the government priorities its resources and more importantly, reflects its commitment to transformation and reconstruction. Nonetheless, by discounting gender-related indicators in national economic development strategies, the development of rural women cannot be adequately measured or realised.

Development practitioners such as Sen and Grown (1987) maintain that development is not possible without greater equity for, and participation by women. In practice, this means 'mainstreaming' gender into all government activities, instead of seeing gender as a separate component of the transitional state. In other words women's development should be seen as a fundamental development issue instead of a 'women's issue' as such. They further argue that without redressing violence against women in development policies and initiatives, women will continue to be negatively affected by development strategies.

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The development approach that is most suited to the conditions which rural women experience, as demonstrated in the findings of this research, is the Women and Development approach [WAD] (Pandy et al., 1997). The WAD approach aims at

creating sustainable development that stresses empowerment and self-reliance. It argues for development designs that fit specific contexts and provides the groundwork for women to affect policy changes to serve the interests of women. The WAD approach stresses the importance of understanding unequal power relations between men and women as well as the extent to which violence in women's lives acts to impede development (Pandy et al, 1997). Goals of this development approach include improving the standard of living for women, creating greater access to employment and education as well as breaking down barriers to government services (Friedman, 1991). It further concentrates on the advancement of women in social, economic and political spheres by challenging the patriarchal architecture of these domains. The reason why this approach emerges as the most appropriate for the rural context is because the results of this research indicate that the issues blocking access to justice for rural women are far more complex than those set out in development approaches aimed primarily at economic empowerment. The more abstruse issues of alcoholism, issues of culture and kinship, lack of access to education due to pregnancy and familial pressures, transport and women's traditional roles in communities, are recognised as contributors to violence against women and thus impediments to women's development. It somehow acknowledges that even with economic empowerment, violence against women in rural communities will still exist.

Ramphele (1990) also supports this approach to development in her study on brick-making cooperatives in rural areas in Northern Transvaal. She suggests that central to the problems of women's development is the question of power and that inadequate attention to power relationships within social structures impoverishes development

efforts. Thus, women's participation in community development must move towards what Ramphela refers to as "fundamental decision-making processes which shape development" (1990, p.9).

It is also important to consider Young's (1988) conceptual distinction between the *condition* and the *position* of women: the condition of women relates to their material state in terms of education, access to credit, technology, health status, legal status, etc. and the position of women refers to the more intangible factors inherent in the social relations of power between men and women. The 'position' of women approach to understanding women's development provides a more pragmatic platform from which to speak of women's obstacles to development as well as re-constructs the scaffolding from which we assess the position of women. The women and development position, therefore, must recognise (i) the differential impact of measures on women and men according to their diverse life situations (including factors such as race, sexual orientation, disability and social class); and (ii) the historical and current social context creating and sustaining inequality.

## **2.1 The Cost of Violence Against Women**

In addition to the lack of attention to violence against women as an obstacle to development, is the critical gap in information relating to the costs of violence against women to economic, legal and social structures. The cost of violence against women, and specifically domestic violence in South Africa has, due to ineffective documentation of these incidents by health and criminal justice sectors, never been calculated. Even with loose indicators of the frequency and extent of violence against women, we can see that violence against women has a staggering economic impact on our health, welfare, policing and justice resources. Despite the awareness that the costs of violence against women are great, there have been no systematic attempts to quantify them. The costs of domestic violence are both private and public, covered by women and their families (medical care, accommodation, travel, direct income, child care, serious injury, loss of property & non-monetary costs), their communities, non-governmental organisations and the state. More specifically, health costs carried by the state include doctors, nurse sisters, emergency wards, clinics, mental health services; justice costs include those of the police, courts and correctional service; and in social services sector, welfare, housing and child care. Employers also pay for violence against women in the form of higher absenteeism and lower productivity.

A growing body of research has emerged in recent years supporting the fact that the mental and physical consequences of violence against women places a burden on both health care and economic systems. The World Bank<sup>37</sup>, for instance, estimates that in addition to the costs trauma bear on women, women may experience 1-5 years of

“loss of life” due to violence against women (1996) in developing countries. Another study undertaken by the Health Maintenance Organisation (HMO) found that women who have been raped or beaten had medical costs that were two and a half times higher than those women who were not victimised (Heise et al., 1994). A similar study by Felitti (1991) found that among women enrolled on an HMO plan, 22 percent of those who had a history of abuse or rape had visited a physician 10 or more times a year (in Heise et al, 1994). Other studies in Mexico, Papua New Guinea, India and Ethiopia have found that women also learn to restrict their movements and behaviours (including the collection of firewood, water and food stuffs) as well as their participation in development projects because of the threat or fear of violence (Heise et al., 1994). These examples, which are far from isolated, illustrate the largely unrecognised effect that violence against women can have on women’s functional abilities and social development.

Very preliminary and gross calculations, based on women’s testimonies in this rural women’s research project suggest that 4 days are spent going to the police, acquiring interdicts and attending court for each victim of domestic violence<sup>38</sup>. This figure is likely a gross-underestimate of the full cost of violence against women (it is calculated only with justice services in mind) and, of course, does not take into account the costs of the pain and suffering endured by these women. An added burden for calculating costs being that most women do not identify themselves to the health system and staff do not consistently record which patients are being treated for injuries that are a result of domestic violence.

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<sup>37</sup> Information on the World Bank report received by IDASA, personal communication.

<sup>38</sup> This is based on each reported incident where criminal charges were laid or an interdict was obtained.

Until the state undertakes to document violence against women more accurately, we can only begin to estimate the costs based on a series of assumptions. There are, however, serious limitations to estimates of the incidence of violence against women, even if we could work with more accurate documentation of the problems. The real economic costs may be hampered by the fact that violence against women is under-reported, pre-natal damage caused by the abuse of pregnant women is difficult to quantify, long term consequences such as intergenerational transfers of violent behaviour cannot be accurately estimated and private costs to women cannot be captured (Kerr and McLean, 1996). Excess costs incurred by the state may also include costs for medication, psychological intervention and undetected violence (i.e. poor treatment or referrals based on levels of disclosure provided by the victim about the violence to medical professionals as opposed to being based on the appropriate detection of violence (personal communication, Jacobs, Community Health Centre, 1998).

Feminist researchers, however, can begin estimating the cost of domestic violence on both the private and public sectors by working with state departments and non-governmental organisations on a costing template which may include the following indicators:

Selected financial costs to the police, justice, health and welfare departments in relation to:

- i) specialised personnel or units;
- ii) telephonic, charge office or in-person responses to domestic violence calls;

- iii) the number of domestic violence incidents reported (regardless of whether a charge was laid);
- iv) the number of individuals who are charged with domestic violence assaults and the nature of the charge;
- v) number of cases that are investigated by an investigating officer and the extent of the investigation;
- vi) number of domestic violence which go to court and require police to provide oral evidence;
- vii) the number of successful prosecutions and the nature of the sentence (this may implications for correctional services or diversion programmes)
- viii) number of statements taken for the purpose of obtaining a protection order;
- ix) number of respondents who breach protection order;
- x) nature of response to protection order and court appearance by police regarding breach;
- xi) the number of suspected and reported cases of domestic violence presented to general practitioners, district surgeons, clinics and emergency rooms;
- xii) the nature of the examination, treatment or referral by medical practitioners;
- xiii) the number of domestic violence cases that are picked up by the Department of Welfare and the Child Protection Unit, even if the focus of the case is on child abuse;
- xiv) all financial costs to women in reporting, securing protection orders, medical assistance; temporary shelter, etc.

Like the WAD development framework, these indicators are designed to monitor access to justice for rural women based on the experiences of rural women and they have the specific purpose of directing policy changes that serve the specific interests of rural women. The primary aim of this exercise, therefore, is to breakdown barriers to government services and to redress the obstacles that create inequalities in rural women's access to justice. With the support of structures that empower women to

legally address violence against women in their communities, rural women can begin to challenge those social structures which impoverish their development efforts.

### 3. **CONSIDERING RECOMMENDATIONS BY RURAL WOMEN ON DEVELOPMENT AND VIOLENCE AGAINST WOMEN**

The key element in participatory development theory (as argued by Sen and Grown, 1987) and feminist criminology, is the recognition of women as agents of social change. Feminist criminology, in particular, proposes that the voices of women in feminist research ought to lay the foundation for analytical discussion on gender-based violence. It is on this very principle that the methodology of this research was based, and thus the following section will introduce recommendations provided by rural women on community development and the prevention of violence against women. It will be presented in a manner that aims at capturing women's voices, experiences and recommendations in a way that is truly reflective of their opinions and beliefs. These recommendations will also be utilised for the development of recommendations on women's access to justice later in this thesis.

