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**The Domestic Violence Act
(116 of 1998)**

**Increased safety for women experiencing
domestic violence in South Africa?**

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**A minor dissertation in partial fulfillment of the requirements for the award of the degree
of Masters of Social Sciences in Gender & Transformation
Faculty of the Humanities
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Declaration

This work has not been previously submitted in whole, or in part, for the award of any degree. It is my own work. Each significant contribution to, and quotation in, this dissertation from the work, or works, of other people has been attributed, and has been cited and referenced.

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.....
Date

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Abstract

The Domestic Violence Act (116 Of 1998) (DVA), a new piece of legislation concerned with reducing the levels of domestic violence in South Africa, was brought into operation in December 1999. To date, much effort has gone into assessing the legislation from a structural perspective, monitoring the resources available for implementation, and the effectiveness of those responsible for carrying out the Act. While such information is vital in assessing the success of the legislation, it focuses on efficiency rather than examining whether the ‘solution’ created actually fits or ‘solves’ the problem of domestic violence. It is vital to question whether the Act simply addresses the symptoms of domestic violence, rather than the causes (patriarchy, power differentials between men and women etc.) and whether, as a consequence of this, it can only ever provide partial practical solutions, rather than holistic strategic ones.

Allegations that the Act may actually be *increasing* violence against women and femicide have been made by several organizations, and there is no doubt that women also suffer extensive secondary victimization while making use of criminal justice structures. This research project therefore focuses on women’s experiences of the DVA in order to assess whether the Act is actually reducing violence and improving women’s quality of life.

These questions are explored from feminist methodological and theoretical perspectives which examine the historical, cultural, political and legal factors that contribute to violence in the home. These theories focus on the critical impact of patriarchy and make clear the non-essential nature of women, focusing on the different experiences of violence firmly from the perspective of women themselves. Further, domestic violence is placed within human rights and development dialogues, and a feminist jurisprudence framework, which forefronts the voices and experiences of women, is used to analyze the research material.

The research upon which this thesis is based has been conducted with the Consortium on Violence Against Women¹ (hereafter the Consortium) due to my position as a research intern with this group. The research conducted therefore had a dual purpose, both to collect information to address my research question and for the broader purposes of the Consortium. This location has allowed the research project to be broader and deeper due to the access and support which the Consortium brought to the process. It has therefore been a collaborative and, I hope, mutually beneficial exercise.

Our research was based in three shelters in Cape Town: the Saartjie Baartman Centre, Carehaven and Sisters Incorporated. The primary data collection methods were group workshops (involving a total of forty-nine women) and individual interviews of six shelter residents and five staff members. In addition court observation work was carried out in the Cape Town Family and Magistrates Courts on an irregular basis over a period of several months.

The results indicate that the solution posed by the Domestic Violence Act is a limited one. Access to justice is restricted by lack of awareness, cost, fear of the legal process or retribution and loyalty to the abuser. In addition, extensive secondary victimisation from criminal justice personnel was reported from lack of interest and commitment to actively negative attitudes, aggression, denial of rights and collusion with abusers. Positive experiences within these systems were seen to be tied to the efforts of committed individuals rather than systematic success. While the data on the repercussions of securing protection orders was limited, service providers reported mixed reactions from perpetrators, some modifying their behaviour while others react with physical fury. It is clear that even for the small proportion of women who do manage to access the legal system, that the protection offered under the DVA is at best partial. In the worst cases violence is actually increased as a consequence of seeking help. The thesis concludes that legal solutions are never sufficient in and of themselves, even where they are well resourced. Instead creative and co-ordinated cross-sectoral approaches need to be taken.

¹ The Consortium on Violence Against Women is made up of the following organizations:

- Gender, Law and Development Project, Institute of Criminology, University of Cape Town
- Gender Project, Community Law Centre, University of the Western Cape
- Health and Gender Violence Project
- Rape Crisis, Cape Town

Contents

Declaration	<i>i</i>
Abstract	<i>ii</i>
Acknowledgements	<i>vii</i>
Glossary	<i>viii</i>
Chapter 1: Introduction	<i>1</i>
1. <u>Conflicting definitions and estimates of domestic violence</u>	1
1.1 Definitions: constructing meanings	1
1.2 Challenges in measuring the extent of domestic violence	3
2. <u>Context</u>	4
2.1 The extent of domestic violence internationally.....	4
2.2 Gender relations in South African	5 ✓
3. <u>Rationale for the project</u>	7
3.1 The missing indicator: violence against women.....	7 ✓
3.2 Focus on policy & legislative solutions	8
4. <u>The Research Question</u>	8
5. <u>Research Context</u>	9
Chapter 2: International and National Policy Context	<i>10</i>
1. <u>A Framework of International Human Rights Treaties</u>	10
2. <u>Requirements of international human rights treaties regarding domestic violence legislation</u>	11
3. <u>Current Progressive Trends in International Legislation</u>	13
3.1 New definitions and offences.....	14
3.2 Extending civil law protections and integrated laws	15
3.3 Shifting responsibilities to the state	16
3.4 Increased severity in sentencing	17 ✓
3.5 Conclusions.....	18
4. <u>The Domestic Violence Act (116 of 1998)</u>	18
Chapter 3: Theoretical position and framework	<i>21</i>
1. <u>Constructing domestic violence: competing frameworks</u>	21
1.1 Mainstream criminological theory.....	21
1.2 Alternative frameworks	22
1.3 Conclusions.....	29
2. <u>Feminist Jurisprudence</u>	30
Chapter 4: Methodology	<i>35</i>
1. <u>Methodological Musings:</u>	35
2. <u>Shaping Design: Ethics and Accountability</u>	39
2.1 Researcher location.....	40

- Women on Farms Project (from May 2001)

2.2	Stepping out of the shadows: researcher identities	41
2.3	Friend or foe? The relationship between researcher and participants.....	43
3.	Method	45
3.1	A feminist researcher’s toolbox	45
3.2	Designing the research strategy	46
3.2.1	Locating research sites and participants	47
3.2.2	Experimental method: training workshops	48
3.2.3	Protecting participants	50
3.2.4	Filling in the gaps: court observation.....	52 ✓
3.3	Reflections on the methods	54
3.3.1	Changing direction: reconsidering methods	55
3.3.2	Successes and limitations.....	57
3.4	Conclusions: ethics revisited.....	58
Chapter 5: Research Findings		62
1.	<u>Participant Demographics</u>	62
2.	<u>The Workshops</u>	63
2.1	Perceptions and experiences of the criminal justice system	64
2.2	Barriers to access to justice.....	68
2.3	Violence in the home: the missing factor	70
3.	<u>Interviews with shelter residents</u>	70
4.	<u>Interviews with shelter staff</u>	75
4.1	Perceptions and experiences of the criminal justice system	75
4.2	Consequences of involvement with the criminal justice system	77
5.	<u>Court Observation</u>	79
5.1	The Cape Town Family Court	80
5.2	The Cape Town Magistrate’s Court.....	82
Chapter 6: Discussion & Analysis		87
1.	<u>Domestic violence as an abuse of human rights, form of torture and development issue.</u>	87
2.	<u>A feminist jurisprudence analysis</u>	88
2.1	Gaps between policy & practice	88 ✓
2.2	The legal system: reflecting patriarchy.....	89 ✓
2.3	Women’s relationship with the criminal justice system	90 ✓
2.4	Access to Justice	93 ✓
3.	<u>Remembering race and class</u>	94
4.	<u>Conclusions: the relevance of a legal solution</u>	95
Chapter 7 – Conclusions		96
1.	<u>Final thoughts</u>	96
2.	<u>Recommendations</u>	100
Appendix one: Ethical Guidelines		i
Appendix two: Workshop outlines		vii
2.1	Consortium on VAW: Complainant’s Workshop 1: Introduction.....	vii

2.2 Consortium on VAW: Complainant’s Workshop 2: Support Choices – focus on health and SAPS ix

2.3 Consortium on VAW: Workshop 3: Focus on the Court system x

Appendix three: Training postersxi

Appendix four: Interview schedulexv

Bibliographyxvii

University of Cape Town

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Glossary

- BPA Beijing Platform for Action
- CTFC Cape Town Family Court
- CTMC Cape Town Magistrates Court
- CEDAW UN Convention on the Elimination of All Forms of Discrimination Against Women
- CVAW The Consortium on Violence Against Women
- DEVAW UN Declaration on the Elimination of Violence against Women
- DVA South African Domestic Violence Act (116 of 1998)
- DVMP Domestic Violence Monitoring Project
- NCPS National Crime Prevention Strategy (South Africa)
- NGO Non-Governmental Organisation
- SADC Southern African Development Community
- SAPS South African Police Service
- UN United Nations
- UNICEF United Nations Children's Fund

“Nothing influences our ability to cope with the difficulties of existence so much as the context in which we view them; the more contexts we can choose between the less do the difficulties appear to be inevitable and insurmountable. The fact that the world has become fuller than ever of complexity of every kind may suggest at first that it is harder to find a way out of our dilemmas, but in reality the more complexities, the more crevices there are through which we can crawl. I am searching for the gaps people have not spotted, for the clues they have missed.”²

² Zeldin. 1994. p.13

Chapter 1: Introduction

1. Conflicting definitions and estimates of domestic violence

1.1 Definitions: constructing meanings

There is no universally accepted definition of domestic violence. However, definitions of domestic violence clearly affect the collection of statistics depending on where the lines of exclusion and inclusion in the term fall. The violences which are seen to be encompassed by the term range from the purely physical such as: “slapping, beating, arm twisting, stabbing, strangling, burning, choking, kicking, threats with an object or weapon, and murder”³ (though often only severe violence with visible bruising or scarring is allowed to ‘count’) through to sexual, psychological, verbal, emotional or economic abuse.

Similarly, the relationships within which such violence is construed to be ‘domestic’ vary immensely. At the narrowest it is only married partners who are co-habiting who are viewed as ‘genuine’ domestic violence cases. However, many definitions now include a far broader set of relationships including: “wives, live-in partners, former wives or partners, girlfriends (including girlfriends not living in the same house), female relatives (including but not restricted to sisters, daughters, mothers) and female household workers.”⁴

Regardless of where the ‘boundaries’ of definition fall, there are additional problems in the use of terms such as ‘battered woman’, ‘abused woman’, ‘survivor’ and ‘victim’. These terms gloss “over the emotional ties, interludes of calm, and shared history that women experience over the course of relationships with violent partners. Extracting physical violence as the pivotal concern, whether for academic or legal purposes, simplifies the intricacies of relationships...”⁵ and results

³UNICEF. 1996. p.2

⁴UNHCR. UNHCR. p.3

⁵Hilton. 1993. p.121

in the danger of creating an 'abstract victim', denying women's complex and varied experiences of abuse.

For the purposes of this research paper, the comprehensive description of domestic violence outlined within the South African Domestic Violence Act, 116 of 1998 (hereafter the Act / DVA) will be used. This states that domestic violence means:

- "(a) physical abuse;
- (b) sexual abuse;
- (c) emotional, verbal and psychological abuse;
- (d) economic abuse;
- (e) intimidation;
- (f) harassment;
- (g) stalking;
- (h) damage to property;
- (i) entry into the complainant's residence without consent, where the parties do not share the same residence; or
- (j) any other controlling or abusive behavior towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or well-being of the complainant;"

These acts may be carried out by a wide range of perpetrators from partners ('actual or perceived') who are married, cohabiting, joint parents of a child, relatives or dating, either presently or in the past, in relationships of any duration. In addition same sex relationships are covered by the Act.⁶

⁶ Domestic Violence Act (DVA) p.4

1.2 Challenges in measuring the extent of domestic violence

Domestic violence is an increasing problem worldwide across all economic and class groups. UNICEF has referred to such violence against women as “a global epidemic.”⁷ However, such violence is also notoriously under-reported due to its sensitivity as an issue: women who are victims of gender-based crimes are rarely in a position to discuss this violation with the police, in public or with a stranger due to: “embarrassment, self-blame, fear of not being believed, trauma of official action, secondary victimisation by state officials or fear of retaliation.”⁸ In addition there is frequently a chronic lack of information regarding legal rights, or a lack of confidence in, and fear of, the legal system and its potential costs, both financial and emotional.

Hilton highlights the minute number of cases which come to official attention: “only a small proportion of wife assaults (Dutton 1988 estimates about 15%) is reported to the police in the first place, and the proportion resulting in arrest is smaller still (a measly 1.2%). Thus, the vast majority of wife assault may never be officially detected by criminal justice or social service agencies...”⁹ Koss confirms this: “Independent estimates of the percentage of women who report domestic assaults to police range from 7-14 %.”¹⁰ While both of these authors are based in the US, it may be possible to assume that the figures in the developing world will be just as poor due to relatively limited resources, access to transport and similar practical barriers.

Not only do we face a problem of under-reporting, but it is also difficult to compare those statistics we do have for different countries or areas. As UNICEF has pointed out: “Most of the data available on violence against women are believed to be not only conservative, but unreliable. Studies vary in the sample size of women chosen, and the ways in which questions have been posed. It is difficult to compare these studies because of inconsistency in the

⁷UNICEF. 1994. p.2

⁸Bollen, Artz, Vetten & Louw. 1999. p.4

⁹Hilton. 1993. p. 299-300

¹⁰Koss. 2000. p.2

definition of domestic violence and in the parameters used, which can range from just physical abuse to physical, sexual and psychological abuse.”¹¹

2. Context

2.1 The extent of domestic violence internationally

Despite the problems of definition and measurement outlined above, the scale of domestic violence worldwide is indisputably chilling, regardless of which part of the globe one focuses on. A briefing document on violence against women published in 1999 by the British Council gives a taste of the extent of this problem: “Worldwide our best estimates are that at least one in four women suffer domestic violence”. For example, 61% of women in Papua New Guinea, 60% of women in Chile and Tanzania, 42% in Kenya, and 40% in Zambia report that they have experienced domestic violence.¹²

These crimes are by no means restricted to the so-called developing world. In Canada 29% of women reported being physically assaulted by a current or former partner since the age of 16. In Japan 59% of women surveyed (1993) reported physical abuse, in the UK 25% of women and in the U.S.A. 28% reported at least one episode of physical violence from their partner.¹³ These figures, equally harrowing for both the ‘developing’ and ‘developed’ world, call into question the whole notion of what it means to be developed. If violence against women, or in fact access to justice, were used as the key indicators of development today, a persuasive argument for the existence of a uniformly under-developed world could be made.

¹¹UNICEF. 1996. p. 4

¹² The British Council. 1999. pp. 9-13

¹³UNICEF. 1996. p.5

2.2 Gender relations in South Africa

The South African historical, cultural, social and political context is particularly complex and there is not room here to provide more than a few brief contextual markers. There are three key historical forces which have helped to shape the South Africa we find today: "colonialism, capitalism and apartheid, all of which have reorganised social relations and fractured society along racial, class and gender lines."¹⁴ However, one theme has remained consistent throughout them, that of the patriarchal nature of the societies they perpetuated.

Struggles against oppression and inequality along racial lines have been the key catalyst in creating the new South Africa, while the need for gender equality has largely been seen as a secondary concern. However, since the 1994 election, there have been attempts to make the state more representative of women. On paper things have improved considerably with the equality of women guaranteed by the Constitution and a complex machinery of structures designed to take this aim forward. However, despite these significant symbolic gains huge disparities and inequalities remain. As Artz writes, "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 ... 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."¹⁵

2.2.1. The extent of domestic violence in South Africa

While the new South Africa is lauded for its successes in achieving the advancement of women (for example the achievement of strong representation of women in parliament) it simultaneously is one of the world's most dangerous countries for women. "Statistical evidence tells us that post-apartheid South African women are more likely to be murdered, raped or mutilated than women anywhere else in the democratic world, including the rest of Africa. Their assailants ...

¹⁴ Baden, Hasim & Meintjes. 1998. Section 2.1

¹⁵ Artz. 1999. p.4-5

are South African men, most often the very men with whom South African women live in intimate relationships.”¹⁶

Accurate statistics on the prevalence of domestic violence are not available in South Africa. The data which is available is largely based upon victim surveys, a series of estimates by NGOs working with survivors and police statistics. However, domestic violence is not codified in South African law as a separate criminal offence, instead it is classified as rape, assault or assault with intent to do grievous bodily harm. Since 2000 the fact that these crimes occur within the domestic arena has been recorded by the South African Police, so that in theory a clearer picture of the number or reported crimes is being established, but the sustained and pervasive nature of this violence is not reflected in these figures.

In addition, service providers assert that there is a massive problem of under-reporting of domestic violence crimes, as mentioned above, due to the sensitive nature of the issue, fear on the part of the survivor, lack of public awareness of rights, and lack of access to transport, police stations etc. It is also important to remember that part of the legacy left by the apartheid regime is that the criminal justice system has traditionally been the enforcing arm of an oppressive regime. While efforts towards transformation have been made, many personnel, systems, buildings and structures remain the same. Understandably, eight brief years of democracy have not been sufficient to transform people’s relationships with, and assumptions about, the criminal justice system. It is asking a great deal for women to trust criminal justice staff to deal sensitively and effectively with the complex issue of violence in the home. Understandably the involvement of either the police or the judiciary is often still associated with betrayal and systematic injustice. It is critical to remember this additional layer of complexity when considering the suitability of a legal solution to domestic violence within the South African context.

Despite the hidden nature of domestic violence the 1995 Human Rights Watch Report states: “what is certain ... is that South African women, living in one of the most violent countries in

¹⁶ Mama. 2001. p.3

the world, are disproportionately likely to be victims of that violence.”¹⁷ Voluntary sector service providers, such as NICRO Women's Support Centre in Cape Town, estimate that between sixteen and sixty percent of South African women are in abusive relationships at some point of their lives¹⁸. Eighty percent of the violence that women suffer is within their own homes¹⁹ and one woman is killed by her partner every six days.²⁰ In addition, research has found that an average of 80 percent of rural women are victims of domestic violence.²¹

3. Rationale for the project

There are two intersecting factors which have created the motivation for this project. An outline of these follows:

3.1 The missing indicator: violence against women

While gender dynamics and the differential impacts of development on men and women have gained increasing prominence in governmental and civil society circles world-wide over the past decade, vulnerability to gender-based violence has rarely been highlighted as a critical element of gender inequity. In fact, the violence against women factor is often ‘missed out’ of gender equity dialogues. As Josette Cole has written of South Africa, “the gender-based violence sector has not on the whole managed to place violence against women, direct or indirect, squarely within the context of development... gender-based violence continues to remain marginal to broader development and peace-building initiatives taking place in South Africa.”²² Work on gender-based violence is often ‘ghettoised’ rather than integrated into, or drawing upon, other sectors or fields such as poverty alleviation, or conflict resolution.