The women in the study identified a need to move away from dependency on the state and non-governmental organisations for community development to be successful and sustainable. Defining community development meant more to the women than economic development. It meant personal and social empowerment to take on issues of violence as a community, for the community. Women on farms and forestry communities raised the additional complication of being fully dependent on their husbands for financial security and argued that this dependency be kept in mind when considering the development of women in their communities, as any initiative that

appears to exclude the participation of men and management in their communities will put women at further risk of losing their homes and incomes and further destabilising women's rights to violent free homes.

Key issues that were raised to promote effective community development were:

- The need to identify strong women within rural communities to act as ambassadors for the community;
- The need to train these women in organisational and governance skills, but not only in relation to violence against women;
- To initiate 'community projects' to develop the communities' society identity and to raise consciousness about issues ranging from sanitation, violence, childcare and substance abuse; encouraging collective community responses about these issues; and
- To be trained in lobbying local government on issues relevant to the particular community;

Other recommendations included:

- The targeting of shebeen owners by community members to ensure that they are not serving children alcohol and to make sure they are selling alcohol responsibly (i.e. if they know that a man is not providing for his family, to cut his credit off or put pressure on him); and the regulation of shebeens.
- Putting up more street lights; making the streets safe for women and children.
- Detailed planning of communities, so that the police can identify who is living where and the community can monitor people's movements.
- Upliftment of communities, by showing them examples of successful projects in other communities.
- The establishment of neighbourhood watch programmes.

The focus-groups also provided recommendations in relation to increasing accessing justice and reducing violence against women in their communities.

- Women need to know their rights -- they need to understand what their rights are in relation to their families, the state and the criminal justice process.
- Organisations educating women on violence prevention must also include education for men.
- Communities must learn, through education campaigns, to take the shame of domestic violence and rape away from women and put it on men.
- The police, welfare and community clinics nurse sisters should organise talks for the men in the communities to show them that "violence against women and children will not be tolerated"; teach them that it is against the law.
- Women must be encouraged to speak out. They must do this knowing that the police and the courts will support them if they experience violence in the home.
- Women need help in organising themselves in their communities; a women's forum.
- Women need 'safety zones' in their community; a room or an office that the police know about; a place where women can talk without fear.
- Change the attitude of the police toward the informal communities and vice versa; improve community relations.
- Empower women to challenge inappropriate responses and treatment by the police, welfare, justice and men in their communities.
- Satellite police stations or caravans over the weekends. Preferably with one female officer.

From the recommendations arising out of this research, it is clear that a number of strategies need to be explicated so as to achieve the objective of access to justice for rural women. One of the strategies involves the development of a criminal justice system which is reflective and sensitive to rural women's needs. It must be emphasised, however, that although the criminal justice system is a powerful tool through which these needs can be realised, it has severe limitations and restrictions in terms of its affect due to two reasons. Firstly, the proper implementation of laws and polices directing role players within the criminal justice system and secondly, the role

of society in combating factors which contribute to violence against women which fall outside of the criminal justice system, such as 'culture', high levels of alcohol abuse and environmental safety. It is therefore important at this stage to take a critical examination of the laws and policies which are presently in place to eradicate violence against women and improve gender equality, in order to establish whether South Africa's laws and policies adequately contribute towards this goal.

#### **4. CURRENT POLICY AND LEGISLATION RELATING TO VIOLENCE AGAINST WOMEN AND ACCESS TO JUSTICE**

Over the past five years the South African government has made significant commitments to protect women from gender-based violence in the form of ratifying international instruments and the development of policy and legislation relating to violence against women. The implementation of these commitments, however, has been less than adequate. This is particularly true for women in rural areas who have attempted to access and utilise these very instruments and criminal justice structures that purport to improve government responses to violence against women. Little consideration has been given to the implementation of these laws and policies in light of underdeveloped rural communities and the poorly resourced and inaccessible health, welfare and criminal justice services that are meant to support them.

The following section will provide a background to and analysis of these policies in light of the issues of access to justice identified in the results section of this thesis. It will be argued that when laws and policies relating to violence against women are drafted, insufficient consideration is given to actual implementation and therefore not

all women benefit from these rights and services. It is against this backdrop that recommendations for criminal justice reform will be addressed.

It is important to note here, that some may argue that the problems and thus the recommendations for criminal justice reform in relation to domestic violence should not be seen in a social vacuum - that recommendations for criminal justice reform should be presented in light of other problems faced with victims of other crime categories. It is acknowledged here that all victims potentially face systemic and operational obstacles and difficulties in the treatment of crimes committed against them. Whilst there are clearly critical inequities within the criminal justice system in the treatment of victims of crimes in general, specific recommendations in light of domestic violence are proposed for two reasons. Firstly, this thesis represents a specific constituency in South Africa, and that is rural women. Secondly, women who are victims of gender-based violence experience additional barriers in accessing justice and support by criminal justice officials as a result of the masculinist ethos that continues to distinguish violence against women as a 'private' or non-criminal matter. Domestic violence is not recognised as a crime in the codification of criminal offences and therefore the analysis of policy and legislation and the recommendations for criminal justice reform addressed in this discussion, demands a distinct political will that gives domestic violence the same status as other crime categories. The following debate can indeed share areas of concern with the treatment of other crime categories, however, it is beyond the scope and intent of this paper to address all systemic, legislative and operational difficulties of the criminal justice system in relation to the wide range of victims.

#### **4.1 Human Rights Treaties Ratified by South Africa: The South African Commitment to CEDAW**

The Declaration on the Elimination of Violence Against Women or CEDAW was adopted by the UN General Assembly in 1994 and ratified by the South African Government in 1995. Constitutionally (see section 231 of the South African Constitution) the ratification of international agreements like CEDAW requires that provisions within treaties be incorporated into or considered in South African law, unless the provisions are in conflict with the Constitution or pre-existing legislation (Amien & Farlem, 1998). CEDAW sets out specific provisions in relation to the following areas that affect women's lives:

- i. discrimination
- ii. basic human rights and fundamental freedoms
- iii. affirmative action
- iv. sex roles attitudes and prejudice
- v. prostitution
- vi. equality in politics and government
- vii. participation in international affairs
- viii. nationality
- ix. education
- x. employment
- xi. health care and family planning
- xii. economic and social benefits
- xiii. special help for rural women
- xiv. law
- xv. marriage and family life

The provisions which affect violence against women in rural areas includes Article 14 and Recommendation 19. Recommendation 19 states that the general prohibition of gender discrimination includes gender-based violence, that is 'violence that is directed at a woman because she is a woman or that affects women disproportionately'. This recommendation also confirms that violence against women

constitutes a violation of women's human rights irrespective of whether the perpetrators are state officials or private individuals. The CEDAW treaty also states that in order to fulfil its duties, member states must take all measures necessary to provide effective protection to women, including comprehensive legal, preventative and other measures. Recommendation 19 of the Declaration also states that member states should condemn violence against women and should pursue *by all appropriate means and without delay* a policy of eliminating violence against women.

Although CEDAW provides the framework from which member states should work in their development of appropriate policy and legislation regarding violence against women, it remains unclear how CEDAW itself provides any real recourse for women in violent situations. It must then be said that this international instrument is merely a tool for member states and not for women themselves and its value is only of a symbolic nature. It has been argued that CEDAW provides women outside of government with a tool to hold their governments responsible to the international community for the implementation of the content of this instrument, but in reality this exercise is only used by women who are well resourced and have access to structures to monitor the effectiveness of the instrument. With specific reference to Recommendation 19, the South African government has indeed fulfilled its obligations in relation to the drafting of legislation pertaining to domestic violence. The merits and applicability of this legislation will be discussed under national developments in legislation (see section 4.5 in this chapter). Nonetheless, it is important to note that this legislation does not come even close to remedying the obstacles that rural women face in securing protection under this Act.

Article 14, which deals specifically with rural women, provides for (i) the recognition of the particular problems of rural women, the special roles they play in economic survival of families and of their unpaid work; (ii) equal participation in development; (iii) the right to participate in development planning and implementation; (iv) access to health care and family planning services; (v) the right to training and education; (vi) the right to organise self-help groups and cooperatives; (vii) the right to participate in all community activities; (viii) the right to access credit, loans ... and equal treatment in land and agrarian reform and resettlement; and (vi) the right to adequate living conditions, including housing and sanitation, electricity, water, transport and communications.

The results of this research show that the South African government has done little to ensure that rural women have benefited from the commitments made in terms of this article. As illustrated in the results, rural women continue to have poor and inadequate access to health care, education and training, credit and property, policing services and adequate living conditions (including housing, sanitation, water, transport and communications). The Green Paper on Local Government (October 1997), which set out to establish co-operative political and developmental systems for local governance, is yet another example of how women are excluded from development policy. Not one mention is made of the role of women in integrated planning, growth and development of local communities. The socio-economic, political and social composite of rural communities in the results of this research reflect the poor redistribution of resources by government in rural areas. It is against this backdrop that the ratification of CEDAW is bound to remain at a symbolic level.

## **4.2 The Constitution**

Another legal tool which ensures the fundamental requirements of an equal and safe life for women in South Africa is the Constitution. Though the newly adopted Constitution recognises equality of women, women are still adversely affected by “the law” because of the economic and social conditions of their oppression. In the past, the extent to which the state bore certain duties to protect women from violence (and where women had been subjected to violence, to come to their aid) was at best nebulous. Attempts to effect improvements to legislative, judicial and executive responses to violence against women in South Africa have been met with limited success. This situation could be attributed on the one hand to a lack of political commitment to improve the position of women generally, and on the other hand to a lack of clarity on the government’s duties towards women who are subjected to violence (Combrinck and Pithey, 1997).

Jurisprudence that affects women in South Africa has changed, however, with the persistence of social and legal advocates and the combined influence of the final Constitution and recent ratification’s of international human rights law. As Combrinck (1996) explains, “the question whether positive duties exist to protect individuals against violence (and whether such duties would apply in the case of violence against women) [was left] unspecified and thus left to judicial interpretation” (p.2). This position has been altered significantly by the adoption of section 12 (1)(c) of the 1996 Constitution which specifically entrenches the right to be free from all forms of violence from public or private sources. Combrinck argues that section 12(1)(c) should be read with section 7 of the Constitution which provides [in section

7(2)] that *the state must respect, protect, promote and fulfil the rights in the Bill of Rights*, implying that the state should not only respect the rights of women to be free from all forms of violence, but should take active steps to protect those rights. As Combrinck maintains:

The recognition of the right to be free from violence and the acknowledgement of concomitant obligations to prevent, investigate, punish and compensate for acts of violence against women should merely be seen as the first step in the process: it now remains for the SA government to uphold its international obligations and 'summon the political will' to ensure women effective protection against violence (p.26).

It remains to be seen how the South African government will protect the rights enshrined in the Constitution as they relate to violence against women in rural areas. It is submitted, however, that the Constitution does provide a platform for the delivery (or implementation) of services which benefit rural women, such as the possession of adequate transport and lighting which could contribute toward reducing the levels of violence against women in rural areas. At another level, it is vital that the government recognises and understand the power relations that are operative within rural communities and their affect on the economic, political and social positions of women. Further, they must recognise the role of and the history of patriarchy, that is so deeply embedded in our society, in order to effectively translate guaranteed rights within the Constitution into sustainable programmes which benefit rural women. The Constitution provides, however, an opportunity to challenge the commitment of the government on issues of the equality and safety of rural women.

### **4.3 The National Crime Prevention Strategy and the Victim Empowerment Programme in South Africa**

South Africa's first National Crime Prevention Strategy was introduced in 1996. One of the four pillars of this policy includes the re-engineering of the criminal justice system, under which the notion of victim empowerment falls. It will be argued that victim empowerment remains loosely defined within this national policy framework and, in relation to gender-based violence, has only succeeded in providing the 'window dressing' for criminal justice reform. The deconstruction of victim empowerment will include a brief analysis of just a few of the many contradictions and dubious assumptions surrounding crime prevention and victim empowerment in relation to victims of gender-based crimes in South Africa.

A questionable assumption of the NCPS is that violence against women, particularly within the domestic sphere, is that which begins in a society and political culture where violence has been used as a means of resolving conflict and inevitably "spill[s] over into the social and domestic arenas of society" (p.15). This take on violence against women not only takes the responsibility of violence against women away from the responsibility of men, but locates this violence in politics. It sends the message that violence against men is political and violence against women is somehow merely a product of a 'political culture'. The NCPS in analysis of "factors giving rise to crime in South Africa" (s.4) also states that "victimisation itself lies at the heart of much retributive crime and the absence of means of victim aid and empowerment play an important role in the cyclical nature of violence and crime in South Africa. Victims of past and current criminal activity, if untreated, frequently

become perpetrators of either retributive violence or of violence displaced within the social or domestic arena” (p.20).

The current understanding of how the NCPS and the VEP explains the link between the cycles of violence and victim empowerment, and how this leads to crime prevention is as follows:

- 1) By supporting and empowering victims, you reduce the possibility of a victim becoming an offender – the concept of ‘taking the law into one’s own hands’ or choosing to operate outside of the system as ‘crime pays’. Victim empowerment, as defined by the VEP model, will, in essence, increase victims’ faith in the criminal justice system if they are part of that process of achieving justice.
- 2) By empowering the victim you reduce the possibility of that person becoming a victim again.
- 3) To break the cycles of violence (e.g. by intervening in domestic violence situations and empowering the child victims in that situation) you reduce the possibility of those children as adults becoming abusers themselves.

Pithey (1998) argues that the motivations for victim empowerment set out in cases (1) and (2) are rarely applicable to violence against women. Firstly because few women as victims of sexual assault or domestic violence become perpetrators of abuse and secondly, because violent crimes against women are ones of opportunity and access. She further argues that to use the analysis that empowerment will reduce the possibility of re-victimisation places the blame and effectively the responsibility of violence against women on women. Moreover, the assumption that victims may become perpetrators if they are not afforded appropriate support is not necessarily true in the context of domestic violence. Perpetrators of domestic violence (men) are not necessarily victims of ‘other crimes’, which lead to them becoming perpetrators in domestic violence situations.

The motivation for victim empowerment, as it pertains to violence against women, therefore requires a different analysis. For example, the motivation for victim empowerment is that the more empowered a victim feels (i.e. made to feel that she is in control) the more co-operative she will be in the criminal justice process. This in turn will affect the quality of the investigation and the evidence which is collected by the police. An example of this is the statement that is taken by the police from a rape complainant - if the principles of victim empowerment are used in the procedure of statement taking (cf 'Good Practice for Serving and Protecting Victims') a higher standard of the evidence will be gathered, which may in turn result in a higher probability of arrest and prosecution (Pithey, 1998).

The *Victim Empowerment Programme* of the NCPS, fails no better in its analysis of violence against women. While the NCPS identifies a victim-centric vision which clearly states an intention to 'improving the access of disempowered groups to the criminal justice process, including women and children' (8.1.5 of the NCPS), the NCPS Victim Empowerment Programme, in its draft position paper (June 1997), proposes that

Whilst attention from service providers, be it state departments or civil society, has traditionally focused on victims of sexual violence as well as women and children, the National Programme promotes a more generic approach to victims of crime – that all victims of crime receive equal treatment ... from the police and justice officials – a position which avoids the danger of enforcing stereotypes of women and children as vulnerable groups (p.2)

In the first place, there is a marked shift from the initial policy paper in identifying violence against women and children as priority crimes and women and children as vulnerable groups in need of assistance, to a more a general victim approach. Then, in an attempt to seem to not be ghettoising the plight of women and children as vulnerable victims of crime, the draft position paper puts all victims of crime on an equal footing, proposing that all victims receive equal treatment. In this light, victim empowerment will remain remedial, if not rhetorical, and will have little impact in alleviating secondary victimisation for victims of gender-based violence.

The NCPS and VEP can however be commended on a more general level for exposing the unacceptable levels of poor service delivery to victims of crime by criminal justice agents. Even in light of the criticisms presented here in relation to the NCPS and VEP approaches to violence against women, it is acknowledged that the implementation of this policy into practice must straddle a wide range of, and sometimes competing, victim groups and this will require long-term crime prevention and victim empowerment strategies. Like other policy documents, poor implementation results in a policy that is merely a symbolic gesture. The symbolism of this policy paper, however, changes the face of criminal justice by critically examining the treatment of victims by criminal justice officials and presenting a view of victim empowerment as a systemic necessity.

#### **4.4 The Prevention of Family Violence Act (1993) and the new Domestic Violence Act (1988)**

In December 1993, the Prevention of Family Violence Act [Act 133 of 1993 (PFVA)] was adopted as a means of giving recourse to women who are being abused or who fear violence from their partners. The Act provided for the granting of interdicts, or court orders, through the Magistrate's Courts. The interdict in this context is a legal order which prevents a person from committing injury to another person or his/her property. Interdicts are essentially court orders which "can anticipate family violence and constrain the movements and actions of a potential abuser accordingly" (Novitz, 1996). The Act included people who are married via civil, customary or common law marriage, as well as men and women who ordinarily live or lived together as husband and wife, although not married to each other. The victim of family violence, or anyone authorised by the applicant (the victim) to make an application on the applicant's behalf, may apply for an interdict. The Act also provides for the immediate arrest of an abuser who violates the court order.