This project questions whether an isolated ‘solution’, such as the Domestic Violence Act, can actually lead to a meaningful decrease in violence. A more holistic approach which integrates

¹⁷ South African Law Commission. 1999. Section 1.2

¹⁸ NICRO Women's Support Centre. 1998.

¹⁹ Ibid.

²⁰ Vetten. 1996.

²¹ Bollen, Artz, Vetten & Louw. 1999. p.2

²² Cole. 2000. p. 1

challenges to such violence into all work that is carried out by the government and others - whether it focuses on the position of women or entirely different areas – is likely to be far more effective.

3.2 Focus on policy & legislative solutions

The central thrust of the South African Government's approach to tackling domestic violence has been through agreement to international policies and the creation of national legislation (see Chapter 2 below). While this is important in that it creates a positive framework and enabling environment for change, there is a great danger that the good intentions of the policies are lost at the implementation stage. This project explores women's experiences of the legislative process, in order to uncover gaps between policy and practice.

4. The Research Question

The aim of this research project is to investigate the effectiveness of the solution posed by the Domestic Violence Act from the perspective of women survivors.

The question to be addressed is therefore:

Does the Domestic Violence Act (116 of 1998) succeed in decreasing the incidence and severity of violence against women?

5. Research Context

The research upon which this thesis is based has been conducted for and with the Consortium on Violence Against Women in my capacity as a research intern with this group. The Consortium is conducting a research programme monitoring and evaluating the effectiveness of the Domestic Violence Act, the Domestic Violence Monitoring Project. During the first year of research, March 2000 - February 2001, work has focused on the extent to which the Act is being implemented, as well as exploring the obstacles and benefits provided by the Act. Numerous service providers in the Justice and Health departments, and the police have been interviewed and data from ten percent of applications for Protection Orders has been collected at the Mitchell's Plain, George and Cape Town Family Courts for analysis.²³

This thesis, and the research upon which it is founded, form part of the second year of the Consortium's work, reflecting a shift in focus to the experiences of those experiencing domestic violence. This second year includes other research on farm workers' experiences of domestic violence, and an exploration of domestic homicide in the Western Cape.

²³ Parenzee, Artz & Moulton. 2001.

Chapter 2: International and National Policy Context

1. A Framework of International Human Rights Treaties

Rapid and dramatic improvements in the international frameworks and positions on violence against women have been made in the last decade. In 1992 the Committee coordinating the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), introduced in 1979, adopted General Recommendation 19, which states that gender-based violence is a form of discrimination that inhibits a woman's ability to enjoy rights and freedoms on a basis of equality with men. The World Conference on Human Rights in Vienna (1993) accepted that the rights of women and girls are: "an inalienable, integral and indivisible part of universal human rights."²⁴ In December 1993, the United Nations General Assembly accepted the Declaration on the Elimination of Violence Against Women (DEVAW). The first UN Special Rapporteur on Violence against Women was appointed by the Commission on Human Rights in 1994. In 1995 the Fourth World Conference on Women in Beijing included in its Platform for Action (BPA) the elimination of all forms of violence against women as well as providing a concrete list of actions to be taken by governments, the UN, international and non-governmental organizations in order to achieve this.

Domestic violence interventions worldwide are sited within the context of these agreements. They provide comprehensive frameworks from which signatories should develop appropriate policy and legislation with the aim of reducing and limiting violence against women. While some would accuse them of unrealistic and utopian expectations, they do provide a valuable 'measuring-stick' against which progress may be measured.

A brief summary of key attributes will be provided here for those readers unfamiliar with the treaties. The assumptions upon which CEDAW, DEVAW and the BPA are founded provide a positive philosophical framework to work from: firstly women are not assumed to be a homogenous, essentialist category but rather are acknowledged to be a highly differentiated set

²⁴UNICEF. 1996. p.3

of individuals who experience violence, among other things, in multiple ways. Secondly, women's rights are usually rooted within broader human rights frameworks. Thirdly, patriarchy and structural power imbalances are recognized as the source of violence against women. Fourthly, these treaties do not place responsibility on women to end violence. Instead, they place the responsibility for ending violence against women on the individual states. Lastly, comprehensive curative and preventative solutions are posed including among others: implementing effective legislation to protect women from violence, adopting measures to ensure the training of service providers, allocation of adequate resources, provision of shelters and relief and so on.

Of course, these treaties can afford to be utopian as it is the member states that are responsible for the actual implementation of their comprehensive visions. However, they provide an ideal for individual states to use as a model and work towards, and most importantly a clear 'philosophical' foundation of assumptions and understandings, both about the nature of violence against women and the diversity of women's experiences, which are replicable by individual states.

2. Requirements of international human rights treaties regarding domestic violence legislation

As the focus of this research paper is a specific piece of legislation and its effectiveness in tackling domestic violence, the requirements pertaining to such legislation as set out in the international treaties will now be outlined.

The key part of CEDAW relating to domestic violence is General Recommendation 19, which deals with violence against women. This requires states to "act to protect women against violence of any kind occurring within the family."²⁵ The first formal recommendation that it makes is to create legislation to protect women against violence. It also emphasizes that: "states may also be responsible for private acts if they fail to act with due diligence to prevent violations

of rights or to investigate and punish acts of violence, and for providing compensation."²⁶ This is both a radical and a paternal stance. Positive duties are placed on the state to act, regarding governments as complicit in violence if they do not take positive steps to bring it to an end. However, in line with most jurisprudential approaches to gender based violence, this also embodies a vision of a paternal state wherein survivors merely hold the status of witness.

DEVAW similarly places great emphasis on the need to create and implement legislation. Article 3 stresses women's rights to: "equal protection under the law"²⁷ and in Article 4, of the seventeen demands made of signatory states, two request the creation of appropriate retributive legislation. A further two are concerned with the need to train and sensitize personnel and provide adequate resources for the implementation of legislation.²⁸

The BPA has as one of its twelve areas of critical concern: "All forms of violence against women."²⁹ In its suggestions for actions to tackle this issue it states that: "Violence against women is exacerbated by ... women's lack of access to legal information, aid or protection; the lack of laws that effectively prohibit violence against women; failure to reform existing laws; inadequate efforts on the part of public authorities to promote awareness of and to enforce existing laws."³⁰

In its specific instructions on actions to be taken by governments it requires that they: "Adopt and/or implement and periodically review and analyze legislation to ensure its effectiveness in eliminating violence against women."³¹ In fact, of the nineteen instructions given specifically to governments in the pursuit of an end to violence against women, four relate directly to the creation or enforcement of legislation, three to 'sensitizing' and training personnel involved in

²⁵CEDAW. 1997. p.88-89

²⁶UNICEF. 1996. p.10

²⁷DEVAW. Article 3. p.3

²⁸DEVAW. Article 4. paragraph A - Q

²⁹BPA. Chapter III, paragraph 46

³⁰BPA. Chapter IV D, paragraph 119

³¹BPA. Chapter IV D, paragraph 125 D

structures such as the criminal justice system and one to the allocation of adequate resources from government funds to ensure effective implementation.³²

This focus on legislation in these key international treaties highlights the extent to which the law is seen as a government's 'flagship' response to domestic violence with huge reliance being placed on its potential to engineer positive change. Many feminists share this belief, and have pushed for such provisions within this international policy framework. In line with this focus, the UN Commission on Human Rights Special Rapporteur on Violence Against Women has created a: "Framework for Model Legislation on Domestic Violence" which is designed to serve as a drafting guide for comprehensive legislation within states.

The acceptance of the law as *necessarily* an effective and relevant solution may well be unwarranted, but each positive statement of its potential to be *the* solution reinforces a growing international belief in its 'magical' powers. It is this belief which this research project was designed to challenge.

3. Current Progressive Trends in International Legislation

The 1990s have seen the commitment of more countries than ever before to the creation of improved domestic violence legislation. To date, 44³³ countries from around the world have adopted specific legislation on domestic violence. Some countries, as in Spain and Finland, have limited their solutions to civil law, providing access to protection orders for the first time. Others have extended the ways in which protection orders and police powers may be used, for example, Ireland and Austria. Mexico, Nicaragua, some states in the United States and Cyprus have used innovative legislation to link civil and criminal processes to streamline women's experiences of the legal system. Elsewhere, new criminal offences have been created, or the status of domestic assaults has been altered (examples include Belgium, France, Spain and Sweden). Attempts to provide a more coherent approach have led other countries, such as Denmark, Finland, Austria,

³²BPA. Chapter IV D, paragraph 125 A - S

³³UNICEF. 1996. p.17

Cyprus and Sweden, to create 'integrated law' which refers to both state responsibilities and legal powers.

Others countries continue to rely on a patchwork of non-specific legislation designed to deal with crimes such as assault, rape and harassment. In fact, even in those countries where specific legislation has been created, other legal solutions are often relied upon to 'plug the gaps'.

Due to the hugely intricate nature of the law, and the difficulty of summarising individual pieces of legislation with numerous clauses, sub-clauses and subtle variations, this paper will now briefly highlight some of these reforms which have been particularly innovative or controversial. The critical question is whether any of the recent adaptations and innovations are providing substantial relief for domestic violence survivors, or whether effort and resources would be better spent on alternative solutions.

3.1 New definitions and offences

The UN Framework for Model Legislation on Domestic Violence highlights the importance of definitions within legislation dealing with domestic violence: "It is urged that States adopt the broadest possible definitions of acts of domestic violence and relationships within which domestic violence occurs."³⁴ In effect, these definitions form the base of the legislation. They control who and what can be legislated against and send out clear messages about which types of violence are considered 'acceptable' and which are not. Without broad definitions which condemn more or less all violence by anybody in an array of domestic relationships, such as we find in the South African Domestic Violence Act, domestic violence legislation is doomed, even before it is implemented, to protect very few from very little.

Just as new definitions of domestic violence are gradually being accepted, so are new conceptualizations of offences relating to such violence. The complexity of domestic violence, the fact that it does usually take place in private between (usually) intimate parties who are connected in numerous ways - financial, shared home, children and so on - means that it cannot effectively be treated in the same way as more 'public' crimes. As Kelly has written: "domestic violence is never a single event, but a 'pattern of coercive control'. Often the event which

³⁴UNHCR. p.2

prompts women (or others) to call the police is not especially 'serious' in legal terms, and even may not be a criminal offence at all".³⁵ It is the accumulated abuse over time which finally brings a woman to the legal system, but on the whole this is a system which only recognises discrete crimes. Revolutionary legislation in Sweden is the first to recognize the significance of this history through the creation of a new offence of 'gross violation of a woman's integrity'. This allows prosecution for a whole pattern of behaviour; even where individual acts within the pattern would not be prosecutable on its own.

A number of countries in Latin America, as well as some US states have created a specific domestic violence criminal offence. This is at least a symbolic move forward from the current situation, where either the breach of a protection order or acts classified under other offences such as rape or grievous bodily harm, are criminalized. Although it remains to be seen whether defining domestic violence itself as the crime will have any significant impact on women's safety, it is a significant act in developing cultures which refuse to tolerate violence against women.

3.2 Extending civil law protections and integrated laws

Protection orders are an increasingly common civil law remedy for domestic violence. These are seen to be a positive advance from reliance solely upon the adversarial criminal law solutions for a number of reasons. Firstly, compared to a conviction in criminal proceedings they are relatively quick and simple to secure because the standard of proof required in civil trials is lower than in criminal trials. Secondly, protection orders provide survivors with a 'softer' response to an abusive partner than immediate criminal prosecution. The perpetrator is given a clear warning by the order, but unless the order is breached there are no further repercussions. This solution therefore fits the wishes expressed by many women experiencing abuse, who want the violence to end but do not want their partner to be imprisoned.

However, it is important to note here that while protection orders can provide solutions for some women they are rarely enough to end violence, for example in the U.S. Koss reports that: "the majority of abusers violate them in some way within 2 years."³⁶ If they are not backed up by the power of arrest, and if arrest is not carried out when protection orders are breached, such orders very quickly become meaningless. It is also vital to remember that these orders are not simply

³⁵Kelly. 2001. p.3

³⁶ Koss. 2000. p. 2-3

opted for in less serious cases of abuse, instead: "protection orders are sought mainly by women experiencing severe violence after they have been injured, and are thus a desperate call for help, not a primary prevention strategy."³⁷

The integration of civil and criminal solutions is also increasingly popular. UN model legislation urges states to: "enact comprehensive domestic violence legislation which integrates criminal and civil remedies rather than making marginal amendments to existing penal and civil laws."³⁸ This concept has a number of advantages. Firstly, effective linkages between the criminal and civil systems limit the number of court appearances a woman has to make and thus reduce the financial and emotional cost of the process. Secondly, a co-ordinated approach is more streamlined, reducing the number of 'cracks in the system' which offenders may slip through. Thirdly, co-operation between the different arms of the law allows for more effective enforcement - the criminal back up for civil actions becomes speedier and the separation between 'soft', and thus easily ignorable, civil law and 'hard' criminal law becomes less distinct. Fourthly, as with the US Violence Against Women Act³⁹, this kind of legislation allows resources to be allocated within statutes and statutory monitoring/implementation groups to be established, as in Cyprus. This can secure the effective implementation of such legislation financially, and ensure that its progress is transparent and accountable.

3.3 Shifting responsibilities to the state

A number of countries have adopted policies which transfer the responsibility for interventions by the criminal justice system on to the state. Examples of such a shift include no-drop policies (which prevent domestic violence cases from being withdrawn by a Complainant), mandatory arrest of perpetrators when police arrive at an incident and applications by officials for legal protection for a survivor.

All of these approaches are contentious. They have the positive intention of removing responsibility for the criminal proceedings from the woman and placing it on the state with the aim of limiting retributive violence from the Defendant. However, they effectively disempower the survivor by removing the possibility of choice and control over the legal process. Often

³⁷ *ibid*

³⁸ UNHCR. p. 2

³⁹ U.S. Violence Against Women Act

women become compellable state witnesses who may actually be fined or imprisoned if they refuse to testify against their partners (as has occurred in both the UK and Canada⁴⁰).

There are numerous reasons why a survivor might be cautious or change her mind about legal proceedings: the parties may have reconciled, she may not want to risk the imprisonment or fining of a partner which could negatively impact on family finances, or she may simply fear her partner's reaction to the proceedings. In fact, the majority of women choose to withdraw charges if given the opportunity: "Reports from traditional jurisdictions around the United States indicate that 50% - 80% of battered women will drop charges either by requesting dismissal or by failing to appear in court as a witness..."⁴¹

This massive fall-out raises numerous questions about the potential of the legal system to provide the solutions women are looking for. The wheels of justice often turn slowly, and women whose primary aim is survival may well calculate that an increase in vulnerability in the short term is not worth undergoing when long-term protection is not going to be radically improved by the process (to date penalties for perpetrators of domestic violence are minimal throughout the world).

This Gordian knot understandably frustrates many criminal justice personnel. On the one hand they are expected to improve their services, create new legislation and take domestic violence seriously as a crime. On the other hand they are expected to respect a 'woman's right to choose' and to watch numerous Applicants who they know are in critical danger of injury or death walking away from a process which could provide them with some respite.

3.4 Increased severity in sentencing

Some believe that the reason the legal system has failed to bring about a decrease in domestic violence to date is due to the fact that it has been consistently lenient with perpetrators throughout the world. Proponents of the 'short, sharp, shock' school of justice believe that tough sentencing would send out a clear message of zero tolerance which would in turn lead to a decrease in violence. Others believe that the negative impacts on a family of losing one of its members and their income should not be undervalued, and state that this is not actually what the majority of domestic violence survivors want.

⁴⁰Morris. 1993. p.6

⁴¹Hilton. 1993. p.140-141

Therefore, as Seddon writes: "sentencing of a domestic violence offender presents difficult problems for the magistrate or judge because a fine or imprisonment will affect the family which has already suffered from the violence".⁴² Does a magistrate hand down a 'harsh' sentence in order to send out a clear message, both to the individual perpetrator and to those as yet uncaught, that the legal system and the society it represents will not tolerate violence against women in the home? Or do they hand down a lenient sentence which may well have fewer negative impacts on the family in the short term and may persuade the survivor to make use of the legal system in the future if she has the need?

3.5 Conclusions

Each domestic violence survivor's case is different, and the difficulty in devising effective legal solutions essentially rises out of this problem - how is it possible to make a blue print of legal solutions for a problem which is infinitely complicated, varied and personal? Perhaps instead, we should begin to see the very existence of the law as the critical factor. Women may use the potential for legal recourse, the threat of legal action or actual legal process as part of their survival strategies. The fact that a woman does not follow through on a case should perhaps no longer be seen as a 'failure' by the criminal justice system. Instead we should see the mere fact that they have accessed the system at all as testimony of the daily strategising, ingenuity and resilience of women who survive against all the odds.

4. The Domestic Violence Act (116 of 1998)

The South African Domestic Violence Act, the focus of this research paper, is said by some to be the most comprehensive in the world. Credit for this must be given to the violence against women movement within South Africa which not only fought hard to put domestic violence on the government agenda, but also worked with government to create the Act, both as formal advisors and through an open consultation process. While such involvement is seen by some as a form of collusion, it is important to note that while the end product is far from perfect it is dramatically better than would have been the case without the input of the women's movement.

⁴²Seddon. 1993. p.54

This Act falls within the framework of the National Crime Prevention Strategy and the Victim Empowerment Programme. These umbrella policies have at their heart the clear intention of improving: "the access of disempowered groups to the criminal justice process, including women and children."⁴³ Domestic violence is also a Priority Crime Category (under inter-personal violence) in the Strategic Implementation Framework⁴⁴ approved in September 1999.

Within this 'supportive' framework, the Domestic Violence Act came into force in December 1999 and provides for the issuing of temporary and permanent Protection Orders for women and men who have experienced, or are experiencing, domestic violence. One of its major achievements is the recognition of the multiple realities of women's experiences of abuse, through broad definitions of both domestic violence and the relationships it occurs within (as reproduced in Chapter 1). The preamble also specifically highlights the unacceptably high levels of domestic violence in South Africa: "Recognising that domestic violence is a serious social evil; that there is a high incidence of domestic violence within South African society, that victims of domestic violence are among the most vulnerable members of society..."⁴⁵ This has immense symbolic importance, challenging the prevailing acceptance of domestic violence. The hope is that this will gradually filter into national norms and values.

However, despite the fact that the Act cites its purpose to be: "to afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide"⁴⁶, the assumptions behind the Act restrict its potential. Firstly, the Act is grounded in the curative Social Control theory in that the solution it poses is to increase the power of controlling forces to exact punishment for incidents of domestic violence. In other words it aims to make the costs of being violent greater than the rewards.