Due to the severe limitations of this legislation (see Combrinck et al., 1997; Hansson, 1993a), and problems with its implementation, new legislation - the new Domestic Violence Act 116 of 1998 - was passed. In the preamble of the new Domestic Violence Act, there is recognition of the unacceptable levels of domestic violence in South Africa. It also recognises, more importantly, that domestic violence takes on many forms and may be committed in a wide range of domestic relationships. These recognitions mark a distinctive shift in South African law in that violence against women has been defined and reflected in law as it is experienced by women. In the passing of this legislation the South African government to a large extent succeeded

in fulfilling its international commitments and obligations towards ending violence against women (as contained especially in the United Nations Convention on the Elimination of all Forms of Discrimination Against Women).

As stated above, the two most significant aspects of the Act are firstly the wide definition of the complainant, in other words who may apply for relief in terms of the Act, and secondly, how domestic violence is defined. For the first time anyone who is in a domestic relationship and is subjected to an act of domestic violence may apply for a protection order. A domestic relationship is defined very broadly so as to include people who are or were married to each other (whether they live together or not), same-sex partners (whether they live together or not), any person who is or was in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration, parents of a child, and people who share or recently shared the same residence.

Domestic violence is defined so as to include physical, sexual, emotional, verbal, psychological and economic abuse, intimidation, harassment, stalking, damage to property, entrance into the complainants property without her consent where she is not living with the respondent, and any other controlling behaviour where such behaviour may cause imminent harm to the safety, health or well-being of the complainant.

While the Act on paper seems to provide the relief required for domestic violence situations, the greatest concern is the implementation of the legislation by the various role-players. Unless there is significant adherence to the law by both police and

prosecutors this legislation is bound to remain one of theory. In an attempt to address the issue of implementation, the legislation requires both the National Commissioner of SAPS and the National Director of Prosecutions to issue national instructions and policy directives respectively in terms of which its members must comply in the execution of their functions in terms of the legislation. In addition, the Act also provides for a positive duty on the police to perform in terms of the provisions of the law. Any failure to comply with this positive duty of the national instructions constitutes misconduct and must be reported to the Independent Complaints Directorate. The inclusion of these positive duties are a direct result of various submissions made to the National Assembly Portfolio Committee on Justice (the forum responsible for the drafting of the new legislation)<sup>39</sup>. The National Commissioner is also obliged to submit a report to Parliament regarding the number of complaints received against the police, disciplinary proceedings instituted as a result of those complaints and the results of such proceedings.

However, even with this new legislation the levels of violence against women in South Africa will continue to soar unless those responsible for implementing it are diligent in their duties. The police and the courts must utilise this legislation in ways that send the message to civil society that violence against women will not be tolerated. It is therefore imperative that the application of this new legislation is closely monitored. Women, in particular, must be informed of their rights in terms of this legislation, including the right to report police officers who do not comply with

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<sup>39</sup> The results of this research were also used to recommend legal reform in relation to positive duties on the police to provide information and assistance to victims of domestic violence.

its provisions. It is vital that the wide definition of domestic violence is acknowledged and implemented by both the police and our courts.

While in principle the Act has advanced positive changes to “hands off” approaches to domestic violence, so characteristic of the pre-1994 period, complementary changes in related criminal justice policies and practices still need to be addressed or considered. Just a few of criticisms that have been levelled against the Act are:

1. Reforms and policies (in a real, pragmatic sense) have yet to be introduced by the various criminal justice sectors.
2. The reforms are based on a highly problematic and limited understanding of the problem of violence in the home. Interventions designed to eradicate violence in the home must be derived from an understanding of the power relations that give rise to such abuse: (i.e. Why is it that family members are reluctant to testify against their abusers?)
3. Intelligent and sensitive education and training of system role players has yet to be formally and systematically implemented. Criminal justice system officials need to be trained to identify flaws in the new policy, why the policy is necessary and how it will be put into effect.

## **5. CRIMINAL JUSTICE REFORM**

### **5.1 International Models**

International documents in relation to the criminal justice management of domestic violence cases can be useful guides towards the development of criminal justice reforms in South Africa. Their utility is limited to a great extent by the particular social and legal structures in which they operated (often more sophisticated or advanced systems that are both better resourced and have the support of state welfare structures). International guidelines do however provide direction to criminal justice reform. An example of this is a document from the International Centre for Criminal Law Reform and Criminal Justice Policy in Canada (1997) which developed model strategies and practical measures for legal reform based on the United Nations Commission on Crime Prevention and Criminal Justice's Model Strategies for the elimination of violence against women that South African advocates for women can draw on. The areas for analysis include criminal law, criminal procedure, police, sentencing and corrections, victim support and assistance, health and social services, training, research and evaluation, crime prevention measures, international co-operation and follow-up activities. The general thrust of the model is the periodic review, evaluation and revision of law and procedure to ensure their value and effectiveness in eliminating violence against women and removing provisions that allow for or condone violence against women. Examples include:

1. Revising criminal procedure in order to ensure that the police have, with judicial authorisation and adequate powers to enter premises and conduct arrests in cases of violence against women.
2. Ensuring that the primary responsibility of initiating prosecution lies with prosecutors and does not rest with women subjected to violence.

3. The protection of women as witnesses in court and the protection of their privacy.
4. Ensuring that rules and principles of defence do not discriminate against women, and the removal of any legal principle that allows room for defences such as honour, ownership or provocation to allow perpetrators to violence against women escape criminal responsibility.
5. Ensuring that perpetrators who commit acts of violence against women while voluntarily under the influence of alcohol or drugs are not absolved of all criminal or other responsibility.
6. Safety risks are taken into account in decisions concerning non- or quasi-custodial sentences, the granting of bail or conditional release.
7. To develop investigative techniques that do not degrade women subjected to violence and minimise intrusion.
8. To make available to the courts, through legislation, a full range of sentencing options to protect the victim.

The United Nations (1993) also recommends strategies for confronting domestic violence, and makes three vital points about policy development and legal reforms. First, policies and reforms must consider the cultural, economic and political realities of South Africa and must not be developed in a vacuum - there must be complementary changes in related policies. Second, policies should not treat the victim or survivor of domestic violence as incidental to the issue; they need to take into account her needs and wishes. Third, reforms and policies must be introduced to the criminal justice system intelligently and sensitively including systematically educating and training people in 'the system' about domestic violence issues. The police and the courts need to understand the new policy, why the policy is necessary and how it will be put into effect. This is a critical point because often, particularly in hierarchies like police organisations, policies are introduced at the top levels and not properly explained to the people who are required to put them into practice.

## 5.2 National Reforms

### 5.2.1 The South African Police Service

Traditional approaches to domestic violence by law enforcement agents have been severely criticised internationally for failing to protect the victim and conveying to the abuser that his behaviour is unacceptable to the community (Sedlak, 1988). The South African Police Service [SAPS], furthermore, is facing new political and constitutional realities which demand a critical reassessment of the nature of policing in South Africa. Bound by the new Domestic Violence Act, the White Paper on Safety and Security and their own annual business plans, the SAPS are required to develop new policing strategies that address human rights issues and the principles entrenched in the new legislation and departmental policies of protecting women from violence.

This research has confirmed that the police provide battered women with their first, and most discouraging contact with the law: “in their progression from informal to formal sources of help, women are often met with attitudes of indifference or open hostility” (Nobb, 1992, p.2). Without question, police are often the second offenders after the perpetrator himself. Through their responses, the police have not committed themselves to conveying the message, to victims or perpetrators, that domestic violence is unacceptable and will not be tolerated. Nor have they enforced, as part of their legal duty, victim’s rights<sup>40</sup>. The women who participated in this research have

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<sup>40</sup> To reiterate the findings, rural women’s experiences of police in relation to domestic violence incidents include, (i) being accused of wasting police time, of provocation or of lying; (ii); being told

also quickly learned the futility of reporting domestic violence cases to police. One of the major factors related to this trend is that when women go to a police station for help, the police are reluctant to accept an assault charge unless the injuries are of a 'very serious' physical nature. Even when charges are laid, limited information on legal remedies are provided, protection of domestic violence victims is seen outside of the policing domain and referrals to medical, legal and social work services only happens in what police establish as "extreme" cases of domestic abuse.

Police discretion in domestic violence cases begins from the first point of contact with a victim. This discretion has played a primary role in determining the validity and seriousness of crimes of domestic violence, and in this sense, police become the gatekeepers to the criminal justice system. These wide discretionary powers in establishing whether an incident is criminal or illegal, is based on both their interpretation of the law and traditional responses to domestic violence. This is also reflected in what they perceive as acts which occur 'naturally' in domestic situations. Much of what would be called grievous bodily assaults in other circumstances become domestic 'disturbances' or comparably minor offences if they occur in domestic situations (Bersani & Chen, 1988). Police officers' behaviour in response to domestic violence incidents "reflects a pervasive assumption that family problems are non-criminal 'disputes' or 'disturbances', essentially verbal in nature, and causing no one danger" (Tong, 1984, p.143). Domestic violence, therefore, is considered much less serious than common assault and is trivialised by both police and the courts who treat domestic violence with contempt in the legal system. Regarding domestic

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they could not lay charges because of the lack of evidence provided by victims; (iii) being discouraged from laying charges; (iv) not being informed about their legal options; and (v) having to wait hours or

violence as a domestic 'dispute', both trivialises and obscures the violent nature of domestic violence and mystifies the fact that the violence is directed by a man towards a woman, and is brutal in nature (Johnson, in Hill, 1987).

This research has found that there are well established patterns of police responses to domestic violence cases. The perception that domestic violence is a "domestic affair" has become a justification for non-intervention. There are a number of arrest-avoidance strategies in cases of domestic violence which contribute to the exclusion of domestic violence as a real crime category. Testimonies in this research suggest that the preferred approaches appear to be mediation or diffusing situations, if the police attend the scene of domestic violence at all. Arresting offenders is rarely used unless the police establish the severity of injuries. The test for seriousness appears much greater than that for assault committed by a non-intimate or stranger. This is a result of the levels of provocation that the police establish are operating in domestic violence cases. The cultural meanings of police work are clearly based on notions of masculinity and male behaviour, reinforcing the ideology of the masculine understanding of what constitutes a serious crime, which in and of itself presents a significant barrier to accessing justice (Stanko, 1985). These responses are exacerbated by the uncomplicated categories of what defines 'assault' and 'assault with intention to do grievous bodily harm' which effectively adjusts the unique and pervasive nature of domestic violence to fit into these categories.

Even with the new Domestic Violence Act, police only have a positive duty to arrest if a breach of the protection order has been committed and in the opinion of the police

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until the next day for police assistance.

there is danger of 'imminent harm' to the complainant. Without a protection order, arrest is left up to police discretion if the domestic violence situation contains "an element of violence" (s. 3 of the Act). The primary excuses for non-arrest are resources, limited powers of arrest and entry into property, time constraints, policing priorities and lack of evidence. The reality, however, is that police still view domestic violence as a family matter - that arrest will not solve the 'family problem'. Police cement the rhetoric of protection by their discretionary practices. The protection order is also seen as the sole remedy for domestic violence, instead of a legal option for women. The criminal element of domestic violence is therefore underplayed and the vision of domestic violence as a civil problem remedied by civil action is maintained.

If a woman's statement is taken and criminal charges are laid, the next discretionary power of the police is at the level at which the investigation of the case occurs. This research shows that follow-up investigations on domestic violence cases are rare. There is also no guarantee that once charges are laid the domestic violence case will receive any further attention by the criminal justice system, in the form of a prosecution. Reasons for this have included whether the victim is a credible witness, the severity of the abuse, the quality of evidence gathered by the investigating officer, whether the victim actively pursues the case and current police and prosecutorial case loads. The most important feature found in this research of whether a matter goes to trial appears to be what police and prosecutors determine are 'serious' cases of domestic violence (i.e., attempted murder or murder of the victim). Prosecutors are under no obligation to prosecute a case of domestic violence and appear to take a "value-for-money" approach to prosecuting these cases. The result of this approach is

that very few domestic violence cases ever proceed far enough to be considered for prosecution. The lethality of the abuse, therefore, steers the criminal justice process and that domestic violence remains no more than isolated, episodic events, rather than systematic and intensifying violence against women. The credibility of the victim - her reasons for reporting the case (i.e. false complaints), her possible complicity in or provocation of the offence and socio-economic factors seem to play a role in whether the case is prosecuted. For rural women, however, features of criminal prosecution also include whether she actively pursues the case (which is uncommon given the long distances women must travel to police stations and the lack of working telephones in these areas discourages women from even reporting their cases to the police) and whether the community she belongs to has a history of violence (the idea that violence occurs 'naturally' within underdeveloped or disadvantaged communities).

In light of the issues identified by rural women in accessing justice, it is recommended that:

- i. The criminal justice system develops a separate codification for domestic violence;
- ii. Domestic violence is established as a 'real' priority response (as set out in the SAPS business plans over the past three years) in that the priority is adequately resourced and acted on;
- iii. Officers should be required to file written reports on all domestic violence incidents, regardless of whether charges are laid;
- iv. A current file of all protection orders and interdicts valid in each policing jurisdiction is maintained;
- v. Police respond immediately to violations of protection orders and document violations;

- vi. The immediate and short-term safety of the battered woman and her children is ensured;
- vii. Police powers of entry are increased in order to allow police to enter a premises if they have some reasonable suspicion the violence has taken place;
- viii. An individual who is charged with domestic violence (assault or grievous bodily harm) is removed from the home for at least one night (a study in British Columbia showed a decrease in battering statistics when this step was implemented);
- ix. Provisions that ensure that the abusive partner agrees to certain conditions before his release, which if violated, results in the maximum sentence allowable for assault GBH (Tong, 1984);
- x. Specialised domestic violence units or specially trained officers are established (Morris, 1994); and
- xi. Accurate and up-to-date information is made available to victims on rights and remedies and how to obtain them (this includes information about participating in criminal proceedings as well as information on services available to women in their communities).

What also needs to be established is a more accessible and legitimate system or body to review complaints concerning the conduct of police officers<sup>41</sup>. While the Independent Complaints Directorate (established in terms of the South African Police Service Act, Act 68 of 1995) has been put in place, its recommendations are not binding. It is mainly a recommendatory body; it has no legislative or administrative power to enforce its recommendations. The ICD is decentralised, but in the Western Cape is only located in Cape Town, thus making access for complainants in rural areas difficult. A new system must be developed that is uniform and ensures that all members of civil society and of the police can have access to complaints structures, are treated fairly and that the police are responsive to local needs and concerns. Local bodies ought to be set up to conduct the monitoring and review of complaints and

complaints could be filed at local police stations or by phone with toll free numbers. The overriding goal should be to improve public confidence that is essential for effective policing. In addition, the SAPS as part of the criminal investigation must introduce the practice of obtaining victim impact statements that describe how the police and courts treated the victim and as an opportunity, in event that a case goes to court, for the victim to tell the court how a criminal offence has affected them.

These proposed recommendations are particularly important in light of the imbalances in service provision by the police and their wide discretionary powers in assisting victims of domestic violence. They are also necessary in order to redress some of the masculinist ideologies in policing that affect responses to domestic violence. For rural areas in particular, standardised protocols will contribute to equitable distribution of resources (specifically in relation to gender-based crime). Specific provisions for the management of domestic violence cases will also contribute to more effective case management techniques and will have a greater impact on the community policing approach, which is seen as an important method for combating increasing levels of crime. By simply providing appropriate legal advice and support, the police can eventually stop hiding behind the issue of the lack of resources and deliver appropriate services.

Even with the most recent Domestic Violence Act, which is commended for its comprehensiveness, the effectiveness or success of this legislation is dependent on its enforcement. The protection of women from domestic violence will require the co-

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<sup>41</sup> The study by Lochrenberg and Stanton (1996), *Towards the Development of the Constitution's Complaint Mechanisms for Adult Survivors of Sexual Assault*, entails a comprehensive examination of

operation of the police from the first point of contact with a victim. Because a protection order does not offer protection to women unless it is enforced, it is up to the police to intervene in a manner which promotes the rights of women set out in this legislation. The effectiveness of implementation of legislation demands exact codification of domestic violence, as a separate criminal category. Without this codification the New Domestic Violence Act becomes somewhat of a political machination and the systemic marginalisation of domestic violence issues continues. In the mean time, the systematic arrest, separation of victim from offender, the protection of victims, the explanation of the full complex of rights to victims and methodical investigation will improve justice for victims of domestic violence. However,

... it must be borne in mind that the South African Police Services are to some extent still dealing with an about-turn from a policy which set out a firm non-interventionist approach. Changes in policy must be translated into changes in attitude among personnel. In this regard, training of police personnel on gender issues, and the handling of domestic violence is necessary, both as a core component of any training programme, and as an on-going education focus” (Human Rights Commission, 1998, p.6)

### **5.2.2 Health and Social Services**

Violence against women is indeed a critical health and welfare issue in rural communities. Both the health and welfare sectors in rural areas are well placed to identify and refer victims of domestic violence. They are the only public institutions likely to interact with women at some point in their lives (Heise et al., 1994). In rural

areas, health facilities, such as clinics, are often the first place victims of domestic violence seek assistance. Health practitioners, however, are not adequately trained to detect domestic violence and are ill-equipped in relation to appropriate referrals for battered or sexually assaulted women. Despite their critical role in domestic violence cases, few health care providers identify and respond appropriately to abuse. A study undertaken at the Alexandra township Health Care Clinic found that providers failed to record the identity of the perpetrator of the injuries in 78% of the cases (398 were presented) and medical charts included agent-less descriptions such as “chopped with an axe” or “stabbed with a knife” (Motsei, 1993).