This 'curative' approach fails to address structural issues such as the influence of the patriarchal nature of South African society and the resulting gender power imbalances upon the prevalence of domestic violence. Secondly, an essentialist understanding of the 'complainant' lies at the heart of the Act: no recognition of the impacts of race, class or sexuality are addressed. However the realities of access to this limited solution *are* defined by these additional factors. Thirdly, even if women manage to overcome these barriers, at every step the Act assumes that the responsibility for action rests upon the woman, she is responsible for attempting to prevent the

⁴³NCPS. para. 8.1.5

⁴⁴ See NCPS

⁴⁵DVA. p.2

⁴⁶DVA. p.2

violence of the perpetrator from the application for a protection order, to a breach and on into criminal trial. Fourthly, the Act criminalizes the breach of a Protection Order and not the acts of domestic violence themselves, as domestic violence is not codified as a separate criminal offence in South Africa. This fails to send out the zero tolerance of domestic violence message outlined by DEVAW and the BPA.

These assumptions and limitations, both about the causes of domestic violence and potential solutions as embodied in the Domestic Violence Act are now 'reappearing' in the problematic implementation stage. When you add to the 'theoretical' paper shortcomings of the Act problems including: criminal justice system staff who have had little or no training and are often both unaware and insensitive to the complexity and enormity of domestic violence; a government failure to provide a budget for the implementation of the Act; a critical shortage of back up services such as shelters and counselling and ineffective linkages between departments who have contact with domestic violence survivors (SAPS, Justice, Health and Welfare primarily) to name just a few, it is hard not to question the level of positive change which the Act truly represents.

As yet, the jury is out on this question. Extensive monitoring and evaluation of the Act is ongoing, including the work carried out by the Consortium on Violence Against Women in the last eighteen months. What is clear however, is that even where legislation is (relatively) progressive on paper, it is more or less meaningless unless the complex process of implementation is given at least as much attention as the fine print of the legislation. As highlighted above, it is the support systems to any legislation which are probably the factors most critical to its success, because they form the 'filter' through which action does, or does not, occur.

Chapter 3: Theoretical position and framework

1. Constructing domestic violence: competing frameworks

There are numerous competing theories about domestic violence which have emerged from a number of different academic disciplines. These reflect the conflicts in understanding the causes of, and solutions to, domestic violence, as well as appropriate frameworks within which to place it as a problem⁴⁷. While I will not attempt to elaborate these multiple theories here, I will briefly outline the more orthodox criminological theories before exploring my understanding and conceptualisation of domestic violence, and the theoretical scaffold from which this research project has been constructed.

1.1 Mainstream criminological theory

Mainstream criminological theories largely explain violence in the home as a function of the dynamic between *both* partners, reinforced by their social environment (either positive feedback condoning violence, learnt violence from others, or a lack of ‘punishment’ deterring violent behaviour)⁴⁸. This literature tends to create a universal victim wherein a unitary, essential construction of women’s experience is isolated and described independently of race, class or sexual orientation. The definition of domestic violence itself is also limited largely to behavioural rather than societal variables, and there is an almost total absence of reference to the experiences of women in developing countries. The work done is largely Western, with: “conclusions, recommendations and theories that are only useful within developed, welfare states.”⁴⁹

⁴⁷ See for example: Bellack, Hersen, Morrison & Van Hasselt. 1998.

⁴⁸ These include the Family Systems Theory, Social Learning Theory, Resource Theory and Exchange/Social Control Theory as found in Bellack, Hersen, Morrison & Van Hasselt. 1998.

⁴⁹ Artz. 1999. p.15

These theories are created from, and recreate, the myth that the woman plays a more or less equal role in creating the violent situation, either through ‘irritating behaviours’ or a failure to say no to the violence - if only she would change her behaviour the violence would cease. Responsibility for the violence is removed from the perpetrator, and placed in his environment, somehow recreating him as another victim of the situation. These theories feed the construction of ‘victims’ as irrational, emotional, provocative creatures who more or less deserve what they get.

1.2 Alternative frameworks

This research project is founded on a competing understanding of domestic violence, in line with more recent feminist socio-cultural theories⁵⁰, which examine the historical, cultural, political and legal factors that contribute to violence in the home. These theories focus on the critical impact of patriarchy in the home and are framed within a human rights context. They explain violence as: “profoundly political” resulting from the: “structural relationships of power, domination and privilege between men and women in society.”⁵¹ They also make clear the non-essential nature of women, focusing on the different experiences of violence firmly from the perspective of women themselves.

These theories challenge the myths reinforced by the first set of theories, constructing women as an underclass oppressed by a complex social web of patriarchal power. Violence is seen as a symptom of this power system, but the perpetrator is in no way excused by this. The survivor is constructed as blameless, but not helpless. The aim is to challenge society and empower women, recreating them as resilient survivors, not passive victims.

⁵⁰These include patriarchal perspectives, domestic violence as terrorism and torture, and the situation of domestic violence within human rights frameworks – see Dobash & Dobash (1979), Bunch 1991 & 1997), Russell (1992).

⁵¹Bunch. 1991. p.7

1.2.1 A human rights framework

Much work has gone into incorporating women's rights, and more particularly, violence against women and domestic violence, into historically gender-blind human rights frameworks. While the Universal Declaration of Human Rights was agreed upon in 1948, it wasn't until the second World Conference on Human Rights, held in Vienna in 1993, that the movement for women's human rights crystallized. In the build up to this conference, the Global Campaign for Women's Human Rights⁵² fought to: "emphasize issues of gender-based violence since they illustrate best how traditional human rights concepts and practice are gender-biased and exclude a large spectrum of women's human rights abuse."⁵³ This focus promoted the introduction of new human rights instruments including the adoption of the UN Declaration on the Elimination of Violence Against Women (DEVAW) and the appointment of a UN Special Rapporteur on Violence Against Women (as discussed in chapter two above).

However, these successes were hard won, and continue to be hotly contested, because the incorporation of women's human rights, and particularly the focus on violence against women: "requires that barriers be broken down between public and private, state and non-governmental responsibilities."⁵⁴ As Bunch writes: "Significant numbers of the world's population are routinely subjected to torture, starvation, terrorism, humiliation, mutilation and even murder simply because they are female ... Yet, despite a clear record of deaths and demonstrable abuse, women's rights are not commonly classified as human rights."⁵⁵

The pragmatic purpose of placing domestic violence within this framework is found in the fact that the: "promotion of human rights is a widely accepted goal and thus provides a useful framework for seeking redress of gender abuse. Further, it is one of the few concepts that speaks to the need for transnational activism and concern about the lives of people globally."⁵⁶

⁵² A loose coalition of groups and individuals worldwide concerned with women's human rights

⁵³ Reilly. 1996. p. 5

⁵⁴ Bunch & Carrillo. 1991. p. 13

⁵⁵ Bunch & Carrillo. 1991. p. 3

⁵⁶ Bunch & Carrillo. 1991. p.4

The strategic location of domestic violence within such a framework thus allows for a more holistic and global approach to challenging its all-pervasive tenacity. However, the advantages of this universality are counterbalanced by arguments that solutions to domestic and other violences against women must be context specific.

Criticisms are leveled at universal agreements on the grounds that they undermine specific cultures, traditions and religious beliefs about the place of women and relations between men and women in society. However, while I do believe that interventions should be location specific, simply framed by the broader international agreements, I think it is important to challenge the defence of gender violence along the lines of culture, tradition or religion. While this could form a whole lifetime of thought and debate in itself, I shall simply quote Schroeder:

“If it happens to you for racial reasons, it’s a human rights violation.
If it happens to you for political reasons, it’s a human rights violation.
If it happens to a woman, it’s cultural.”⁵⁷

Authors such as Green, Dawit, Maboe and Halim⁵⁸ have pointed out that the ‘categories’ of culture, tradition and religion are by no means fixed, rather being reinterpreted generation by generation throughout the world. However they identify the sites of fluidity and change as those which are of benefit to those in power, in most cases men. Far greater rigidity is, as a broad generalization, experienced in the expectations and roles of women. Often they are viewed as the bearers and reproducers of culture, and change which could potentially lead to societal power shifts in women’s favour are avoided at all costs.

While the human rights instruments are clear in stating that culture is not a justifiable defense of abuses of women, reports such as those published annually by Amnesty International and Human Rights Watch highlight how much work there still is to be done to bring violence against women to an end throughout the world. Nowhere is such violence truly recognized or treated as a human rights abuse. While we may have made ‘official’ progress at an international level, real

⁵⁷ Schroeder quoted in Green. 1999. p. 11

⁵⁸ Center for Women’s Global Leadership. 1994.

successes in incorporating domestic violence into human rights thinking can only be claimed when tangible change occurs on the ground.

1.2.2 Domestic violence as torture or terrorism

Just as the mainstream human rights movement has overlooked and sidelined women's specific needs and rights for many years, so has international work against torture often ignored the particular experiences and contexts for torture which women experience. While the movement against torture, an integral part of the human rights movement, has been gaining momentum since the Universal Declaration of Human Rights in 1948, and more particularly the 1975 UN Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the 1984 UN Convention Against Torture, the focus has been on acts carried out by the state or state actors. The domestic arena as a site for torture has almost exclusively been ignored.

This is largely due to the constructions of torture which were considered acceptable. As Kois has written: "torture has been socially constructed and understood both through psycho-medical models and through the law ... such models have excluded women's experiences of torture."⁵⁹ She continues: "overwhelmingly, international definitions of torture have been interpreted narrowly and, consequently, have led to a profoundly gendered portrait of the torture victim as a male prisoner of conscience."⁶⁰

Definitions and constructions of torture vary widely. The Collins Dictionary defines torture as: "to cause extreme physical pain to, to give mental anguish to, the practice of torturing a person..."⁶¹, and terrorism as: "the act of terrorizing, the systematic use of violence and intimidation to achieve some goal, the state of being terrorized."⁶² The dominant international definition is provided by the 1984 UN Convention against Torture: "any act by which severe pain and suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for

⁵⁹ Duner. 1998. p. 86

⁶⁰ Duner. 1998. p. 88

⁶¹ Collins Dictionary & Thesaurus. 1986. p. 1057

⁶² Collins Dictionary & Thesaurus. 1986. p. 1037

an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”⁶³

While it is fairly easy to see how domestic violence, with its multifaceted mental and physical abuses, could also be termed domestic torture or terrorism when working within the Collins definitions, the public-private divide gets in the way of easily fitting it under the accepted international definition. For many years women have been, and continue to be, seen as inhabitants of the private sphere, while men have dominated the public. As Kois writes: “International human rights law, a response to overt forms of state violence against, and repression of, actors within the political – and hence public – sphere, has developed along similar fault lines.”⁶⁴ Therefore, women’s experiences have, until very recently, been excluded from mainstream notions of torture.

Aside from the public-private divide, there have been, and continue to be, myths about women’s responsibility for domestic violence which prevent it being framed in terms of torture. As Russell writes: “many people consider women who are tortured by their husbands to be responsible for their victimization. They are expected to feel ashamed, not angry.” She continues by pointing out the huge difference between political prisoners or hostages - who are never expected to be able to escape their situations, or faulted for not trying, let alone accused of colluding in the process of their torture – and domestic violence survivors who are often perceived to be at least partially responsible for their experiences.⁶⁵

Despite these obstacles, over the last two decades lobbying by women’s organisations worldwide has finally led to the inclusion of domestic violence within frameworks of torture. In particular, the UNHCR Resolution 1994/45 acknowledged the ‘long standing failure’ of the United Nations’ mainstream human rights mechanisms to protect and promote the human rights and fundamental

⁶³ Forrest. 1996. p. 5

⁶⁴ Duner. 1998. p. 87

⁶⁵ Russell. 1992. pp. 5-11

freedoms of women in relation to violence against women.⁶⁶ Following this commitment to bring women's experiences into the human right's mainframe, the UN Special Rapporteur on Violence Against Women included in her 1996 second report to the UNCHR an entire section which explicitly named domestic violence as a form of torture. She writes: "domestic violence can constitute torture or cruel, inhuman and degrading treatment or punishment under the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This view challenges the assumption that intimate violence is a less severe or terrible form of violence than that perpetrated directly by the State."⁶⁷

Slowly, the comparable severity of domestic versus 'public' torture is beginning to be recognized. Obviously using terms such as torture or terrorism to describe acts carried out within the home is an emotive and tricky business. Particularly in the current political climate each of us carries a personal understanding of these words, and many feel that they are too 'extreme' for acts carried out within the home, especially homes within their own country. However, I believe that it is only if we start to face up to the safety nets which semantics have afforded us for so many years, and to understand the power of language to diminish violence experienced in the home, that change will eventually occur.

1.2.3 Domestic violence and development

Rather as with thinking around human rights and torture, the specific needs and experiences of women came late into the development debate, and violence against women has only recently emerged as a relevant issue for development theorists and practitioners. After nearly three decades of: "efforts to integrate women into development, there is a growing body of evidence indicating that women are still only marginal participants in, and beneficiaries of, development programmes and policy goals."⁶⁸ Further, though the UNDP Human Development Reports have included broader indicators to measure the success of development initiatives, including: "security against crime and physical violence,"⁶⁹ since 1990, to date: "the gender-based violence

⁶⁶ Duner. 1998. p. 87

⁶⁷ Special Rapporteur on Violence Against Women. 1996. Paragraph 42

⁶⁸ Bunch & Carrillo. 1991. p. 18

⁶⁹ Bunch & Carrillo. 1991. p. 17

sector has not on the whole managed to place violence against women, direct and indirect, squarely within the context of development.”⁷⁰

There are numerous competing approaches to development, and more specifically to women and development which it is not my intention to elaborate here. Rather, I just wish to highlight my belief that violence against women, and domestic violence in particular, is a critical development issue, both as an indicator of true development and as a barrier to its achievement. As Bennett has written: “gender-based violence must be seen as – at best – a challenge; at worst, a complete barrier to developmental success.”⁷¹

My vision of ‘true’ development derives from alternative feminist frameworks which construct development as a more holistic notion than the narrow economic indicators so often relied upon in mainstream development. Specifically, I share the vision of Development Alternatives with Women for a New era (DAWN)⁷²: “We want a world where inequality based on class, gender and race is absent from every country and from the relationships among countries; where basic needs become basic rights and where poverty and all forms of violence are eliminated ... This political environment will provide enabling social conditions that respect women’s and men’s physical integrity and the security of their persons in every dimension of their lives.”⁷³ In particular, I believe that the absence of violence against women is one of the most, if not *the* most, critical indicator of successful development.

As discussed above, I view violence against women, and domestic violence within this, as rooted in the unequal patriarchal nature of all world societies with the profoundly political purpose of maintaining the inequitable power balances which benefit men world-wide. Violence against women prevents women from taking their position as equal partners in their world – economically, educationally, socially, emotionally and professionally. As Carrillo writes: “Violent acts against women, the world over, attack their dignity as human beings and leave them vulnerable and fearful. Conditioned to undervalue their skills and abilities and paralyzed

⁷⁰ Bennett. 1999. p.5

⁷¹ Bennett. 1999. p. 4

⁷² a network of women scholars and activists from the economic south

⁷³ DAWN’s Vision: www.dawn.org.fj/index.html

by real fears of violence and retribution, women are marginalized in society and forced out of the decision making processes which shape and determine the development of their communities.”⁷⁴ Thus they are excluded from positive personal and societal development.

The so-called ‘developed’ world likes to think of development as something to be done for, with or in ‘developing countries’ with this polarization being founded largely upon economic indices of success. Violence against women is such a critical indicator of development because it robustly challenges this dichotomous view of the world. If we explore the statistics in chapter one it is clear that violence against women, and domestic violence in particular, are issues which affect an overwhelming number of women and men throughout both the ‘developed’ and ‘developing’ world. ‘Developing’ is usually understood to constitute positive change, however, in terms of violence against women many countries are actually experiencing regression as new forms of oppression and violence are developed. If, in fact, we use violence as our primary indicator of true human development, then it is more accurate to name the whole world as ‘underdeveloped’.

1.3 Conclusions

While these three frameworks for social action from human rights and torture, to development may seem a somewhat disjointed conceptual scaffold from which to work, the fact is that violence against women *is* involved in every sector of our lives, whether or not we identify or name it as so. As Bennett has written: “perceptions of gender-based violence need to change – gender-based violence is not comprised of isolated incidents of abuse, but rather of a mesh of action and attitude that permeates every level of our communities.”⁷⁵ In addition to the frames I have explored domestic violence could also be inserted into peace-building and disaster management,⁷⁶ macro-economics,⁷⁷ health and HIV/AIDS - including the construction of an

⁷⁴ Bunch & Carrillo. 1991. p. 19

⁷⁵ Bennett. 1999. p.1

⁷⁶ Bennett. 1999.

⁷⁷ See DAWN publications

‘epidemic’ and consequential responses – or military responses to states of emergency, civil or international war, among others.

The use of the human rights and torture frame speak to my belief in the comprehensive inhumanity of domestic violence, and the importance of naming in precipitating global change. It is often the location of an issue within certain modes of thinking and understanding which bring prominence and action, as for example has finally been the case with the re-conceptualisation of rape as a weapon of war, form of torture and crime against humanity after the conflicts in the former Yugoslavia and Rwanda in particular.

The focus on the development framework is useful in that it is a dominant paradigm for change and transformation world-wide. Current measures of development are too limited, and it is only when these are reconceptualised to fore-front issues such as domestic violence or other violence against women and access to justice, that we will finally step away from the global polarizations, and incomplete transformations which fail to challenge and dismantle the unequal power relations so detrimental to the majority of the world’s population.

2. Feminist Jurisprudence

While the frameworks outlined above locate my conceptualization of domestic violence as an issue, and clarify the position from which I write, it is important to also have a clear framework for analysis of the research material. For this purpose, I have chosen to work within a feminist jurisprudence model. This is a fundamentally political form of analysis which explores the differential impact of the law (structure, legislation, policies etc.) on women and men, in order to critically assess how effectively it challenges or reinforces gender inequality. As Smart writes: “the idea of a feminist jurisprudence is tantalizing in that it appears to hold out the promise of a fully integrated theoretical framework and political practice which will be transformative ... It

promises a general theory of the law which has practical applications ... grounded in women's experience."⁷⁸

While there is much common ground among those who choose to carry out such analysis, just as there is not a unitary 'feminism', there is not a single feminist jurisprudence. However, there is shared understanding of the law as a system which is socially constructed and so founded upon the patriarchal norms and values which underpin societies worldwide. As Mogwe writes: "Law plays a significant role in supporting and articulating perceived cultural premises in ways which are not always visible. The characteristic of a gender-blind society is embedded in the law which is a product of our societies."⁷⁹ Even where policies, legislation or language are carefully gender neutral (or more usually, gender blind), the understanding is that they will therefore have differential impacts on women and men, largely excluding women and benefiting men. Thus legal systems, including that in South Africa, both reflect and protect the status quo.