Like the police, clinics and hospitals must play a role in preserving the crime scene and the most crucial source of evidence. This is, the victim herself. Therefore, at minimum, medical attention should have two purposes: providing attention to the victim’s medical needs and collecting evidence for possible prosecution of the offender. There is an urgent need, however, to establish and implement model protocols for the identification, treatment and referral of domestic violence victims in all health care settings, including emergency rooms, primary health care institutions and private medical practices.

The recognition of violence as a health issue and the involvement of the health sector is critical to improving access to justice for rural women. Though rural clinics often lack basic facilities and public transport hinders access to clinics, one of the key factors for women in overcoming the abusive situations in which they find themselves is appropriate treatment, advice and support. Health care workers can play a vital role in assisting victims of domestic violence and increasing the safety and well-being of

abused women by responding to the individual needs of women who have been abused. This should include establishing linkages with other primary health and welfare service providers and providing information on legal remedies for victims in order to establish a reliable continuum of health and welfare services.

### **EVA: A Case Example**

A study by the Black Sash in 1993 identified support structures for rural women who are victims of gender-based violence of immediate and critical importance. The findings of the study reported that there was not a single structure (in the Knysna area) that addressed the special needs of these women. The surrounding areas of Plettenberg Bay, Sedgefield, Keurhook, the Craggs and many of the forestry communities in these regions also experienced a dire lack of support services. The Black Sash subsequently took on the role of providing intervention and support services for this region, developing a women's structure they later named "EVA" (End Violence Against Women) (see Appendix 2). The mission statement for EVA was to provide a network for survivors of domestic violence and rape through support work, paralegal advice, campaigns for the rights of women and education.

EVA divided its work into specialist focus groups which included volunteer management, survivor support, educational workshops, public talks and lobbying and finally media which produced newspaper articles and pamphlets on rights such as obtaining a court interdict. Other initiatives were to gain community support by businesses and organisations signing endorsements to support women and end the violence.

The co-ordination and management of volunteers, the financial administration and the amount of time that EVA took eventually became problematic, however, for the host organisation. In response to these and other problems (i.e. engaging with police and other structures who were non-committal in leading, financing or resourcing victim centres) the Black Sash re-examined its role in relation EVA. After some reflection and deliberation, it was decided that the immediate solution for these communities was not necessarily creating new support structures for women, but that ensuring existing health, welfare, policing and justice structures were working together and were adequately trained in relation to issues on violence against women.

The Black Sash then initiated a system of fast tracking women from the first contact of reporting to the SAPS station to when she arrived back home. This has already made a huge difference to the lives of women who have been in contact with these structures. These structures also know that the Black Sash is monitoring them closely and will report or intervene if procedures are not followed. They have also continued local advocacy work, such as ensuring that the new SAPS station has a one way glass for assisting the identification of the accused in rape cases. Paralegal service are now offered to victims and survivors of domestic violence and rape and commitment to influencing policy, legislation and procedures of the relevant state departments is still strong.

On the basis of this research and the EVA experience, recommendations for health and social services are as follows:

1. Clinics, with the aid of non-governmental and welfare organisations must begin to design programmes that provide information on and address alcohol and substance abuse and violence against women.
2. Networks and linkages between clinics, hospitals and criminal justice agencies are critical to develop improved responses to violence against women. The impact of these linkages on reporting and recording violence against women in rural communities can be used to inform more comprehensive service delivery and increase attention and awareness to the problem.
3. The health and welfare sectors and criminal justice personnel must undergo mandatory training in relation to violence against women, its impact and consequences, current legal instruments and procedure, the links between poverty and violence and to promote more professional and sensitive responses to violence against women.
4. Identification and prevention of violence against women must not only focus on the individual woman, but her family and the communities they live in. The health perspective in rural communities must extend beyond understanding women as a homogenous group, but must understand cultural and social differences in these communities.

### 5.3 Courts and Victim Participation in Criminal Justice

Internationally, the more active role of victims within the criminal justice process has been recognised as critical to effective criminal justice procedures. A scan of victim-based criminal justice models from the United States, Canada, South Australia, the United Kingdom, Poland, Holland and Germany, reveals that internationally there are 13 common tenets of victim participation in criminal justice, most of which are contained within the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>42</sup>. These include:

- (i) to be dealt with in a sympathetic, constructive and re-assuring manner at all times, with due regard to his/her personal situation, rights and dignity;
- (ii) to refer victims of serious crimes to agencies which could offer assistance;
- (iii) to give general information on the procedure following the crime report;
- (iv) to be informed about the progress of the investigation of the case and the progress of the trial;
- (v) to be advised of the charges laid against the accused and of any modifications to the charges in question;
- (vi) to have a comprehensive statement taken at the time of the initial investigation which includes information regarding the harm suffered and losses incurred as a result of the crime;
- (vii) to be advised of justification for accepting a plea of guilty to a lesser charge or for accepting a guilty plea in return for leniency in sentencing;
- (viii) to be informed about the trial process and his/her rights and responsibilities;
- (ix) to be protected from unnecessary contact with the accused and defence witnesses during the course of the trial;
- (x) to have his/her need for physical protection put before the presiding officer who is determining an application for bail by the accused, by the prosecutor;

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<sup>42</sup> South Africa is a signatory to this Declaration.

- (xi) to be informed of the outcome of all bail applications and any bail conditions which are designed to protect the victim from the accused;
- (xii) to have the full effects of the crime upon him/her made known to the sentencing court (by the prosecutor or by information contained in a pre-sentence report via a victim impact statement); and
- (xiii) to be advised of the outcome of criminal proceedings and of the sentence when imposed.

The South African model of victim participation and empowerment – as set out in the National Victim Empowerment Programme and the South African Law Commission’s issue paper on ‘Sentencing Restorative Justice (Compensation for Victims of Crime and Victim Empowerment) - follows these principles closely. While on face value these principles are seen to contribute to victim participation in criminal justice, these procedures for victims of gender based crimes fall desperately short of substantive victim empowerment, as many of these principles are already currently contained within the criminal justice process. Unless the South African criminal justice system is prepared to undergo major structural changes, victim’s rights cannot be integrated into the current system without remaining largely cosmetic (Pithey & Artz, 1998).

The current South African discourse surrounding victim empowerment takes a somewhat amorphous approach, in taking a view from ‘everywhere and nowhere’. It attempts, unsuccessfully, to deal with the ‘generic’ victim, dealing only superficially with the diversity of victims. This is especially true in relation to the unique circumstances of the victim of sexual violence, domestic violence, harassment and stalking. Whilst there is no dispute that there is a need for a general protocol for criminal justice in dealing with all victims of crime, it cannot emphasise enough the

importance of developing specialised criminal justice responses to vulnerable groups, such as victims of gender-based violence. The victim empowerment movement is diametrical, in that on the one hand it is saturated with fragmented constructs and on the other, expects this victimological enterprise to be implemented by a state structure that sits steadfastly within a positivist legal domain.

#### **5.2.4 Educational and Training of Rural Women**

Women in rural areas remain ill-informed of their rights in relation to domestic violence, rape and private and state maintenance (child support). While booklets are available on these issues, few address the obstacles that women might face in accessing justice in relation to these issues. The kinds of questions that women in the sample were concerned with ranged from transport to the courts/police to their own responsibilities in relation to their rights to property. Moreover, while many were basically aware of the various options available to them, most of these women found the criminal justice and welfare processes frustrating, confusing and expensive. Many were treated very harshly by these systems and did not believe they could protest to this treatment.

In the development of resource and training materials, we tend to assume that women (a) can read the materials; (b) understand basic, fundamental human rights; (c) understand who is there to provide support to them; (d) will take responsibility of their rights; and (e) will 'cope' or manage with the many obstacles that justice and welfare systems put in their direction.