The notion of the law as a universal, impartial, neutral arbiter simply masks this reality. As Bridgeman & Millns write: "laws are gendered, while being presented as neutral and objective. Their purported application to everyone in a universal, abstract fashion amounts to nothing more than the application of a male perspective."⁸⁰ These claims by the legal system to such universal 'objectivity' are a powerful silencing tool, as Pruitt says they deny: "the reality of women's experience."⁸¹ Smart explores this relationship between claims to 'truth' and 'knowledge' with power further in her engagement with Foucault: "If we accept that law, like science, makes a claim to truth and that this is indivisible from the exercise of power, we can see that law exercises power not simply in its material effects (judgments) but also in its ability to disqualify other knowledges and experiences. Non-legal knowledge is therefore suspect and/or secondary."⁸²

⁷⁸ Smart in Bridgeman & Millns. 1998. p. 84-85

⁷⁹ Jagwanth, Schwikkard & Grant. 1994. p.4

⁸⁰ Bridgeman & Millns. 1998. p.70

⁸¹ Pruitt. 1994. p. 8

⁸² Smart. 1989. pp. 6-11

Not only are these claims to universal objectivity and neutrality silencing, they also bring with them the power to define. As MacKinnon asserts: “the definition of women in law and in life is not ours... women ... do not exist as we, as women, see ourselves.”⁸³ In fact, law is an authoritative language which is particularly powerful in its: “ability to define appropriate ‘feminine’ behaviour, morality and roles.”⁸⁴ In this way certain stereotypes are promoted while others are censured through: “criminalisation, marginalisation and the silencing of alternative accounts of social reality.”⁸⁵

Often, these essentialist stereotypes have evolved from constructions of the public-private divide; women are defined as daughters, wives and mothers within the domestic sphere and as such are ‘different’ from men who inhabit the public domain. While we accept these roles the law: “views women as men view women: in need of special protection, help or indulgence. To make out a case, complainants have to meet the male standard for women: femininity”⁸⁶ On the other hand, women who transgress these boundaries are either defined by their sexuality (especially in cases involving crimes such as rape or sexual harassment) or are awarded honorary ‘male’ status and expected to fit into the system as it is. In other words: “we have to meet either the male standard for males or the male standard for females.”⁸⁷

In order to forefront women’s actual experiences with the law, those working within a feminist jurisprudence framework have focused their methodological energies on uncovering women’s interactions with the law, and using these experiences as the data upon which to found competing, potentially transformative perspectives. Particular foci have included women’s access to justice (both formal and substantive); the impact of the public-private divide on the provision of justice in areas such as rape, incest and domestic violence; the tendency of the law to rely on an essentialist notion of ‘woman’; debates around the inclusion of women on an equal or different footing from men and a challenge to the state and its power as it is represented in the legal system. The central aim of this ongoing work is to actively mainstream a gender

⁸³ MacKinnon. 1987. p.71

⁸⁴ Jagwanth, Schwikkard & Grant. 1994. p. 20

⁸⁵ *ibid*

⁸⁶ MacKinnon. 1987. p.71

⁸⁷ *ibid*

perspective within the legal system which achieves meaningful access to justice and substantive equality for all.

However, a central criticism of much feminist jurisprudence is its tendency to privilege gender as *the* central area in need of transformation within the legal system. Just as the law is constructed from a male perspective, so is it largely constructed from a white, middle-class, heterosexual perspective. It is not simply women who are disadvantaged within the legal system, anybody who fails to meet any of the dominant criteria – be that gender, class, race, sexuality or any other – will be at a disadvantage in one way or another. As Pruitt writes: “The gender issue is indeed important, and it has been ignored for too long. But, what will be the end result of developing a feminist jurisprudence that takes into account solely this factor? If knowledge from a feminist standpoint obscures or precludes knowledge from a working-class or racial minority standpoint, how can we whole-heartedly embrace it as the new norm we have sought?”⁸⁸

This ties into a second criticism of feminist jurisprudence, that it – rather like legal systems worldwide – often constructs an essential ‘woman’ founded upon the experiences of the predominantly white, western, middle-class women who have the most dominant voices in academia. The assumption that ‘sisterhood’ means shared experience of and with the legal system⁸⁹ is a dangerous one, and it is critical that the intersecting issues of race, class, sexuality, age and so on form a central part of feminist jurisprudence analysis of women’s experiences of the law.

It is also important to carefully consider the advantages of working within a fundamentally flawed system such as the law. While engagement with legal structures has succeeded in catalyzing some change designed to benefit women (the plethora of new legislation concerned with domestic violence world-wide being one example) it is important not to accept this as necessarily useful or beneficial. Many argue that engagement with a system which is so embedded in patriarchal norms, values and constructions of life is either an exercise in collusion or futility. As Smart writes: “The problem of attempting to construct a feminist jurisprudence is

⁸⁸ Pruitt. 1994. p. 11

⁸⁹ See for example Anleu in Bridgeman & Millns. 1998. p.72

that it does not de-centre law. On the contrary ... it preserves law's place in the hierarchy of discourses which maintains that law has access to truth and justice. It encourages a 'turning to law' for solutions, it fetishizes law rather than deconstructing it."⁹⁰ Smart advocates non-legal strategies to avoid such fetishization of law and warns feminism to: "avoid the siren call of the law."⁹¹

I am similarly cautious about viewing the law as *the* solution to women's oppressions, including domestic violence. However, I do not wish this to suggest that my purpose is to discredit the potential for the legal system to provide positive benefits to some women. Simply put, I believe that the South African legal system, and the DVA in particular, may well provide some benefits to some women – thus it may be *part* of a holistic strategy to bring about the demise of domestic violence. My concern is that a disproportionate amount of the total energy and resources employed in the battle against domestic violence is channeled into the legal system – either advocating change, providing support structures or referring women to its services. I simply don't believe that this should be done at the expense of other interventions.

In conclusion, this research project *is* firmly located within a feminist jurisprudence framework – using and privileging women's experiences of the law to challenge the efficacy and relevance of the legal system to women. However, it will also challenge this framework by questioning the level of energy directed into the legal system by those working in the field of domestic violence.

⁹⁰ Smart. 1989. p. 88-89

⁹¹ Smart. 1989. p.5

Chapter 4: Methodology

1. Methodological Musings:

“a theory and analysis of how research should proceed”⁹²

Over the last three decades numerous feminist⁹³ thinkers and activists have engaged with the thorny debates involved in challenging orthodox, malestream ways of thinking and doing research. Questions of how to create and validate new epistemologies, theoretical standpoints and methods emerged from debates around what it meant to do feminist research. While the debate is ongoing and, just as there are multiple feminisms, there is no fixed or unitary feminist methodology or method, several common themes have emerged. I will outline these briefly below as they provide the framework within which this research project is located.

Reinharz stresses that: “feminism is a perspective, not a research method”⁹⁴ and explains that while no single research method is prescribed, feminist methodologies can be distinguished by their attempts to include and forefront women’s lives and concerns in accounts of society. In addition there is broad agreement about the necessity of minimising any harmful impacts of research to the research subject and to supporting work that will bring about social change, in particular improvements in women’s status.⁹⁵

Many feminists move beyond these broad unitary aims to careful considerations of the impacts of all categories of identity, not simply gender, on women’s experiences – race, class, sexuality, age, location and so on. In particular post-colonial feminists such as Mbilinyi, Narayan and Mohanty stress the critical need to de-homogenise women’s experiences world-wide and locate research firmly within particular contexts. As Jordan writes: “every single one of us is more than

⁹² Harding. 1987. p.2

⁹³ There is considerable debate on what the term “feminist” means. I am using the term broadly to include positions founded upon a political commitment to the eradication of women’s oppression. Feminism is therefore seen as a set of theories about women’s oppression, and a set of strategies for social change

⁹⁴ Reinharz. 1992. p. 240

⁹⁵ See also Mbilinyi (1992), King (1994), Fonow and Cook (1991), Oakley (1981) etc.

whatever race we represent or embody and more than whatever gender category we fall into. We have other kinds of allegiances, other kinds of dreams ...”⁹⁶

This critical focus on identity uncovers not only multiple experiential variations within the category of ‘woman’, but also raises challenging questions regarding the relationship between the researcher and the researched. Much has been written about the respective benefits of being a “friend” or “stranger”⁹⁷ to those being researched, and of the potential deafness and blindness caused by power and other differentials between the researcher and the researched.⁹⁸

In order to surface this critical relationship between the researcher and the researched many feminist researchers⁹⁹ see self-disclosure as a vital part of the research process. This has led to a fore-fronting of the role of reflexivity in research, both in terms of the research process and the role of the researcher within this. As Harding writes of feminist analysis: “it insists that the inquirer her/himself be placed in the same critical plane as the overt subject matter, thereby recovering the entire research process for scrutiny in the results of research ... thus the researcher appears to us not as an invisible, anonymous voice of authority, but as a real, historical individual with concrete, specific desires and interests.”¹⁰⁰

Feminist standpointism has emerged from this focus on position, both of the researcher and, more specifically, the research participants. As Mbilinyi writes: “Feminist standpoint-theorists reject the possibility of ‘unmediated truth’ about the world, insisting on the impact of positionality.”¹⁰¹ Not only do they underline the difference in knowledges achieved from different positions, but they also privilege women’s vision of the world. As Hartsock writes: “women’s lives make available a particular and privileged vantage point on male supremacy, a vantage point which can ground a powerful critique of the phallographic institutions and ideology which constitute the capitalist form of patriarchy.”¹⁰²

⁹⁶ Jordan (1987) in Mbilinyi. 1992. p. 32

⁹⁷ Reinharz. 1992. p. 26

⁹⁸ See, for example, Fonow & Cook (1991), Morsy (1988), Oakley (1981), Patai (1997), Reinharz (1992) etc.

⁹⁹ See, for example, Fonow & Cook (191), Harding (1987), Mbilinyi (1992), Narayan (1989), Reinharz (1992) etc

¹⁰⁰ Harding. 1987. p. 9

¹⁰¹ Mbilinyi. 1992. p. 54

¹⁰² Hartsock. 1987. p. 159

These theorists¹⁰³ believe that the clarity of this vision is achieved because: “it is only through struggle against an exploitative system, such as male domination, that one can come to understand its strength and resilience.”¹⁰⁴ Therefore, “groups living under various forms of oppression are more likely to have a critical perspective on their situation.”¹⁰⁵ Thus feminist standpoint theorists are founded on the notion that knowledge is socially constructed, rejecting the positivist preoccupation with objectivity.

Central to such theories is the notion of engagement. As Hartsock writes: “A standpoint is not simply an interested position ... but is interested in the sense of being engaged.”¹⁰⁶ It is therefore not enough to simply ground research in women’s experiences, rather, it is critical to use these experiences to work towards positive change. As Artz writes: “Standpointism is directed by both intellectual and political struggle and to some extent aims at recognizing and shifting the power realities operative within our social, intellectual and political systems.”¹⁰⁷

This research project was initiated in the hope that it could begin to uncover answers to critical questions regarding the effectiveness of the DVA. Both internationally and at home this piece of legislation has been lauded as an indication of the high priority given to women’s rights and access to justice within South Africa. However, very little data has as yet emerged founded upon women’s actual experiences of making use of the Act. In line with standpoint theorists, I believe that it is these women survivor’s experiences which offer the “critical perspective”¹⁰⁸ capable of illuminating the shortcomings of both the DVA and the criminal justice system responsible for its implementation. Without this perspective claims about the success of the DVA are meaningless. In order to demonstrate that this piece of legislation is not simply ‘window-dressing’ to appease the CEDAW committee and gender-advocates, the voices of women survivors must be heard.

¹⁰³ See for example Freire (1972), Harding 1987), Hartsock (1987), Narayan (1989)

¹⁰⁴ Hartsock . 1987. p.157

¹⁰⁵ Narayan. 1989. p. 262

¹⁰⁶ Hartsock. 1987. p. 159

¹⁰⁷ Artz. 1999. p. 42

However, in this quest there is the danger that survivor's voices will become homogenized. Some critics of standpoint theory have raised concerns about its potential for such homogenization of women, or particular groups of women (whether created from location or common experience). Throughout the research process I have not sought to find one common experience of this piece of legislation. Instead, remaining critically aware of the post-colonial feminist's insistence on difference, I have wished only to hear individual experiences, and to look for both common threads and points of departure within this.

A second critical concern which I have in making use of a feminist standpointist position is that of my own identity as a white, western, English speaking, middle class, young woman. I will explore the tensions which my identity places within the research in greater depth in the ethics section of this thesis. However, it is important to note here that there is a contradictory tension between my identity and the choice of standpointism as a methodological frame. Daphne Patai raises challenging questions about the possibility of ethical research by western women 'about' the experiences of women in the south, as she writes: "The dilemma of feminist researchers working on groups less privileged than themselves can be succinctly stated as follows: is it possible – not in theory, but in the actual conditions of the real world today – to write about the oppressed without becoming one of the oppressors?"¹⁰⁹ She continues: "in a world divided by race, ethnicity, and class, the purported solidarity of female identity is in many ways a fraud."¹¹⁰

So while feminist standpointism allows me to claim 'insider' status as a woman (and thus a member of an oppressed class), the reality is that my intersecting identities of class and race provide me with cushions of privilege. Solidarity along gender lines is not enough. What right do I, as a researcher, have to claim a standpointist position, when I am actually appropriating the voices of those who are in a fundamentally different position (in almost all ways except gender) than myself? As Narayan puts it: "Those who display sympathy as outsiders often fail ... to understand fully the emotional complexities of living as a member of an oppressed group."¹¹¹

¹⁰⁸ Narayan. 1989. p. 262

¹⁰⁹ Patai. 1997. p. 139

¹¹⁰ Patai. 1997. p. 144

¹¹¹ Narayan. 1989. p.265

In order to address both my concerns – that this research constructs a homogenous voice of the survivor, and that my ability to understand and communicate what it means to live as a member of this group of women is limited – I will attempt to make the research process as transparent as possible to the reader. Attempts at scrupulous honesty are rarely absolute, if nothing else because they may serve to undermine the perceived validity of a research project. After all, if the researcher has concerns over the ethics and validity of her work how is anybody else meant to trust in its reliability?

However, honesty may well be the only methodological tool left if I am to avoid the masks of feminist rhetoric which so often obscure the limitations of research. As Patai so sharply puts it: “feminist researchers in today’s culture of self-reflexivity often engage in merely rhetorical maneuvers that are rapidly acquiring the status of incantations.”¹¹² It is tempting to use these incantations to present this research in a way which sits comfortably within the acceptable bounds of feminist methodological thinking as outlined above - the commitment to fore-fronting women’s lives, minimizing harm, supporting social change, self disclosure and so on. However, I will attempt to step outside this comfort zone in order to question the possibility of carrying out truly ethical research (as framed by feminist methodology) in practice, particularly when working with extremely vulnerable women such as survivors of domestic violence.

2. Shaping Design: Ethics and Accountability

This research project has arisen out of the needs identified by the Consortium on Violence Against Women (CVAW) after completion of their first year’s research, which, as mentioned above, involved monitoring the implementation of the DVA.¹¹³ While the first year’s work focused on the criminal justice sector, it was felt that the second phase of the research should begin to explore the experiences of those the Act was designed for: women experiencing domestic abuse.

¹¹² Patai. 1997. p.149

¹¹³ Parenzee, Artz & Moul. 2001. p. 6

While this was the ‘obvious’ and necessary direction for such a feminist research project to take, it unearthed critical and challenging questions about how to effectively and ethically explore the research question: “Does the DVA succeed in decreasing the incidence and severity of violence against women?”

Ethical research is one of the primary aims of the Consortium. Its work is guided by a clear Code of Ethical Conduct for Researchers¹¹⁴ which stresses, among other things, the need for informed consent, the importance of considering “foreseeable consequences”¹¹⁵ for research participants, voluntary participation, the fore-fronting of the needs and interests of the research participant, confidentiality, anonymity, accountability and the notion of exchange whereby researchers do not simply ‘take’ information, but also explore the possibility of providing appropriate support in return.

2.1 Researcher location

While examining the relationship between ethics, identity and self-disclosure it is important to raise and face the very real ethical minefield of carrying out research for an academic or organizational purpose. This project, as with most, is carried out from within an organizational location. Firstly, I am located within the Consortium on Violence Against Women and thus bound (albeit willingly) to their codes of conduct and requirement for written outputs. Secondly, I am a Masters student located within the African Gender Institute and am required to produce a written academic output which fulfills both departmental expectations and those of the faculty and university within which it is located.

As Patai writes: “it is a fact that we are confronted by dual allegiances. On the one hand, we are obligated to our academic disciplines and institutions ... on the other hand, if we take feminism seriously, it commits us to a transformative politics. In other words, most of us do not want to

¹¹⁴ See Appendix 1

¹¹⁵ Appendix 1. p. 2

bite the hand that feeds us; but neither do we want to caress it too lovingly.”¹¹⁶ This tension between the needs of the institutions within which I operate and those of research participants need not be negative, but must be highlighted and monitored throughout the process to ensure that the ethical boundaries are not stretched in order to achieve professional or academic expectation.

2.2 Stepping out of the shadows: researcher identities

Central to the Consortium’s ethical framework is the need for transparency, not only about the research and the use to which any information will be put, but also regarding the identity and interests of the researchers. As Reinharz writes: “Utilising the researcher’s personal experience is a distinguishing feature of feminist research repairing a project’s “pseudo-objectivity.”¹¹⁷

My position and context as observer has, of course, impacted on this research process. Inevitably, my particular perspective as a white, heterosexual, able-bodied, western, middle-class, English-speaking twenty-something woman has played itself out in my experience of the research process and the ongoing interpretations of the data collected. As Harding writes: “the cultural beliefs and behaviors of feminist researchers shape the results of their analyses no less than do those of sexist and androcentric researchers. We need to avoid the ‘objectivist’ stance that attempts to make the researcher’s cultural beliefs and practices invisible while simultaneously skewering the research objects beliefs and practices to the display board.”¹¹⁸

While I am responsible for the production of this thesis, the research upon which it was based was a truly collaborative effort. For this reason I have also asked my co-researcher, Penny Parenzee¹¹⁹, to write a few paragraphs exploring her identity in relation to the work we carried out:

¹¹⁶ Patai. 1997. p. 138-9

¹¹⁷ Reinharz. 1992. p.258

¹¹⁸ Harding. 1987. p.9

“An awareness of my identity and the impact of that identity is essential to understanding some of the group process. According to my self-description, I consider myself to be a black South African feminist. Black because of political ideology and because of experiences in apartheid South Africa. Feminist because of my strong belief that women have a voice that should be heard, and that women are not secondary citizens in this male world.

However, feminism and race politics have left black women in a position where they are expected to choose an affiliation to either camp – how is this possible for black women? My identity does not allow me to decide whether or not I am black today and a woman tomorrow. I am always a black woman – that is always my consciousness... The bind for a black woman is always, which oppressor is easier to side with...