It is for the dual purpose of providing answers to these many questions as well as encouraging women to challenge inappropriate responses by police, justice and welfare officials, that the following materials be must developed:

Firstly, information regarding women's rights to "organisation" within their communities. Rural women raised many issues that they would like to address within their communities. Issues ranged from children frequenting the shebeens to rape. The women, however, felt "helpless" and powerless to effect change. Of the 15 communities visited, 14 felt that the women needed training on 'organising women', whether via the Community Police Forums or as a separate entity. Secondly, information on understanding the criminal justice process in relation to violence against women (domestic violence and rape) is critical. Again, while there are resource materials on policing and the courts in relation to violence against women, few honestly address the obstacles, frustrations and difficulties women may face. A detailed picture, including what to do if treated inappropriately by the police as well as pre-trial preparation ("What do I do if they make me wait outside the courtroom with my rapist?"), must be drawn. Women must be equipped with a realistic account of the criminal justice process. Thirdly, a training manual for state prosecutors on preparing women who have been sexually assaulted/raped or victims of domestic violence for court needs to be developed. The women in this research who discussed their experiences of sexual assault and rape consistently referred to being 'in the dark' about the court process. Prosecutors treated victims of rape and domestic violence with ignorance and sometimes callousness. Rape victims often feel like "giving up" and did not understand what they were meant to do. The training should be targeted

at prosecutors and contain a clear directive for assisting sexual assault, rape and domestic violence survivors.

## Chapter 8 CONCLUSION

The examination of access to justice for rural women in this research was based on a feminist jurisprudence model of analysis. This framework was utilised through an adaptation of Heidenson's (1985) analytical apparatus for legal reform. This framework emphasised three modes of analysis: (i) a *formal* analysis of existing policy and legislation; (ii) the *ideological* construction of these instruments; and (iii) through an analysis of the *practice* of criminal justice. This approach provided an analytical platform from which domestic violence and access to justice could be discussed, not through a rigid analysis of law, but rather through broader examination of how law and legal scholarship regulates women and silences feminist discourse. It established women's experiences as a legitimate contribution to feminist knowledges on violence against women and the response of the criminal justice system to these abuses. It also provided a lens through which one could view how law exercises power and how it nullifies women's experiences of violence. Furthermore it proved useful for challenging masculinist understandings of law, justice and access. Coupled with a feminist understanding of access to justice, one could begin to analysis the contradictory imperatives of criminal justice and examine the application of laws and policies (and the application of them) by developing a feminist position that combines theory with practice in a way that is meaningful to women who come into contact with the criminal justice system. Feminist jurisprudence, then,

... signals the shift away from a concentration on law reform and 'adding women' into legal considerations to a concern with fundamental issues like legal logic, legal values, justice, neutrality and objectivity. Because it appears

to offer the combination of theory and practice, and because it will be grounded in women's experience, the ideal of a feminist jurisprudence appears to be a way out of the impasse of liberal feminist theories of law reform (Smart, 1989, p.66).

South Africa's newest domestic violence legislation is a good example of feminist influence on legislation. It can be argued that though the legislation contains provisions for policing and prosecutorial duties surrounding domestic violence cases, these agents of the criminal justice system are still afforded vast discretionary powers (i.e. in establishing 'imminent harm'). As a consequence the legislation may not impact on women in the way it intends to. This thesis, however, argues for more systematic monitoring of government policies and legislation relating to domestic violence. With the operation of a new piece of legislation, feminist research should play an active role in monitoring the extent to which this legislation improves access to justice and increases protection of women.

This research found that despite policy deliberations to confront issues of domestic violence in South Africa, little has been done to ensure that these policies are reaching women in rural areas. After 5 years of international and Constitutional commitments, rural women do not enjoy the rights they are ensured by the Constitution or reconstruction and development programmes. Rural women in particular continue to face judicial, police, health and welfare systems which are systemically problematic for women seeking redress. The move towards increased emphasis on law reform and policy development is a seductive one for both gender advocates and policy makers to promote women's interests. Positive duties on the police and prosecutors as set out in the *Domestic Violence Act*, for instance, are useful mechanisms to ensure criminal

justice officials are performing their duties in relation to legislation, but these efforts need to be balanced against a system which is maintained and delivered by individuals who are still provided with a large margin of discretionary powers.

More importantly, the current system also assumes that women have access to the judicial process, but it has been argued here that for many women access to justice is limited. Access to justice is difficult to incorporate into law reform and is therefore often ignored in legislation. Against this backdrop, there is an urgent need to strengthen non-legal strategies. At the centre of this argument is the fact that the criminal justice system cannot provide a comprehensive service without massive structural and attitudinal changes. Implicit in this argument is the notion of cross-sectoral responsibility towards the management of domestic violence cases. The social work and the health sectors, for instance, can play a significant role in providing women with appropriate information and assistance. Social workers should be equipped to provide information on welfare, housing and legal rights. The welfare sector, in particular, is one of the few agencies which deals directly with family life and community development and can contribute substantially on this front. The world trend in domestic violence intervention models, however, seems to operate in terms of 'keeping the family together'. Both welfare and criminal justice services, however, need to look at other alternatives and equip women to leave their abusive partners and to break the cycle of dependence on men. Within the health sector, the shift away from simple (and symptomatic) medical treatment of injuries, to a model which emphasises early detection and appropriate referrals is also critical for effective non-legal remedies to domestic violence. This means that the treatment of domestic

violence must move away from the subject of medical emergency and treatment to a more comprehensive medico-social approach to this complex problem.

This research has also shown that rural women live in highly criminogenic conditions and until resources are adequately brokered in rural areas, access to justice will not change significantly. Both legal and non-legal reform will remain only symbolic if appropriate mechanisms for implementation are not put in place. These reforms, then, should contain provisions relating to the treatment of victims and victims ought to have a reliable and accessible mode of redress if these provisions are not adhered to.

This research was largely exploratory, attempting to contextualise domestic violence within a wider gender-sensitive development debate. The results highlight the importance of further exploring the factors which do give rise to violence against women in domestic relationships. It is critical that further research is undertaken in order to explore exactly the range of factors which contribute to and sustain violence against women in domestic relationships. Only then can we begin to develop appropriate 'solutions' to combating domestic violence in rural contexts.

To a large extent this research, given its exploratory nature in a relatively uncharted terrain, furnished more questions about access to justice than answers. The inquiry attempted to cut across a number of research areas including rural women, rural development and violence which gave rise to a large amount of data that was not originally anticipated. There is a critical need for further feminist research on access to justice in relation to rural women and policing, informal justice and support

structures, justice responses and assistance to rural women, and the transformation of the health and welfare sectors in rural areas.

Finally, the author proposes that in order to provide a substantive contribution to issues surrounding access to justice, criminological research needs to re-visit narrative accounts of the silenced and the invisible within criminal justice debates; to put on the agenda the 'real life' consequences of institutionalised injustices. It is from these narratives that legal protections for battered women emerged - from feminist input that re-defined what is criminal and put women on the legal agenda. It is also these personal accounts that will contribute to substantive criminal justice reform for victims of gender-based violence. This movement in South Africa has contributed to the development of legislation, the enforcement of women's rights, the increase of legal and civil options and heightened awareness around the need for criminal justice training on issues of violence against women. This approach must now ensure that these reforms are made accessible to all women in the country.

APPENDIX 1

No \_\_\_\_\_

**Access to Justice  
INTERVIEW SCHEDULE**

**INTRODUCTION AND DE-BRIEFING**

*I have some questions I would like to ask you about your experiences in a marriage or partnership and as a woman in your community. Because some of these questions are personal, I do not need to write down any information about who you are. The discussions that we have today will be used for research on violence against women in rural communities. The aim of the research is to identify what problems women in rural communities experience in their homes, in their communities and with the police and courts. You will not be identified in the research in any way -- no one will know who you are or that you participated in this research.*

*It may go against your beliefs or custom to talk about some of these things with me. I do not want to go against your beliefs. If, for any reason, you feel strongly that you cannot talk about these issues with me, we can go on to the next question or stop the interview all together.*

**1. GENERAL**

(a) Region:	(b) Type of Community:	(c) Respondents Age:
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**2. DEMOGRAPHICS**

(a) Occupation or Source of Income	
(b) Level of Education or Literacy	
(c) Religion/Denomination	
(d) Marital Status/Relationship	
(e) Type of Marriage (customary, civil)	
(f) Length of Relationship	
(g) Children? How many?	
(h) How many children do you look after?	

(i) Location of children	
(j) Who do you live with?	
(k) Who owns your house/property?	
(l) Does anyone in the family receive a state grant? (m) What kind of grant?	

### 3. COMMUNITY VIOLENCE

- (a) What are the problems that women face in your community?
- (b) Do the women experience any violence in the community?
- (c) Why kind of violence?
- (d) What do you think are women's greatest fears in your community?
- (e) How do the women in your community deal with these problems?
- (f) Who do they go to for support? Help?
- (h) How does your community respond to violence against women?
- (i) Have you heard about HIV or AIDS?
- (j) How do people get it? Who can get it?

### 4. FAMILY VIOLENCE: GENERAL

- (a) What do you think causes problems in marriage or relationships?