I think to a large extent others would perceive me as a coloured middle class South African woman. 'Coloured' because that is the label afforded me by the apartheid government, and that has a history to it with regards to the type of upbringing I had. Middle class, because I am educated and have a set of skills that enable me to be in a fairly stable job that pays well.”

While Penny and I have attempted to maintain this awareness and sustain a process of reflexivity throughout the research process in an effort to manage our impact, it is important to remain critically aware of Patai's fears mentioned above. I do not wish our self-disclosures to become: “merely rhetorical maneuvers [with] the status of incantations.”¹²⁰

While many feminists discuss the importance of managing the self, self-disclosure, awareness of difference etc, very few tell us how to do this in practice. What does managing the self really mean? I am able to tell you the key elements of my identity, I can conclude that there are racial, class and other oppressions which I will never fully understand, but where does that leave us? Should I be in South Africa doing research at all? Are my attempts legitimate? Patai would say

¹¹⁹ Senior Researcher with the Gender, Law & Development Project, Institute of Criminology, University of Cape Town

¹²⁰ Patai. 1997. p.149

“no,” others would say my ‘outsider’ status gives me a useful perspective. I myself have had, and continue to have, many ethical struggles over this question.

In particular I am concerned that I have ‘used’ my co-researcher’s identity, as a black/coloured South African feminist with an established professional reputation as a social worker and researcher, in the way that so many white westerners do when working in the south. Simply put, without Penny I could not have done this work. I would not have gained access to the shelters, I would have struggled with language barriers, I had minimal research experience and no experience of working with groups, and most importantly of all, with ethics as a primary concern of the work, I had no ‘right’ to be there.

In addition, while I have “honourable intent”¹²¹ in revealing my layers of identity and privilege there is a danger that this trope sounds like an apology and is founded on the underlying assumption that: “by such identification one has paid one’s respects to “difference” – owned up to bias, acknowledged privilege, or taken possession of oppression – and is now home free.”¹²² However, as Patai continues: “The world will not get better because we have sensitively apologized for privilege.”¹²³ I knew of these tensions when I began the research and decided to continue – both for personal and institutional reasons, and because I truly believe that the research needs to be done. I know that I am not the best person to do it, but within that understanding I have attempted to do the best job possible.

2.3 Friend or foe? The relationship between researcher and participants

Over the years there has been much debate around whether it is an advantage to be a ‘friend or stranger’ to the people one is studying.¹²⁴ My position in the research project has been one of stranger in that I was not known in the research sites prior to the research process. However, I was introduced within the secure environment of women’s shelters in Cape Town, as part of an

¹²¹ Patai. 1997. p. 144

¹²² Patai. 1997. p. 149

¹²³ Patai. 1997. p. 150

¹²⁴ Reihare. 1992. p.26

ongoing project – The Domestic Violence Act Monitoring Project - which makes me an ‘insider’ of the movement to end violence against women.

I hoped that the fact I am from within the network of ‘friendly’ organizations would ease the building of trust and communication with research participants because, of course, it is not only my response to the information I gather which is relevant, the responses of others to my identity is also critical. The way participants responded to me, as the researcher, has inevitably impacted on the information they provided, and the way it was framed.

Penny raised some useful questions about this relationship between researcher and researchee in her discussion of identity:

“How ... does a black South African feminist who is perceived as a ‘coloured’ middle class South African woman enter into a shelter for abused women and conduct research? This alongside a white foreign woman? And with predominantly ‘coloured’ working class South African women who have experienced horrendous abuse in their relationships?”

Who has the right to observe, be the researcher & who has the right to be researched? Am I more ‘suited’ to research than my white foreign colleague? Me, who has a history so different to many of these women, if not all of them. Am I more ‘suitable’ because I am more able to tune into the experiences of these women, I understand some of the history of ... being a black/coloured woman in South Africa – or does my class automatically set me aside and make me ‘unsuitable’. Is there a way that my presence makes any of these women feel less judged/watched or more judged/watched? Does the duo of a black/coloured South African woman and a white foreign woman take away credibility or add to credibility and if so, for whom? Is Rachel more accepted or are the women more wary of Penny?”

While it is hard to uncover concrete answers to these questions, they must, nevertheless, be asked. Perhaps the only answer at present is that: “In an unethical world, we cannot do truly

ethical research.”¹²⁵ The reality is that due to our various privileges we have been given the opportunity, the resources and the access to carry out this piece of research. The reality is also that researchers rarely research those with the same ‘identity traits’ as themselves, and even where they do it would be a mistake to assume that the power balance is equal. The very fact that the researcher is the “knower” who processes and translates data produced by the “knowable”¹²⁶ gives them a power ‘advantage’ which is inescapable.

While such power differentials are always an issue in researching people, they are particularly critical and tricky when carrying out research with such a vulnerable group of women. Women who are resident in shelters are admitted only during situations of extreme crisis and danger. The need for sensitivity and care has therefore been particularly acute during this research process. In response to this need we strove to design a research strategy which would minimize the emotional cost of exploring potentially painful topics, while maximizing our accountability to the individual women involved in the research. This strategy, and its successes and failures, will be discussed further in the method section which follows.

3. Method

“techniques for gathering evidence”¹²⁷

3.1 A feminist researcher’s toolbox

Not only have the methodologies and ethics, as outlined above, framed feminist researchers’ questions of what and who to ‘investigate’, but also how to go about this investigation. Their primary aim has been to escape the essentialist, polarized worlds described by androcentric accounts of the world and to begin to uncover and describe the world as it really is – complex, contradictory, multiply layered and firmly located within specific contexts.

¹²⁵ Patai. 1997. p. 150

¹²⁶ Fox Keller. 1978. p. 190

Many have therefore concentrated on the use of qualitative research methods. As Cassell and Symon have written, qualitative methods are distinguished by their: “focus on interpretation rather than quantification; an emphasis on subjectivity rather than objectivity; flexibility in the process of conducting research; an orientation towards process rather than outcome; a concern with context – regarding behavior and situation as inextricably linked in forming experience; and ... an explicit recognition of the impact of the research process on the research situation.”¹²⁸

Content analysis, case studies, ethnographies, oral histories and, in particular, semi-structured or unstructured interviews¹²⁹ have become the key feminist tools of trade. Much has been written about the efficacy and ethics of these alternative methods,¹³⁰ all of which have attempted to fulfill the desire for in depth qualitative information, a desire founded on the need to challenge orthodox, objective, scientific methods of enquiry which, for centuries, have obscured or ignored the voices of women in societies around the world.

3.2 Designing the research strategy

Both the Consortium on Violence Against Women and I wished to research the same area – the experiences of women who have either made use of the DVA or consciously decided that they did not want to make use of its services. We decided to include the latter group because of the importance of perceptions of the Act; if women experiencing domestic abuse do not believe that the DVA can improve their lives in any way, this has a critical bearing on the overall success of the Act. We therefore decided to carry out a unified research process as so much of the information required was common to us both. While the Consortium’s remit was somewhat broader than my own, including for example an interest in the health sector responses to domestic violence, all of the data collected provided useful context for my own work.

¹²⁷ Harding. 1987. p.2

¹²⁸ Cassell & Symon. 1994. p.7

¹²⁹ Reinharz. 1992.

¹³⁰ See for example Cassell & Symon (1994) , Oakley (1981), Reinharz (1992)

Penny and I decided to co-facilitate the research, each leading different sections. There were multiple benefits to this joint working approach in terms of support, shared work load, access, language and so on. In addition, I was able to observe and learn from my co-researcher's facilitation skills which have been tried and tested in many organizations and locations. The facilitator who was not leading particular sessions also had the opportunity to observe the process, to identify which exercises were most successful, where particular participants were being side-lined and what, if anything, had been omitted from the process.

While co-facilitation answers some ethical and practical problems, the key challenge in research work involving violence against women is finding suitable points of access to possible research participants, and the ethical tightrope you walk when involving such a vulnerable group of women in research. Questions abound about who benefits from the process, who is harmed and how, and ultimately whether the process produces any tangible positive change either in the lives of research participants or other women experiencing abuse (the supposed beneficiary group of most of the work in the sector).

3.2.1 Locating research sites and participants

We decided to use women's shelters in Cape Town as the research sites, firstly because they are one of the only 'access points' to domestic violence survivors and secondly because these institutions are spaces designed to provide ongoing support and safety to residents. We hoped that these structures would therefore be relatively safe places within which to conduct research as they support research participants in ways which we, as 'visiting' researchers, could not hope to do ourselves.

We approached three shelters in the Cape Town area: the Saartjie Baartman Centre, Carehaven and Sisters Incorporated. At each shelter we met with managers and social workers to discuss our proposal, gain approval and to incorporate their inputs into the research design. Because shelters are one of the few places where it is possible to access women who have experienced domestic abuse, many of these institutions receive numerous research requests on a monthly

basis. This can place huge demands on the time and resources of already overburdened organisations.

We were fortunate in that the ‘institutional gatekeepers’ were open to allowing and supporting our research process. However, what was clear was that this willingness stemmed firstly from our location within the Consortium, which has an established record of ethical research, and secondly from my co-researcher’s professional qualifications and extensive experience, both as a social worker and as a researcher. Quite rightly, if I had approached these institutions as an unqualified¹³¹ social sciences student, I would have been denied access.

3.2.2 Experimental method: training workshops

While my co-researcher, Penny Parenzee, and myself were clear about the purpose of the research, decisions about the research methods were more complex. The methodological and ethical frameworks outlined above framed the type of questions we asked when designing the research project, and the methods we have ultimately used in attempting to answer them. However, we struggled to design a research strategy which was both in line with our belief in qualitative research processes as catalysts for positive change, and which was also truly ethical, particularly in ensuring some sort of exchange within the research process and the minimization of harm to participants.

We explored and discussed the possibilities of using semi-structured interviews, oral histories or case study constructions as the main source of data, but felt that despite the praise heaped upon these methods by many feminist researchers¹³² they were inappropriate for our needs. Our primary concerns with these methods lay within what is also regarded as their greatest strength – the ability to uncover great depth and breadth of personal information about participants. We were, of course, committed to gaining as complete a picture as possible of women’s experiences of the DVA. However, as far as is possible we did not wish participants to open up painful issues which we would not be able to contain, manage or support them through. In addition, we

¹³¹ i.e. not having yet completed my degree

¹³² See for example Mbilinyi (1992), Reinhartz (1992).

wanted to make sure that we ‘gave’ something in return for participant’s time and investment in the research process. We therefore decided to use group work as the primary mode of data collection, but rather than a group ‘interview’ method, we adapted training methods and used a workshop format which would more easily allow for a true exchange of information.

After initial approval had been granted for our research we set about designing a series of workshops with input from shelter staff. Once these were accepted, we asked shelter workers to discuss our proposed research with residents to explain its purpose and methods, to recruit volunteers to be part of the process and to explore whether participants were happy with the topics we proposed to discuss. This was reportedly carried out in each shelter and provided us with a sample of forty-nine women across the shelters.

Initially we hoped to carry out five workshops within each research site, but it quickly became apparent that the turnover of shelter residents is high and many participants were unable to attend regular sessions due to external demands such as work, house-hunting and child-care. We therefore condensed the research into three two-hour workshops per shelter¹³³. These were designed to stand alone because many participants were only able to attend one session with groups varying in size and composition each week. In fact, the majority (thirty-five) of the total forty-nine participants only attended one workshop, and only four attended all three in their respective shelters. These research sessions were carried out between the 11th July, 2001 and the 14th August, 2001.

The workshops were designed to focus both on training participants around their legal rights in relation to the DVA, and on exploring women’s experiences with the Act and the criminal justice system. The different sectors – health, police, civil and criminal courts – were unpacked individually to explore experiences and expectations of secondary victimization. In addition assumptions and experiences around the efficacy and consequences of gaining a protection order were also given priority. In this way we hoped to explore decreases or increases in both the violence of secondary victimization and domestic abuse.

3.2.3 Protecting participants

We hoped, as far as possible to avoid exercises or questions which would create an expectation of women talking about their actual experiences of abuse as we felt we would be unable to provide the support or counseling which such explorations merit. In order to create a safe space for these workshops we began each session with a dialogue about group rules, asking participants to highlight the things which they needed in order to feel secure during the workshops. Confidentiality, accountability, trust, group responsibility and respect were raised as the critical needs.

To avoid the pressure for personal disclosure in the group setting we designed a fictitious case study based on a woman we named 'Evelyn'. We gave a sketch of her experiences – that she is in her mid-thirties with two children under ten, and that she has been experiencing abuse of various kinds (we did not specify) over the last ten years. She has now decided that she wants to get a protection order. We used this 'character' in various group exercises to give participants the opportunity to talk generally, or raise issues that did not necessarily have to be attached to an 'I'.

This may seem like something of an ethical contortion, but the fact is that many of the women we worked with had only been in the shelters for a short period of time and were not familiar or comfortable with the other participants. Understandably there was a great deal of skepticism about the possibility of achieving true confidentiality, and the 'Evelyn' case study simply provided people with the opportunity to talk without being judged.

Over the three sessions we used two group exercises based upon 'Evelyn's' experiences. The first, in the second workshop, asked small groups to 'map' Evelyn's use of support services over time, including informal support such as family and friends through to formal services such as the health sector or Criminal Justice Sector. Further discussion then centred on Evelyn's likely experiences with the health system and the police. The second such exercise asked the group to map out Evelyn's experiences when applying for a protection order – where she would go, who

¹³³ See Appendix 2

she would speak to and how the process unfolds through in to the Criminal Courts if there is a breach.

Evelyn was also used during the training sections of the workshops. I designed training posters¹³⁴ of the entire civil and legal process involved in making use of the DVA, and used these as a guide throughout the second and third workshops. These provided a simplified version of Evelyn's 'journey' though the legal process and were used in interactive sessions, or flexible 'trainings', which were open to questions, points of clarification, comment, narrative and so on from participants. These were self-consciously not 'lecture sessions', instead participants clearly felt free to participate and question. These sessions lay at the heart of the 'research exchange' in that they provided a systematic way for us to pass on information which could be valuable to participants.

The group tracking and training exercises based on 'Evelyn's' experiences were both useful sources of data and exercises which virtually all participants were able to participate in. If nothing else, the smaller group settings used for the activities did give some participants a less exposed opportunity to participate and contribute. While not all participants wished, or were able to, make use of these opportunities to discuss the issues in the third person, we did on the whole find it a useful mechanism in keeping the discussion more general and less personal.

Some feminists may argue that this type of game playing is a patronizing attempt to neutralize the personal and an unrealistic attempt to disentangle experiences of a system from experiences of abuse. However, it was neither intended nor used as a silencing mechanism. It was entirely up to individual participants whether they wished to talk in the first person about their experiences. 'Evelyn' was only recruited because of our fears of enforced disclosure, our lack of ability to provide long term support for those who might open up painful experiences they then could not manage and a wish to provide as much choice as is possible for participants about how they wished to discuss the issues at hand.

¹³⁴ See Appendix 3

While this case study and the linked exercises were designed to minimize the vulnerability of participants feeling ‘obliged’ to speak of personal encounters, inevitably many women chose to speak of their own experiences. We endeavored to make space for this in the groups, and where there was a danger of an individual’s need to speak ‘hijacking’ the process we made sure that there was time and space to resolve issues after the workshop. After each group we stayed in the shelter for tea, and dedicated this space to any individual needs that had not been addressed as a group. We also used this time for those participants who wanted individual legal advice about their own cases relating to the DVA, or help in understanding or completing the application forms.

3.2.4 Filling in the gaps: court observation

In addition to the workshops, our initial research design also included observation of the process of applying for a protection order and criminal trials relating to breaches of protection orders issued under the DVA (civil hearings relating to the DVA are held *in camera* so could not be observed). The purpose of this observation was to experience the court systems directly and get a ‘coal-face’ view of the challenges facing women when they access the criminal justice system. This method was chosen in order to gather data in a non-invasive manner while providing me with personal experiences of the challenges of accessing and understanding the legal system and processes. As Moser & Kalton have written, observation is a technique that results in: “general orientation” of the subject matter.¹³⁵ Moulton continues: “The distinguishing feature of observation is that the information required is obtained directly, rather than through the reports of others.”¹³⁶ However, it is important to note that observing a system is by no means the same as making use of it. While the observation did give me a factual insight into the processes involved, it is the experiences described during the workshop and interview process which give voice to the true challenges of accessing this system.

Earlier research for the CVAW was carried out through court file analysis in a sample of three courts: Mitchell’s Plain, George and Cape Town. Cape Town court was found to have the most

¹³⁵ Moulton. 2000. p. 7

¹³⁶ *ibid*

complete records and the greatest degree of co-operation from personnel. I therefore felt it would provide an enabling environment for further research. In addition, these Courts were chosen because I had already spent a great deal of time within the institutions working as a researcher for the CVAW. Not only was I familiar with the lay out and processes, but I had built up useful contacts with individuals willing to support the research process, provide me with access to files, court records, trials etc.

Observation of the Family Court began in August 2000 and continued into the first quarter of 2001 as part of the first year of the Consortium's work. Observations were recorded informally in a journal. Criminal cases in the Cape Town Magistrate's Court were observed over a similar period, but these continued until October 2001, and were similarly recorded in a journal. Visits to the courts were made on an ad hoc basis, on different days of the week and at different times.

The court observation, as hoped, allowed me to experience the court systems directly and to uncover the challenges facing women when they access the Criminal Justice System. I believe that this method was successful in that it was non-invasive, yet provided an in depth understanding of the system which translates the paper legislation of the DVA into practice.

By recording my observations, emotions and responses to the time spent within the court systems I have been able to trace and unpack many of the experiences of dealing with the legal system which women have spoken of during the workshops. This first hand experience and knowledge has also afforded me greater empathy with, and understanding of, research participants, and has provided me with information which has been beneficial to share as part of the workshop process.

In addition to cases relating to the DVA, I also observed numerous cases relating to different charges such as housebreaking, theft and assault. As will be discussed further in the results and analysis section, I found this comparative observation invaluable in uncovering whether the challenges facing women's access to the DVA are systemic or legislative.

3.3 Reflections on the methods

I will explore how successful these research methods were for participants in the concluding section of this chapter. However, at this point I wish to unpack the limitations of these research methods in terms of uncovering ‘useful’ data.

As stated above, we originally conceptualized the workshop format as a mechanism for building relationships with participants over five two-hour sessions, which would have given us considerable space for in depth exploration of experience and perceptions of the Criminal Justice System and the DVA. The actual format of three two-hour sessions, with a majority of new participants each week was much more limited in this regard.

We found the fact that we had to attempt to build relationships of trust and openness with highly vulnerable participants, within what was often only two hours of contact time, extremely challenging. Questions of harm to participants increased in importance because we would often not have future opportunities to provide information or support as we had originally planned to do.

Due to our commitment to achieving research which was ‘as ethical as possible’ in the circumstances, this limited contact time led to increased caution about protecting individuals from potentially painful and destructive disclosure. We were also concerned, as discussed above, that individuals should leave the workshops with something in exchange for their time. Due to the fact that many participants were new to each session, there was considerable repetition of information about the DVA and the Criminal Justice System in order to ensure that all participants had at least been given the opportunity to develop a basic grasp of the system. These ‘interactive training’ sessions ended up dominating the time in workshops, maximizing participants’ opportunities to learn, but minimizing the space for discussion of experience and perceptions.

While we remained true to the commitment to safety and exchange, this affected the depth and breadth of the information we gained from the workshops. While time was limited, we did receive fragmented, but useful information about participants experiences with the police and court systems. Understandably, participants found it relatively easy to discuss such structural issues. However, we struggled to uncover perceptions about the effectiveness of the DVA as a mechanism of protection. Due to our focus on case studies and impressions, rather than personal experiences, we failed to gain an in depth picture of the impacts of securing a protection order under the DVA. What happens when a Respondent is served with the papers? What happens when a woman returns home, both in the short and long term? Does the violence escalate, or is it subdued for a period before returning with renewed viciousness? Answers to these questions will always be personal, but we had hoped to begin to build up a patchwork of experiences and to look for patterns. Herein lies the contradiction in our method – we wanted to protect participants from personal disclosure, but felt we needed information about such experiences to truly unpack whether the DVA is successful or not.

To a certain extent, the court observation work was able to fill in some of these ‘missing pieces’. In particular, observation of criminal cases, which only occur when a protection order has been breached, and the breach reported, has given us the opportunity to hear and see that the protection order itself is not enough to prevent violence in the home. Statistics presented in the results section below clearly illustrate that the law is at best a limited intervention.

While this court observation was useful in this regard, it is important to remember that research has demonstrated that most breaches are never reported. We have to remember that there are numerous obstacles in the way of women wishing to re-access the legal system, and to ask why a woman would return to a legal system if the so-called remedy or obtaining a protection order has failed to protect her. Court observation is thus limited in that it represents only a minute part of the patchwork of women’s experiences of the law in relation to domestic violence.

3.3.1 Changing direction: reconsidering methods

Due to the limitations discussed above, as we neared the end of our training workshops we decided to add a third source of information to the research project. Having discarded the most

popular tool in the feminist toolbox, the semi-structured interview, early in the research design stages due to fears that it was too intrusive and invasive, we found ourselves reaching for it with enthusiasm when our experimental method was less successful than we had hoped. As Reinharz writes, such interviews allow: “opportunities for clarification and discussion” and “explore people’s views of reality”¹³⁷.

Although our ethical concerns with this method continued, we decided that we would carry out a limited number of interviews with women who had been involved in at least one of our workshops. We hoped that this would mean that they had gained something from the process, if nothing else at least an understanding of who we were and what we were doing. The idea was that we could use this greater depth of information to supplement the more general observations gained through the workshops and court observation, and possibly to develop some case studies as a way of communicating the results of the research.

We asked shelter staff to put the idea forward to residents and request volunteers to come forward. In total six women agreed to participate – five of whom were based in the Saartjie Baartman Centre, and the sixth in Sisters Incorporated. Interviews were carried out in private rooms, with only the interviewer/s and interviewee present. They lasted between fifteen and forty-five minutes, depending on interviewees’ responses to the questions, and were tape-recorded with participant’s permission.

We also decided to interview staff from the shelters within which the workshops had been held. We felt that this was a less intrusive way of gathering information, in that they would be talking of the trends they have witnessed regarding experiences with the DVA, rather than personal experiences. We hoped that these interviews would provide us with a useful overview, built from numerous women’s experiences. In total four staff members from the shelters volunteered - one at the Saartjie Baartman and Carehaven Shelters, and two at Sisters Incorporated. I also interviewed the Legal Co-ordinator at NICRO Women’s Support Centre, a non-profit organization which provides counseling and legal support to survivors of domestic violence. As a non-residential service provider I believed that they would have a different perspective on

¹³⁷ Reinharz. 1992. p. 18

women's experiences of the legal system, as the majority of their clients remain at home while they seek legal solutions.

The interview schedule used was totally flexible¹³⁸ but was based around broad themes of experiences with the health sector, police, courts and the impact of securing a protection order on a partner's behaviour. As with the workshops we avoided any request or expectation that participants would discuss the actual abuse which had led them to make use of the criminal justice system, though several did choose to do so. We also avoided asking about specific incidents, or using direct questions, so for example I would ask open-ended questions such as: "have you ever been to the police – what was that like?" As Raymond has written, such open-ended questions maximize "discovery and description."¹³⁹ Interviewees directed the flow of these exchanges, and were free to avoid particular themes if they were uncomfortable with the topic or had no experience of the issue at hand.

3.3.2 Successes and limitations

These one-on-one interviews did yield a more coherent set of information regarding experiences with the criminal justice sector and the perceived effectiveness of the DVA in reducing violence. The interviews with staff members were particularly successful in this regard, because they had witnessed numerous client experiences and could therefore provide both a useful overview, and details of individual experiences, without the ethical dangers of exploring these issues with those who have actually experienced them.

The interviews with the shelter residents were more mixed in their success in data collection terms. While some respondents were clearly comfortable with the set up and were happy to talk, others were visibly uncomfortable. I believe that our experiences with these interviews with residents, justified our initial ethical concerns. In retrospect, while I would repeat the useful, and ethically sound, interviews with staff, I would not repeat the interviews with residents. I think even those who appeared enthusiastic were probably so for the wrong reasons, for example their

¹³⁸ See Appendix 4

¹³⁹ Raymond in Reinhartz. 1992. p.18

lack of safe spaces to talk and counseling opportunities rather than a overwhelming desire to be interviewed. It was also clear that people had ‘signed up’ to be interviewed without fully understanding why they were there, even though they had been through workshops. For example, two of the six interview volunteers were actually in the shelter for reasons other than domestic violence. While we felt that asking shelter staff to recruit volunteers placed less of a pressure on individuals, it was clear that this meant that our message was not always clearly passed on.

There is an abruptness to the interview exchange which I also found problematic. We would come into a space with an interviewee and despite the window dressing of a few pleasantries, and an attempt to ‘ease into’ the topic, they would usually launch into descriptions of deeply traumatic events extremely quickly, however hard we protested that they need not do so. I think that there is something about the interview set-up which leads to an expectation of a need to ‘bare the soul’. Perhaps this is due to the similarities to the counseling dynamic. Whatever the cause, it is hard to contain, and absolutely clear that we were opening up painful topics when we would not be there to support women after the interview was over.

3.4 Conclusions: ethics revisited

While the participants’ informal responses to the methods used were positive, reflections after each workshop and interview as to whether we actually managed to conduct successful ‘training’ or research sessions were inconclusive. Our research design did not include any formal evaluation as participants varied from session to session, and become unreachable once they have left the shelter environment.

However, it is important to note that the same challenges will face any research involving women experiencing abuse. Access points are few, and residents usually only stay in shelters for a very limited time period. How then is it ever possible to know how effective any intervention is? How would success be measured? Would we have failed in our hope of a research exchange if none of the participants could recall any useful information about the legal process? What

information is actually useful? Was it of benefit simply to be in a 'sympathetic' space, or is that a placebo that researchers all too often fall back upon?

Certainly, many questions were raised for us about the meaning of training and learning for people who are deeply immersed in ongoing trauma. Is it actually possible to learn when pressing needs of basic survival need to be addressed? Were we providing the information or support that the participants most wished for in exchange for their experiences? Or was the whole notion of an exchange simply our use of the feminist rhetorical smoke screen, hiding the exploitative nature of our work? Perhaps, if we are honest, this research has provided more methodological questions than answers, but without questions change will never be achieved.

I believe that it is critical for feminist researchers to continue to interrogate their methodologies and methods. While I could easily pull on many of the disguises available to me as a feminist researcher to appear before the reader as a 'truly' ethical practitioner, I am increasingly cynical about whether truly ethical research is ever possible.

Did I receive informed consent and voluntary participation from my research participants? Yes, the shelter staff confirmed that they had briefed potential participants fully and then requested volunteers. Yet most of them when questioned on arrival at the first session did not have any clear idea of who we were, what we were doing, or what would be asked of them.

Did we receive consent to tape record and note the research sessions? Yes, from groups as we began the work. But what is the meaning of consent? We found that responses varied depending on how we phrased the question. So responses to 'we would like to record this session, is that going to make anybody uncomfortable?' would lead to mixed responses and uncertainty, whereas 'we're going to record this session, please tell us if you have a problem with that, and feel free to turn the recorder off at any point if you wish', technically still a request, led to passive agreement.

Did I consider the 'foreseeable' consequences for research participants and fore-front their needs? Yes, in that our design strove to locate itself within organizations which could provide a

supportive framework to the research, used 'Evelyn' to minimize intrusion and offered information in exchange for experiences. No, in that it is never truly possible to determine the 'consequences' of research. Did our 'warts and all' approach to explaining the legal system deny some women access to a system which could have helped them, or did the emphasis on the legal solutions persuade some women to travel down a path which could put them in greater danger? We do not know.

It is duplicitous to pretend that careful consideration of the entire feminist army of ethical considerations and methods can ever do anything except limit some forms of harm. We like to congratulate ourselves on the soft, qualitative, people focused nature of our research as compared to the orthodox, objective, scientific, impersonal methods. But is it not possible that we, as feminists, actually do more harm by luring people into disclosing deeply personal and painful experiences and then (usually) disappearing in a pool of ink never to be seen again?

Could I present this research as ethical, as feminists construct it? Yes, in an instant. In designing this project we truly were committed to these notions, we made genuine attempts to come up with a design which would minimize harm and maximize benefit for participants. It was in the attempts to carry out this design that we realized that we had deceived even ourselves. The only (albeit partial) solution to this is to be brutally honest about our methods. Feminist methodologies will never progress, particularly when facing research efforts around complex and sensitive topics such as domestic violence where the target group are hyper-vulnerable, unless we are scrupulously honest about our failures.

While it would be easiest, at this point, to give up the whole attempt to research violence against women ethically as a lost cause, it would be as Patai writes: "a mistake to let ourselves be overwhelmed by these problems ... Neither purity nor safety resides in calling one's research "feminist." But no controversy attends the fact that too much ignorance exists in the world to allow us to await perfect research methods before proceeding. Ultimately we have to make up

our minds whether our research is worth doing or not, and then determine how to go about it in ways that let it best serve our stated goals.”¹⁴⁰

We still believe that our research was and is worth doing. This is because the difficulty in achieving ethical research with women who have experienced, or are experiencing, domestic violence often deters feminist researchers altogether. As a consequence of this other more mainstream forms of research have often been the only sources of information available in the field, this leads to entirely inappropriate and inadequate solutions and interventions being devised and perpetuated. Services are so limited that women are supposed to be grateful for what they get, and often they are because there is simply nothing else. This is not good enough.

The challenges in accessing this group have for too long been a key reason why this epidemic is swept under the carpet. Ways have to be found, voices have to be heard. We have to continue to scrutinize the ways we try to do this, we have to be prepared for, and welcome, criticism from all quarters. We have to be ready to respond and change, ready to find innovative, creative ways of revealing the experiences of women living with abuse in a constructive way, which not only minimizes harm for the individuals who speak, but also maximizes benefit for the millions more who will not themselves be heard.

¹⁴⁰ Patai. 1997. p151

Chapter 5: Research Findings

This chapter will provide a descriptive summary of the information gathered during the research process outlined above. First basic demographic data on the research participants will be presented, then the information gathered using a triangulation of three key methods - the workshops, interviews and court observation – will be described separately to demonstrate the relative efficacy of each method. Analysis and discussion of this information will be carried out in Chapter 6.

In seeking to answer the research question, ‘Does the Domestic Violence Act succeed in decreasing the incidence and severity of violence against women?’ I have sought to highlight data which reveals both the violences of secondary victimization from within the criminal justice system, and the direct violence experienced by women within the home.

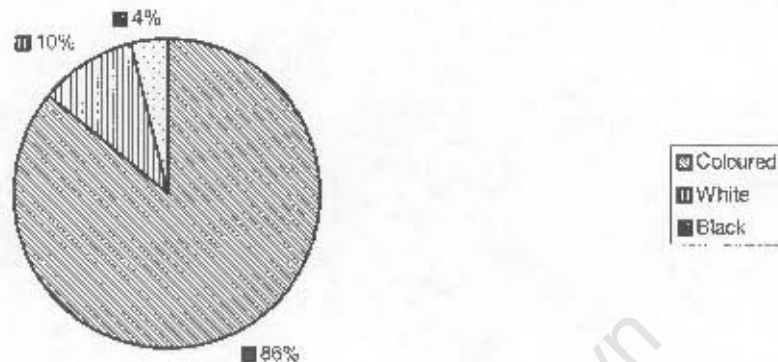
1. Participant Demographics

Because of the group nature of this research, and the focus on service provision rather than in depth exploration of personal experiences, we did not gain a great deal of personal information about participants. The data we did collect was during group icebreaker sessions at the start of each workshop where we asked participants to put together collage ‘portraits’ of themselves. This was meant to be a relaxing, creative exercise but also provided us with basic details such as age and number of children.

Fig. 1: Age Distribution of Research Participants (n=39)



Fig. 2: Distribution of Participants By Race (n=49)



As you can see in Fig 1 and 2 above, the majority (67%) of the women who participated in our research process were between twenty-five and forty-four years of age (n=39) and most (86%) identified as coloured (n=49). Of the total forty-nine women, thirty had between one and three children, or were pregnant with their first child. Nine had no children, and eleven did not disclose whether or not they were parents.

2. The Workshops

As discussed in Chapter 4 above, the workshops were of limited success in terms of yielding great depth or breadth of information regarding women's experiences with the DVA. This was due to the group setting, our focus on case studies rather than individual narratives, the time given to 'training' rather than questioning, and the limited number of sessions which each woman attended. In order to capture and analyse these research sessions, we requested permission to record six of the nine workshops (we felt that the first introductory session in each shelter would not yield much data so decided to ease participants into the process by not recording the session) – agreement was granted for five of these six. These recordings were subsequently transcribed and some data emerged on two key themes: perceptions and experiences of the criminal justice system and the Domestic Violence Act, and barriers to access to justice.

2.1 Perceptions and experiences of the criminal justice system

2.1.1 The South African Police Service (SAPS)

We found that participants had made use of a wide range of police stations including Lansdowne, Mannenberg, Athlone, Mowbray, Wynberg, Cape Town, Mitchell's Plain, Table View, Bellville and Kuilsriver among others. While we did not 'survey' individual experiences in the group setting, far more of the participants appeared to have made use of the SAPS at some point in relation to domestic violence matters, than had experience with the court system.

The vast majority of the comments and anecdotes relating to the SAPS were negative. Firstly, much concern was raised about the lack of interest of police personnel towards domestic violence matters. As one participant stated: "a lot of police have the attitude that they won't get involved in domestic violence,"¹⁴¹ another said that: "its like they're not even interested in what your problem is."¹⁴² Not only was lack of interest and concern cited as a problem, but active negative attitudes and aggression were also described: "when the police came they tend to be aggressive as well in that they tell you – look you're wasting their time..."¹⁴³

These attitudes appeared to be located in the ongoing belief by many police personnel that domestic violence is a private matter. One participant described returning home to collect her belongings while accompanied by a police officer: "he doesn't want to get involved, it's basically a civil matter, he's just there to keep peace, that's it."¹⁴⁴ Another spoke of requesting police support after physical abuse: "and the policeman said we must sort it out, we must talk – we can't talk."¹⁴⁵

These attitudes and beliefs were often reported to lead to delays or failures in response to requests for help or support. One participant described talking to other applicants in the family court: "a lot of people that had the protection order ... said that something would happen and they'd call the police and the police would come an hour or two hours later when everything was

¹⁴¹ SI2, p.3

¹⁴² SB2, p.6

¹⁴³ SB3, p.1

¹⁴⁴ SB3, p.4

¹⁴⁵ SB3, p.14

over, I mean, must they first be killed before something is going to be done?” Another described the experience of a friend who was: “just quietly swept under the mat and forgotten.”¹⁴⁶

These failures to respond also included outright denial of rights. Many women were given incorrect information about their rights, were refused the right to make a statement or simply told to go home. One lady described how she: “was told to go back to the situation ... and the next time it happened what I’d have to do is, first before even having to worry with the interdict, is go to the district surgeon.”¹⁴⁷ This is not only incorrect, but abdicates the responsibilities of the police while giving the woman little option but to return to the situation of danger with no protection. Many women reported that the police refused to assist them or lay criminal charges until they had secured a protection order: “They first tell her she must get an interdict before they can help with domestic violence.”¹⁴⁸ These failures to provide support were often blamed upon lack of resources. One participant said: “they’ve forever got a story – oh there’s no van available or there are no cars.”¹⁴⁹ Another spoke of the lack of shelters or other safe houses in her area which left the SAPS with: “nowhere they can put you unless you are prepared to sleep in a jail cell.”¹⁵⁰

These problems were exacerbated by a frequently stated belief that the police collude with both abusive partners and gangs. Many women believed that they would be placing themselves in greater danger if they did manage to contact the police for support: “there’s such a lot of bribery and corruptions in the force that you don’t even want to go to them ... in so many instances.”¹⁵¹ One woman described how she returned home to collect her belongings with police protection, only to find the policeman socializing with her husband while she packed: “the policeman’s having coffee with the person that’s thrown you out of the house and did what they did to you ... they’re supposed to be there to protect the wives that are being hurt.”¹⁵²

¹⁴⁶ SI2, p.6

¹⁴⁷ SB3 p.2

¹⁴⁸ SB3 p.1

¹⁴⁹ SB2 p.7

¹⁵⁰ SB3 p.2

¹⁵¹ SB2 p.6

¹⁵² SB3 p.4

The limited services provided to women by the police were exacerbated by the self-confessed lack of awareness of their legal rights which made it impossible to challenge the police for failing to deliver. In addition, most women saw the involvement of the police in their personal lives as deeply problematic, a betrayal of their families, and said they would only choose to make use of this option as a last resort. One of the group exercises we carried out asked groups to track possible use of various informal and formal services over a ten-year period. The police were invariably one of the last avenues people would explore, though they usually were approached before the court system. For many women the police have in fact played a key role in putting them off the criminal justice system altogether, as one participant said: “you end up going to a police station but he’s so full of shit that you won’t even bother, you just want to get out of there and get on because you think if this is what the police is like, what’s the court going to be like?”¹⁵³

This widespread exposure of secondary victimization denies women the possibility of accessing the legal options which are their rights. Despite the DVA, it is clear that many women continue to view the police as part of the problem, rather than the solution and support they are supposed to be.