<input type="checkbox"/> Lack of respect	<input type="checkbox"/> Alcohol/Drugs	<input type="checkbox"/> Housing problems
<input type="checkbox"/> Problems with relatives	<input type="checkbox"/> Sexual jealousy	<input type="checkbox"/> Lack of privacy
<input type="checkbox"/> Retrenchment/Labour problems	<input type="checkbox"/> Money problems	<input type="checkbox"/> Maintenance

<input type="checkbox"/> Wife's failure to meet obligations	<input type="checkbox"/> Custody of children	<input type="checkbox"/> Culture/Customs
<input type="checkbox"/> Husbands failure to meet obligations	<input type="checkbox"/> Problems with children	<input type="checkbox"/> Other
<input type="checkbox"/> Husband hitting wife/children	<input type="checkbox"/> Infidelity/accusations	

- (b) Is it all right for a husband to hit his wife?
  - (i) With his hand?
  - (ii) With a weapon?
- (c) If yes, under what circumstances?
- (d) Is it all right for a wife to hit her husband?
  - (i) With her hand?
  - (ii) With a weapon?
- (e) If yes, under what circumstances?
- (f) In your experience, when a husband/boyfriend hits his wife/girlfriend, does anyone help her? Who helps women who have been beaten?
- (g) If yes, who would help?
- (h) If yes, why would they help?
- (i) If no, why do they not help?
- (j) Among your friends and relatives, how many husbands or boyfriend do you know, hit their wives or girlfriends?
- (k) What does a wife or girlfriend do or say if she wants to shame or insult her husband?
- (l) What does a husband or boyfriend do or say if he wants to shame or insult his wife?

**Rape:**

- (m) Do you know what rape means? What is rape?
- (n) What is sexual assault?
- (o) Among your friend and relatives, how many women do you know of have been raped?

- (p) Who did they go to for help?
- (q) How does the community treat victims of rape? Especially if they go to the police?

### **5. FAMILY VIOLENCE: PERSONAL EXPERIENCES**

- (a) Is there is history of violence in your relationship or in your home? [If no, go to 5(l)]
- (b) Can you briefly explain the kind(s) of abuse you have experienced?
  - (i) Why types of injuries have you had from being battered?
  - (ii) Did the injuries get worse over time?
  - (iii) How often were you battered?
  - (iv) What were the events that led up to the last incidence of violence in your home?
- (c) What did you do after he beat you? Did you leave your husband/boyfriend?
- (d) Did you go to the clinic or hospital for your injuries? Who took you there?
- (e) Have you ever called the police? What happened?
- (f) How did the police treat you?
- (g) Who else did you go to for help? Did they help you?
- (h) What kinds of problems did you experience with the police, hospitals or other people you went to seek help from (including friends and family)?
- (j) Who or where will you go for help if you experience violence in you family or in your home again?
- (k) If you didn't get help, why not?

#### **The Interdict:**

- (l) Do you know what an interdict is?
- (m) If yes, did the police explain how the interdict works?
- (n) Has the interdict helped you? Has it worked?



## 6. BASIC SERVICES

- (a) Do you have a phone?
- (b) Is there a public telephone near your home?
- (c) If you had to get to the police station for any reason,
  - (i) how would you get there?
  - (ii) how long would it take you to get there?
  - (iii) how much would it cost you to get there?

APPENDIX 2

**Results of the Visit to the Knysna Maintenance Court**

By 9:30 a.m. approximately 20 women were queued in the corridors of the court awaiting assistance for their maintenance problems. The women were interviewed in the same focus-group method employed in the rural communities, and were asked about the logistics of getting to the court. Most of the women had travelled at least 40km's, via taxi, to get to the court. The average trip took approximately 2 hours and cost some of the women up to R11,00 (almost half of their daily wages and a trip back would have totalled over two-thirds of a daily wage). Those that were employed lost a days pay in order to wait in the queues for service and advice. Some arrived at the court expecting it to open at 8:00 a.m., but no one was assisted by the maintenance officer on this day until 9:00 a.m. By 10:45 a.m. approximately 28 women were queued and only 2 of the women had seen the maintenance officer. Of the 28 women present, five were with children under the age of 3 years. There were no seats available for the women to sit on in the corridor near the maintenance office.

In our interview with the Control Prosecutor, it was stated that the maintenance officer saw approximately 10-15 women a morning and no one was turned away at the end of the day. It was also stated that the maintenance officer sometimes stays until 10:00 p.m. until all the women have been advised. Given the responses by the women, the majority of whom had been to the maintenance court on several occasions, these figures and times are highly questionable. The Control Prosecutor also revealed that a full-time maintenance officer was appointed approximately one month and a half ago, but the contract will be terminated in June by the Justice

Department. When asked why the maintenance court was then only open on Wednesdays, he responded that "we cannot tell them that it is open 5 days a week, then for only 1 day again in June". Curiously, the time period in which the maintenance officer has been appointed on a full time basis has not been used fully to lower caseloads, re-structure administration of the court nor ease waiting periods for women. If the time period (of how long a full time person has been with the court) suggested by the Magistrate is correct, the Maintenance Court could have actively serviced women for 35 days over the past 6 weeks, as opposed to just 6.

The women who partook in the interview, also suggested that they have been to the court between 2-5 times since their initial application for maintenance. If one were to average the cost of 3 trips in relation to lost wages and spent savings, of a domestic worker for instance, she would have invested a full week's wages into the process ( $R66 [3 \text{ trips} \times R22] + 3 \text{ days wages} [R30 \times 3] = R156,00$ ). In addition to the loss of income for women, they expressed profound frustration about the results they were getting from the court. One women explained that she had come to the court at least 3 times because her husband wasn't paying and that she felt that she "wastes her time and money waiting for results and nothing happens".

In terms of the maintenance procedure, none of the respondents had a clear understanding of how the system worked or what to expect from the maintenance officer other than "support". This was particularly true in the case of a husband not paying maintenance. The waiting area did not offer any brochures or information to the women on the maintenance issue. The Black Sash members distributed booklets on maintenance in English and Afrikaans, and the information was received well by

the women. It is recommended that the Maintenance Court take responsibility of informing the complainants about their legal rights and procedures in maintenance cases, and preferably in the women's home language.

Other problems related directly to the treatment women received by the maintenance officer himself. They argued that they would prefer to deal with a women, because the current (male) officer was insensitive to their problems. There was unanimous agreement that the maintenance officer 'took sides' in favour of the husbands. For example, many argued that the rights of husbands constantly come before the rights of the women and their children -- while the men are excused from paying maintenance because of other debts (at clothing stores, furniture shops or car payments) the women and their children suffer. In other words, a husband's responsibility to creditors takes priority over his responsibility to his family. The respondents also felt that they were not allowed to state their case fairly or contribute in any way to the decision-making process. The women stated that the maintenance officer is unfair in his assessment of how much maintenance they should receive, and states to the complainants that they are asking for too much support.

### **3.5.2 Recommendations from this mini-study**

1. Appointing a full time maintenance officer is of the utmost priority. Requiring women to wait for hours and days for assistance is completely unacceptable. Until a full-time, permanent maintenance officer is provided, the existing services must open promptly at 8:00 am and close whenever the last complainant has left the building. Since the service is currently only available once a week, there is NO EXCUSE for sending women away.

2. The Maintenance Court must be responsible for ensuring that women fully understand their legal rights and protections as well as each component of the maintenance process. This must be built into Justice policy and procedures with respect to maintenance cases.
3. A complaints mechanism must be set up for the complainants. Women are entitled to responsive, effective and efficient service from the Maintenance Court and its officers.
4. A minimum standard of service must be established. It is unacceptable to have women waiting for periods longer than 2 hours. If women are expected to wait for periods longer than this, they must be re-imbursed for their time or travel expenses.
5. Strict guidelines must be developed to ensure that the welfare of the women and their families takes priority over the husband's debts and debtors.
6. Maintenance officers must undergo appropriate training to deal with maintenance issues. This should be done through the Justice College (diversity and sensitivity training) or by appropriate NGO's.
7. Maintenance officers should preferably be women.
8. The very requirement for women who apply for a state maintenance grant on the grounds of desertion or non-support by the father of her children to have to show proof that she has attempted to secure financial support from him in the form of a private maintenance grant through the judicial system, creates a heavy burden for women. If she does manage to provide proof to the maintenance courts, the PMG is based on the father's ability to pay.
9. Maintenance courts must be made accessible in terms of physical proximity, language and removal of bureaucratic inefficiency and red tape (Berman and Berger, 1998).
10. Strict measures must be taken to deal with fathers/husbands who default on maintenance payments.
11. Judicial discretion is discrepant and must be monitored and regulated.

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