2.1.2 The court system and Domestic Violence Act

In the group exercise tracking women’s potential use of various services, each group placed the courts right at the end of the process. All the women involved viewed the legal remedy as an absolute last resort, a trend born out by studies elsewhere in the world (see chapter 2 above).

Prior to our trainings we asked each group to do an exercise which involved them mapping out the process of applying for a protection order under the DVA, and following through into the criminal system if a breach occurred. This exercise uncovered a great deal of confusion and misunderstanding about the legal process. Participants were unsure who they would deal with (volunteers, clerks, magistrates, prosecutors, lawyers etc.), what they would have to do (complete paperwork, appear in court etc), what sequence events would occur in and how long the process would take. Though nearly all knew of the possibility of securing a protection order, almost

¹⁵³ SB3 p.6

none were clear about the types of protection the DVA offers. As one participant stated: “many people on the ground, they’re not very much aware of that law and some of the women they do not know their rights.”¹⁵⁴

Many had picked up incorrect information, for example one woman believed that if she got a protection order her abusive father would necessarily be given her address and be able to seek her out: “that’s scared me now for the past two weeks, that’s why I haven’t gone for one.”¹⁵⁵ Another participant didn’t realize that you could secure a protection order against somebody you continued to live with: “who are the courts to come and say to her, what she can and can not do in her own home?”¹⁵⁶

It transpired that some of the women involved in the groups actually had interim or finalized protection orders but were unclear as to what they were or what they did. One woman was involved in both a criminal trial and civil application for a protection order against her husband, but appeared not to realize that these were separate processes. Another had both a divorce and a protection order, and merged the process of securing both as if they were a single order. Others who had protection orders were unclear about the level of protection or the specific requests included.

These problems highlight the fact that women are ‘herded’ into the court system, either by well-meaning service providers or those trying to ‘pass the buck’, without being given adequate information to make an informed choice about the processes they are embarking on. While most women involved were unclear who had helped them within the court system, they were clear that processes were inadequately explained. One participant described how she went to apply for a protection order, filled out all the forms she was given only to be told: “that’s not really the right paperwork”. At this point she gave up: “then I became frustrated after the whole thing and I just left everything you know, I said I’m not going to do that ... there was just too many...”¹⁵⁷

¹⁵⁴ SI2 p.6

¹⁵⁵ SB3 p.8

¹⁵⁶ SB3 p.9

¹⁵⁷ C3 p.3

2.2 Barriers to access to justice

The lack of information discussed above is only one of the barriers to access to justice. Many women expressed fears of getting involved in the legal system. In particular a number talked of their fear that their abuser would twist their story to make it look as if they were not to blame: ^{NB.} “with my husband I would probably end up looking in court as if I was the person who was the abuser ’cos he’s so smooth.”¹⁵⁸ Others talked of their fear of lawyers: “they are trying to catch you out.”¹⁵⁹ Further concerns included safety while in court: “but you must get out of that building, they might be waiting for you outside.”¹⁶⁰ One woman even described how her husband attacked her in court: “he stabbed me, the day when I went to court ... the police was with him, they walked with him in to court ... they just took his knife off him, then they let him go.”¹⁶¹

Misunderstandings about the cost of securing orders also prevented some from seeking legal assistance. There was a lot of confusion about who did and did not have to pay for service, or in fact the protection order as a whole: “is it true or false that if you are unemployed you don’t pay for the interdict to be served?”¹⁶² Some women were forced to wait for service until they could secure finances, one woman arrived at the sheriff’s office without money because all her belongings were in her abusive husband’s house: “nobody actually ever tells you that there’s any cost involved – and you can go there very traumatized – in my case you think there’s hope but you actually have to pay for that.”¹⁶³ So women are either put off because they assume they have to pay, or else arrive without money and don’t realize that the state should cover costs if they are unable to. Previous research by the Consortium on Violence Against Women has explored the ambiguity of the means tests carried out by court staff to determine who does and does not have to pay¹⁶⁴. This current research project simply highlights how negatively this impacts on women attempting to secure protection for themselves.

¹⁵⁸ C3 p.7

¹⁵⁹ C3 p.7

¹⁶⁰ SB3 p.8

¹⁶¹ C3 p.4

¹⁶² SB3 p.10

¹⁶³ SI3 p.3

¹⁶⁴ Parenzee, Artz & Moulton. 2001. p. 94

Another barrier to access involved the time the process took: “if I knew that I’d have to go through such a lot of channels you know, I wouldn’t have because going to this place to that place, to this place to that place – and I mean it takes you a day from the morning early up to late afternoon.”¹⁶⁵ The amount of to-ing and fro-ing during this process was another factor cited as adding to the exhaustion and trauma of the application: “I was exhausted already ... and I had to climb up stairs to go – there’s no lifts of anything ...and I had to go twice because they weren’t satisfied with some signature on the document so I had to climb down the stairs, go back to the Magistrate, get another signature, go back up the stairs – they wanted to send me a third time...”¹⁶⁶

Aside from the challenges of securing a protection order, many women chose not to apply because they did not perceive it to be effective. As one participant said: “is this whole protection order and interim and interdict are they effective?”¹⁶⁷ Another said that all that happens is that the perpetrators: “come out and they walk scot-free.”¹⁶⁸ In addition, there was much awareness about the difficulties of involving somebody you are in an intimate relationship with in the law: “you must also realize that women are still involved with these boyfriends or husbands ... to put that person in jail its not a very – not a very good thing you know, so I’m just thinking if its really that effective?”¹⁶⁹ Aside from the emotional costs of involving a partner with the law, there were practical considerations as well: “if I had to phone the police after getting this whole final protection order or whatever ... that person then beats me up – I call the police. I’m not working, there’s no money coming in ... you see that’s also another reason why people wouldn’t want to put their confidence in...”¹⁷⁰

NB!

¹⁶⁵ C3 p.5

¹⁶⁶ SI3 p.3

¹⁶⁷ SI3 p. 6

¹⁶⁸ SB3 p.13

¹⁶⁹ SI3 p.6

¹⁷⁰ SI3 p.8

2.3 Violence in the home: the missing factor

While the data gathered during the workshop process has been useful in unpacking women's experiences with the police in particular, and the criminal justice system in general, it has not revealed women's experiences or perceptions about the effectiveness of the protection orders in reducing violence within the home. One woman said that: "I can imagine if my husband were to receive – you know – an order – it would ... make him go crazy – and then I'd be in worse problems than I am right now..."¹⁷¹ Aside from this we did not manage to gather data about experienced or expected increases or decreases in violence as a consequence of the protection orders. While the group setting and research methods decreased the likelihood of personal experiences being shared, the fact that these women are based in a shelter setting and have often not yet returned home after securing a protection order, means that the consequences of their actions are as yet unknown.

3. Interviews with shelter residents

The data gained during the interviews provides an insight into women's personal experiences with the criminal justice system and as such form a valuable part of the picture built up using the various data collection methods. I have chosen to present this data as case studies, based upon two of the interviews. I feel that these very different experiences reflect the key themes and issues which presented themselves in the other narratives, and I hope they will provide a space for the voices upon which this research is based. All names have been changed.

Pam is white, works full-time and would probably be described as lower-middle-class. She is in her early fifties with two teenage children. She has been married three times and each

¹⁷¹ C3 p.6

relationship has been abusive. She met her current husband four years ago and they have been married for two years. She says of him: "I thought I'd found my perfect little family, my perfect little marriage, I've been looking for this beautiful supportive man for the whole of my life and here I found him, and he was so violent ... it never dawned on me that he would be..."

In July of this year, after a number of violent incidents, her husband tried to murder her. Fortunately his family were in the house at the time: "I was under him and his mother had called the police 'cos she found him ... murdering me ... Luckily she came in when she also did because ... it was touch and go that situation. So the police came in, rushed in through a side entrance ... and they pulled me out from under him." Fortunately the police came quickly, a family member drove her to the police station and though the police didn't advise her of her options, her family suggested that she lay a charge of attempted murder, which she did.

About four days later she went to the family court and applied for an interim protection order, she was given little advice about how to fill in the forms or what protections to apply for, and she had an exhausting day being shunted from person to person, and waiting for responses, often unsure as to what was going on. However, the order was granted that day. Service was eventually paid for by the state because all her belongings were in her husband's house. Fortunately service was achieved quickly as her husband was still in custody awaiting a bail hearing for the charge of attempted murder.

After the attack, Pam sought additional support from a doctor - as she had sustained serious back and eye injuries during the attack - as well as from a social worker at her place of work who provided counseling services. She also decided to move into a shelter, on the advice of a friend, until her protection order was finalized. This was due to her fear that her husband would kill her. He owns two guns and the last time she saw him: "he was shouting that he was going to shoot himself and me..."

At the time of writing, Pam's protection order had been finalized, but the criminal case is still pending. She has also applied for a divorce. On the whole she is positive about the criminal justice system, but feels that she was given inadequate information about her options by both the

police and the court. Her ability to access the system has resulted from family support, advice and resources, but she remains unclear about much of the legal process she has been through, including exactly what protection she has actually secured for herself and her children.

Her husband has attempted to contact her by phone and mail, but has not challenged her face to face. She believes that the final order should have some effect: “now I’ve got it he cannot move against me – I mean it doesn’t mean to say that he’s not going to come after me” Therefore, she is looking for additional protections including renting out a spare room to a member of the nearby police barracks, and ensuring that she is never alone and so more vulnerable to attack. She sees the protection order as only one of her survival strategies.¹⁷²

This case presents a relatively positive picture of the criminal justice system, though there are clear failures to provide information about options and rights. While the perception of the protection order is cautiously optimistic, as with most people, the potential for increased violence is not dismissed.

The next case study describes a less positive experience with the criminal justice system:

Marilyn is coloured, works part-time and would probably be described as working class. She is in her early-forties and has been with her partner for six and a half years. They have two small daughters. He has a criminal record, no regular work, and uses drugs and alcohol on a regular basis. She is a trained staff nurse, but lost her job because she was so often beaten and bruised that the matron in charge said: “we can’t use you in front of the patients.” Recently she has been unable to pay her registration fees, so currently works as a domestic worker instead.

¹⁷² SI.Int. 1

Throughout the last six years she has been subjected to serious physical violence on a regular basis. Last year her partner and his daughter hit her: “with a baseball bat and a hockey stick” so she had: “eleven laceration in my head in between two and three centimeters, and ... I’ve got this broken finger and two of my ribs ... all over my body I’ve got stab wounds – in my face and ... four years ago ... he stabbed me thirteen times and the thirteenth one ... he stabbed me in my lung.”

As a result of this relationship she herself has started to drink: “the reason why I’m drinking that much is when I came home with my money which he doesn’t work for he wants to misuse it and I decided okay, before you smoke or drug my money I’ll buy me a drink and I’ll drink.”

Because she drinks, the police have largely refused to help Marilyn: “several times I went to the police offices to lay charges ... one out of ten times I went there was when ... I was under the influence of drugs, the police just chased me away and said they didn’t take statements from people who were drunk ... they just chased me away ... most of the time when I phone or when the neighbour phoned they just said, oh no, its again 27a ... most of the time they don’t even come in – so I decided the next morning ... I’d walk to [the station] and when I came there all blood and all wounds and so they aren’t very helpful they just had that attitude no but this woman is drunk...”

She has managed to lay charges a few times but: “many times before when I laid charges I got a date and a case number and when we had to appear in court I decided to ... stop the investigation ... in most of the cases I was being badly assaulted”. She withdrew these charges due to threats from her partner, because: “he’s the father of my child” and is on a suspended sentence and she doesn’t want him to go to jail because of her.

Last year she finally decided, after five and half years of serious abuse, to get a protection order because her employer supported her through the process of applying. Among other things, she had previously been put off because she: “heard I must pay about forty-five rand and that is making me scared because I haven’t got money.” When she finally secured the order: “the first time when I came home he just grabbed it out of my hands and tear it up ... that specific night he

hit me” Since that time she has not managed to secure another copy of the protection order, though she is hoping to be able to get one with the help of shelter staff.

Marilyn isn't safe, even while staying in the shelter. The week before the interview her partner had: “intercept me again when I was coming from where I char – and so he held me sort of under his ... imprisonment ... he just hold a screwdriver in my side and said its my fault ... I was away for a period of three days.” During this time her children were placed in foster care, as has happened several times before. Her primary concern is that they are not taken away from her permanently. But she can only stay in the shelter for a few more weeks and has nowhere to live once she leaves.

Marilyn has no confidence that the legal system can help her, either through criminal or civil measures. Her partner has absolutely no regard for the law, for example he recently spent a year in jail for stabbing his brother in the back while in court on another charge. He knows where she works, but she can't afford to give up her job – so he will always be able to find her even if she finds somewhere new to live.¹⁷³

These two case studies highlight the numerous emotional and practical barriers to access to justice which women experience – everything from loyalty to a partner and fear of retribution, to lack of funds or information. In addition, they highlight how practical issues of survival must take precedence over possible legal solutions. Concerns such as child custody, maintenance, housing, food and employment often need to be urgently addressed, before possible civil or criminal legal remedies may be considered.

These cases also clearly illustrate that there is no single relationship between women experiencing abuse, and the criminal justice sector. There are multiple reasons for this, but it is important to flag that differences of race and class may well have led to the vastly different experiences of the criminal justice sector experienced by Pam and Marilyn. Some women are

lucky enough to encounter criminal justice staff who are both helpful and supportive, others are less lucky. Certainly knowing your rights and demanding them can help. However, as Marilyn's case shows, even if women do manage to navigate the labyrinth of the legal system they may well find that not only are they receiving minimal practical protection, but that they are also in greater danger than they were before due to the fury of their partners.

4. Interviews with shelter staff

Many of the themes which emerged from these interviews mirrored those in the workshops and survivor-interviews. I will therefore simply provide a brief re-cap of these, before exploring other themes not found elsewhere, in greater depth.

4.1 Perceptions and experiences of the criminal justice system

All staff interviewed described their client's encounters with the police service as a predominantly negative experience. While all acknowledged that there were some committed individuals within the force, all agreed that they were: "hearing more negative than positive things about the police."¹⁷⁴ As with the workshops, a lack of interest or active negative attitudes were also described: "they don't see it [domestic violence] as a big priority."¹⁷⁵ These attitudes led to delays in service provision. One interviewee described her clients' experiences: "problems that they do encounter with the police is that when they phone to report that their husband has breached the protection order, the police doesn't come immediately – the police come three hours later."¹⁷⁶ As well as delays, some women were provided with incorrect information or denied their rights. In addition, many women had been told by the police that: "they need a

¹⁷³ C.Int.1

¹⁷⁴ St. 1 p.3

¹⁷⁵ St. 1 p.4

¹⁷⁶ St. 3 p.2

protection order before they do anything,”¹⁷⁷ or had simply been told: “to go back home ... when the danger is at home.”¹⁷⁸

As with the workshops, it was clear that more of the interviewees’ clients had experience with the police than with the courts. However, those who had made use of the court system had mixed experiences. All of the interviewees spoke of their client’s confusion and lack of information about the DVA and the criminal justice system in general. As one interviewee said: “I often think they don’t understand ... she actually doesn’t have an understanding of what it’s all about.”¹⁷⁹ Rather like with the police, the interviewees identified effective and committed individuals within the court system as responsible for the successes in implementation. The importance of this was highlighted by the fact that a number of the interviewees cited the same individual at Wynberg as a particularly useful contact. However, this was the exception rather than the rule, and: “at most of the courts ... the justice personnel, they don’t have time to sit down with them to explain the forms to them in detail.”¹⁸⁰

One key area of concern raised by all the interviewees, was the frequent misrepresentation of women’s needs and requests by clerks and volunteers, leaving them with inadequate or inappropriate clauses of protection on their orders. Even when shelter staff had prepared typed affidavits, letters providing information of the provisions required or completed application forms, dangerous omissions and additions were reported: “often there’s misrepresentation I think from the courts. They don’t listen to the women and they add on pieces that actually cause a lot of problems.”¹⁸¹ One interviewee described a recent case where: “the court actually added another little piece onto her affidavit ... they’d actually put on there that he had to vacate the premises and she was dead scared, in fact that’s why she came here because she was dead scared that he was going to do something drastic to her.”¹⁸² Aside from putting applicants in further danger, these mistakes often mean that women have to return to court to have their orders amended, adding to their monetary and time costs.

¹⁷⁷ St. 2 p.1

¹⁷⁸ St. 2 p.2

¹⁷⁹ St. 1 p.2

¹⁸⁰ St. 3 p.3

¹⁸¹ St. 1 p.1

For these reasons and others many of the interviewee's clients dropped out of the legal process at some point. Two interviewees identified the time gap between the issuing of the interim and final orders as an especially vulnerable time, they spoke of how the abusive partner will be: "okay for the time period just for the fact that she will – might – take the statement back or not go to court ... and then they're okay and then she doesn't go to court and when she's back home again and she feels that everything is okay, he starts again."¹⁸³ Others spoke of how the perpetrator would prevent their clients from following through on the legal process by threatening to leave or throw them out of his property, stop providing money or food, find new girlfriends to replace them or inflict further violence.

4.2 Consequences of involvement with the criminal justice system

The potential consequences of securing an interim or final protection order - secondary victimization within the criminal justice system or increases of violence within the home - left some interviewees ambivalent about how to advise their clients. The majority of the interviewee's clients eventually return home and have to live with the consequences of their actions on a daily basis. However, in two of the three shelters most clients ended up leaving with at least an interim protection order.

The potential for this involvement in the legal process to lead to an escalation of violence was discussed at length by all the interviewees. All agreed that responses by violent partners to being served with an interim or final order were varied: "there are mixed reactions from the men ... there have been men that have been fairly angry because of the interdict ... on the other hand there are those that are okay for the time period."¹⁸⁴

While the interviewees believed that some perpetrators would be deterred to some extent by the protection order due to a fear of going to jail, often it was felt in these cases that the abuser

¹⁸² St. 1 p.1

¹⁸³ St. 2 p.5

simply resorted to ingenuity to get around the order. In some cases the types of abuse would be altered to be less visible, for example where there had been physical abuse it could be replaced by severe emotional, psychological or financial abuse, no less damaging but far less tangible. In other cases, the abuser simply switched to using forms of abuse not included on the original order, so not therefore technically constituting a breach: “now he’s emotionally abusing her or throwing her out of the house ... but that’s not on the protection order ... then the police will turn up and say ... but it doesn’t say ... this ... and some of these women is like, but what’s the use.”¹⁸⁵

In other cases the perpetrators were reported to simply rip up the protection orders, and go on the attack (as with Marilyn’s case described above). One interviewee said that many of her clients: “don’t want to get a protection order ’cos its not going to help their situation – the husband just tears it up or he becomes more abusive.”¹⁸⁶ Another said: “if you decide to apply for a protection order you have to leave your home. You know – there is no way that the woman can actually stay in that environment because what is happening – if you apply for a protection order you actually endanger yourself, you actually make that person very angry.”¹⁸⁷ Women who lived with particularly violent partners were reported to avoid the legal process altogether because they feared for their lives if they took action: “they’re saying its not worth it applying for a protection order because this guy’s got a gun – he’ll still come and he will kill me ... even if she do have a protection order or whatever he will still kill her.”¹⁸⁸ Another simply said of the protection order, “its not an armour.”¹⁸⁹

One interviewee felt that protection orders were often the final catalyst to the break down of a relationship: “although the relationship isn’t good, but that protection order brings that relationship down the drain.”¹⁹⁰ This is quite contrary to the wishes of the women who applied

¹⁸⁴ St. 2 p.4-5

¹⁸⁵ St. 4. p.9

¹⁸⁶ St. 1 p.1

¹⁸⁷ St. 4 p.7

¹⁸⁸ St. 4 p.9

¹⁸⁹ St. 2 p.8

¹⁹⁰ St. 4 p.7

for them: “to apply for that protection order it didn’t mean that they actually want to end that relationship or they want to divorce their husband, all they want is for the abuse to stop.”¹⁹¹

While the interviewees were all aware of the frequency of breaches of these orders, all said that these were rarely reported, they therefore had relatively limited contact with the criminal side of the legal system. However, they did state a number of reasons why women choose not to report breaches: loss of confidence in the criminal justice system as a solution, threats from partners, loyalty to the perpetrator, lack of resources and the leniency of sentences handed down. “If the men breached a protection order then they should actually have ... quite a sentence ... because often ... you tell them ... they’re going to stay a year and the next minute they’re just – out whatever – so what are you telling these women – you know – its not really worth it.”¹⁹² Where a woman is in extreme danger, the protection order has already failed to prevent violence, and she is aware that if her partner is jailed it will be for a limited period of time, most women decide that the best survival strategy is to avoid further involvement of the criminal justice system. If it has not worked as a deterrent, and realistically cannot provide her with ongoing practical protection, the benefits of enlisting its support do not outweigh the dangers.

5. Court Observation

As an ongoing part of my work with the Consortium on Violence Against Women I conducted ad hoc court observation in both the Cape Town Family and Magistrate’s Court during the thirteen months between September 2000 and October 2001. This has given me the opportunity to witness the experiences which women are having within the court system at first hand. The information and ideas presented below have been picked up in snippets, from many different sources. I have sat in the room where applications are made in the Family Court for several days observing the process and have watched numerous criminal cases – both relating to domestic violence and other non-related crimes. However, I think I have learnt most of all from unplanned, informal encounters – people taking me aside in corridors, chatting in the court breaks, overhearing court staff talking, and keeping my eyes and ears as wide open as possible.

¹⁹¹ St. 4 p.10

¹⁹² St. 4 p.9-10

I will briefly describe these observations as they both reflect and build upon the data collected through the workshops and interviews. Firstly, I will summarise the challenges women face when going through the civil process of securing a protection order, then I will use a case study to reflect the obstacles to accessing justice in the criminal Magistrate's Court.

5.1 The Cape Town Family Court

The civil family courts are often a woman's first experience with the court system. These courts have been designed to be accessible and sensitive to community needs.¹⁹³ Despite these good intentions there are numerous problems with both the building and processes which leave applicants vulnerable to secondary trauma while attempting to secure a protection order.

Firstly, it is difficult to locate the room where applications are carried out. On entering the court building on the ground floor there are no signs to the domestic violence support room, and even once you have found the correct floor, signs are small and only in English. Secondly, aside from a perfunctory security check on the ground floor, security within the CTFC is minimal. This leaves applicants open to bullying, intimidation or even violence while within the building. Thirdly, space is incredibly limited within the domestic violence support room. MOSAIC¹⁹⁴ volunteers share a small room with the two clerks who also work on cases relating to the DVA. This leads to a total lack of privacy for clients, with up to four cases being heard at a time in the same room, and frequently a number of people queuing in the same space.

In addition, court space at the CTFC is extremely limited; domestic violence cases are heard in the same court as maintenance cases (because it is equipped with microphones and recording equipment), which leads to competition for court time, and delays. Within the court the Applicant and Respondent sit within very close proximity of one another which could be a source of intimidation for the Applicant. However sympathetic the magistrate is, the room is

¹⁹³ Burman, Dingle & Glasser. 2000.

¹⁹⁴ Voluntary sector agency providing volunteers to support women through the court process

imposing with traditional-style heavy wooden furniture and a formal layout. This, coupled with the proximity of the Respondent and the technical nature of the legal process, as well as possible language difficulties, all contribute to what is likely to be a very intimidating process for the Applicant. (As all domestic violence cases are heard *in camera* at the Cape Town Family Court, I have been unable to observe these dynamics in action).

As well as limited advice and court space, client facilities are almost non-existent, both due to the limitations of the building it is housed in, and a lack of resources to improve the situation in any way. For example, there is no waiting room for Applicants which means that they have to queue in the dark, narrow corridors, with only wooden benches as seating. There are frequently prisoners waiting for trial in the same corridors which can be threatening. In addition, there is only one ladies bathroom on the Family Court floor, and it is around the other side of the building in the Regional Courts section. Though there is running water (unlike in the Magistrate's Court over the road), no toilet paper or baby changing are facilities provided.

Access to CTFC is another problematic issue. It serves a large area which means that many people have to travel long distances to access its services. When you consider that most Applicants will come to secure an interim protection order, return to pick up the warrant of arrest, and return again for the final return date, the cost becomes prohibitive, particularly if an individual has to take time off work to come to court. Language is another critical barrier to access. While Afrikaans and English are both freely spoken throughout CTFC, the forms are only provided in English, there is only limited interpretation available for Xhosa speakers, and virtually none for other language groups.

Despite these physical drawbacks, the atmosphere is surprisingly positive (particularly when compared to the Magistrate's Court over the road). This seems to be a function of the staff who largely remain committed and positive despite the enormous pressures they work under. Between January and September 2001, for example, they dealt with 1,677 new applications for protection orders, and they also manage around 10 finalizations of protection orders daily. While I did not actually sit at the desks with volunteers and clerks as they were advising women, so can

not assess the quality of the specific advice they were giving to clients, they always appeared friendly and helpful.

5.2 The Cape Town Magistrate's Court

While it is more or less impossible to uncover how many protection orders are actually breached due to the fact that so many breaches go unreported (as discussed above) it is possible to access statistics about the number of breaches which are reported within individual courts. In the Cape Town Magistrate's Court (CTMC) for example, 73 breach cases were initiated between March (when statistics started being collected) and December 2000. In this year, 2001, 55 new cases have been initiated to date. These statistics only represent cases which were begun. A large number of these were reported to have been withdrawn at some time during the process before conviction and sentencing.

While direct comparisons cannot be made between the number of applications for protection orders made in the Family Court (1,677 between January and September 2001) and the number of breaches reported in the Magistrate's Court (55 between January and October 2001), due to the fact that survivors could apply in one jurisdiction and report a breach elsewhere, these figures do suggest that very few women are reporting breaches when compared to those applying for protection. While it would be comforting to think that this is because the protection order has succeeded in preventing violence, evidence from the workshops and interviews above suggest that these reported breaches simply represent the tip of a huge and menacing iceberg.

The case study presented below, which I followed for a few months, starkly illustrates many of the reasons why women choose not to return to the legal system to report breaches, or decide to withdraw cases before their conclusion. This is a particularly complex case which highlight the struggles and secondary trauma experienced by many women if they choose to make use of the criminal legal system. The data was collected both from observation and from the police docket which the Control Prosecutor gave me access to in order to gather details of the case history.

A Case of Delay, Denial & Despair:

Previous Charges:

1994 *Family Violence Interdict (High Court)*
12 month suspended sentence for violating Family Violence Interdict

Sept. 1998 *9 month sentence due to re-violation of Interdict*

July 1999 *Assault - sentence not recorded*

March 2000 *Assault/Robbery*

May 2000 *Assault/GBH*

July 2000 *Housebreaking - Intention to assault - assault and GBH*

Nov. 2000 *Pointing a firearm (at Complainant) - sentenced to 12 months suspended for 5 years*

Nov 2000 *Attempted Murder & Escaping from Court*

2000 *New Interdict under the Domestic Violence Act*

Recent Case History

August 2000

Case postponed and bail extended because of complexity of case (dealing with 2 separate charges with incomplete paperwork) and because Defendant had previously represented self and has now appointed legal representation who requested time to prepare.

October 2000

Trial. Defendant's attorney 'unwell' & did not attend. Defendant did not attend. Warrant issued for Defendant's arrest.

1 week later

High Court Bail Appeal - postponed at Defendant's request so he could appoint legal representation for that case

4 days later

Defendant assaulted Complainant (held gun to her head)

Next day

Bail hearing. Defendant arrested in Court for Attempted Murder. Defendant escapes from Court and recaptured. Placed in custody until bail hearing.

10 days later

- *Bail hearing for Attempted Murder & Escaping Court (bail already granted for previous charges)*
- *Postponed again because the Defendant's Advocate is withdrawing from the case as the Defendant has run out of funds.*
- *Defendant states that he will defend himself as Legal Aid will not fund his case because they know he has funded a private Advocate in the past*
- *Prosecutor attempts to move all outstanding issues to the Regional Court.*

1 week later

- *Regional Court refuses case*
- *Bail hearing in Magistrates Court heard by at least the third Magistrate involved in the recent charges.*
- *This Magistrate reiterates Defendant's right to have legal representation because no previous Magistrate has marked explicitly in the file that the Defendant's rights have been made clear to him.*
- *The Defendant changed his mind four times during proceedings about whether or not he wished to represent himself, finally deciding to secure legal representation again.*
- *Date set to appoint legal representation 10 days later.*

- *N.B. The defendant used to be a police reservist, and the Investigating Officer has been reported to play rugby with the Defendant.*
- *At this point I could no longer follow the case as I was away from Cape Town.*

N.B. Dates have been changed to protect the confidentiality of those involved, the relative time frames (i.e. the gaps between appearances) are however accurate.

While even this limited section of this case may be more complicated than many a number of important themes which limit access to justice for many survivors of domestic violence can be drawn out. Firstly, the ease with which a Defendant and his legal representation can engineer delay after delay is notable. Simply by vacillating between requesting legal aid, appointing private legal counsel or declaring a wish to represent yourself it is possible to create multiple delays in the process, as well as forcing the survivor to make numerous trips to court while the case fails to even progress, with great emotional and practical cost (transport, child care, loss of earnings etc).

This leads to the second observation, which is that the adversarial legal system is designed to protect the Defendant, not the Complainant, for example only the Defendant is offered legal aid. While I am not denying the need to safeguard the rights of the accused, this should never be at the expense of the survivor, which is the case at present. Thirdly, the Complainants are extremely vulnerable while they are in the court buildings, particularly when a Defendant is out on bail (as is usual with domestic violence cases). In the courtroom itself the Defendant is free to sit near (and intimidate) the Complainant while waiting for their case to be heard. During case hearings state witnesses (which often include the Complainant) sit only one metre away from the Defendant's stand, and if the Defendant is representing himself he may directly question the Complainant. It is very possible that fear of such exposure could lead either to a survivor being too terrified to testify coherently, or in fact at all. The fact that there are no waiting rooms in either the Cape Town Family or Magistrate's Court, let alone any dedicated waiting areas to protect the privacy and security of survivors again increases this vulnerability.

Finally, the low priority of domestic violence cases which leads to their delay (as priority for court space and magistrates time are often given to other cases) further increases the vulnerability of survivors who choose to make use of the legal system. In the case outlined

above, the failure of the legal system to take swift action to protect the Applicant left her open to further abuse, including attempted murder. Six years after her initial Family Violence Interdict, the Defendant was still able to break into the survivor's house and hold a gun to her head in the middle of the night. In fact, he was only finally arrested once he escaped from Court, this 'contempt' warranting swifter action than any of the violence that had gone before it.

University of Cape Town

Chapter 6: Discussion & Analysis

In this chapter I shall revisit the theoretical and thematic frameworks discussed in chapter three. Firstly, I will very briefly discuss how far the research results can be used to confirm my location of domestic violence as an human rights issue, form of torture and critical development issue. I will then return to a discussion of key feminist jurisprudence themes in relation to the DVA.

1. Domestic violence as an abuse of human rights, form of torture and development issue.

I believe that the testimony of the women involved in our workshops and interviews clearly demonstrates the extent to which domestic violence is a cruel and calculating form of torture, and as such a clear violation of their basic human right to live a life free from violence. Marilyn's story¹⁹⁵, to take just one example, illustrates this well. Her experiences clearly fit the 1984 UN Convention Against Torture's definition of torture. She has experienced both physical and mental pain and suffering, intentionally inflicted by her partner in order to intimidate, coerce and control her. While this was not perpetrated by a state official, state personnel have entirely failed to provide her with access to her basic legal rights or any meaningful protection, despite numerous requests on her behalf. This failure to act implies a sanctioning of her partner's behavior and as such is a form of collusion.

This links to my belief that domestic violence is both a barrier to, and indicator of, true development. Marilyn's, as with other research participants, experiences of domestic torture have caused her to lose her skilled employment, economic security, health, home, children and mental well-being. Her experiences of violence are preventing her from achieving her potential in all spheres of her life – economic, professional, social and emotional – not to speak of her potential contributions to national development. There is an unmeasured, but no doubt vast, loss of human resources available to society due to the prevalence of violence against women.

¹⁹⁵ See chapter 5, section 3

The function of pieces of legislation such as the DVA, and other attempts to ‘tackle’ the embedded epidemic of domestic violence, are therefore absolutely critical. Not only could they allow women to lead a life free from violence, but concurrently they have the potential to establish basic human rights for women and free them to achieve their true potential.

2. A feminist jurisprudence analysis

In line with feminist jurisprudential methodological thinking, this research has been founded upon women’s experiences and voices. In addition this project has a political and transformative purpose: to both uncover key areas for improvement within the criminal justice system and the DVA, and to challenge the South African Government’s reliance on a legal solution as their flagship response to domestic violence.

2.1 Gaps between policy & practice

As discussed in chapter two above, the government of South Africa is bound by obligations placed on the state by international agreements and policies such as CEDAW, DEVAW and the Beijing Platform for Action, as well as national commitments contained within the Constitution, National Crime Prevention Strategy, the Justice Vision 2000 and the Justice Gender Policy Statement. Despite this impressive paper commitment there have been limited successes to date in tangibly improving the service provided to women by the criminal justice system.

As previously highlighted, the DVA has been hailed as a particularly progressive part of this paper commitment to improving women’s safety and experience of the criminal justice system. However, the government’s failure to provide an adequate budget to allow for effective implementation raises serious questions about the seriousness of this commitment. Currently lack of resources, training, information provision and so on are vastly limiting the DVA’s potential to provide relief.

While thousands of women have applied for protection orders under the DVA, the results presented in the previous chapter challenge this outcomes-focus as a meaningful indicator of success. Research participants have described numerous failures in implementation throughout the criminal justice system from lack of information or misinformation and failures in support and advice to outright prejudice and denial of rights.

While it is critical to maintain a clear analytical separation between the legislation itself (the DVA) and the system responsible for its implementation (the criminal justice system), the reality is that unless the complex process of implementation is given at least as much attention as the fine print of the legislation, the energy pumped into the creation of such 'progressive legislation' will be wasted.

2.2 The legal system: reflecting patriarchy

These failures in practical delivery must, at least partially, be blamed upon the attitudes of those responsible for implementation at all levels. Most feminist jurisprudence theorists understand the law as a socially constructed system which is founded upon the patriarchal norms and values which underpin societies throughout the world. In line with the dominant trend world-wide, the South African social context remains overwhelmingly patriarchal to date, and commitment to gender equity is rarely paid more than lip-service. To some extent policies and legislation within the South African legal system are beginning to reflect the prominence of the post-apartheid gender equity dialogue, however this 'paper equity' largely fails to be shared even by senior members of the government and criminal justice system responsible for implementation.

For example, rather than acting to combat violence against women, in 1999 President Thabo Mbeki publicly questioned the validity of rape statistics saying that they could not be substantiated: "in any way whatsoever."¹⁹⁶ In February 2000 Cabinet Ministers Penuell Maduna and Steve Tshwete (Ministers of Justice and Safety and Security) were: "accused of giving

¹⁹⁶ *Cape Argus*: 04/02/2000

'silent consent' to rape after an interview with the CBS TV news programme *60 Minutes* in the United States, in which they apparently told reporters: "We've been standing here for 26 seconds and nobody has been raped." Their comment referred to the police statistical projection that one person is raped every 26 seconds in South Africa".¹⁹⁷

In addition, Police Commissioner Jackie Selebi, recently claimed that the laws against domestic violence, smoking in public and holding a cell-phone while driving were "unimplementable" and that: "Many of our own members are involved in domestic violence. They come home tired and stressed and want to be left alone."¹⁹⁸ If the most senior member of the police force views domestic violence as a low priority and a justifiable form of violence, and clearly feels that it is acceptable for him to make these comments in a public forum, it is unsurprising that implementation across the board is ineffective.

These examples provide clear evidence of the persistence of patriarchal attitudes beneath the smoke-screen of gender-sensitive legislation and language within government. The paper-commitment to gender equity, and associated legislative changes such as the DVA are doomed to achieve little if those in power continue to demonstrate their lack of practical commitment through public commentary and ever-decreasing budgets. It is this lack of practical commitment which explains the ever-widening gap between policy and practice within the South African legal system.

2.3 Women's relationship with the criminal justice system

The legal system's foundation upon patriarchy has allowed: "the behaviour of men [to] become the norm,"¹⁹⁹ and prevents the system from fulfilling its self-proclaimed role of universal, impartial, neutral and objective arbiter. While all systems are in some way partisan, the danger of the South African legal system (as with all others) is that its proclaimed neutrality masks the

¹⁹⁷ *ibid*

¹⁹⁸ *Business Day*. 15/08/2001

¹⁹⁹ Vetten. 1996.

reality of a system which contains layers of exclusion along race, class and gender lines among others.

There can be no doubt that the legal system treats cases of domestic violence largely with unwarranted leniency, in this way quietly condoning one of the most effective mechanisms for the perpetuation of patriarchal control of society: violence against women. Two recent cases of femicide highlight this point well; even in cases of such extreme violence, the male perpetrator's behaviour is excused and sanctioned.

In March 2001 a High Court Judge reduced the sentence of a man from Parow, Mr. Cronje, to five years (from fifteen) for the murder of his wife. He shot her at point blank range, in front of their four-year-old son. However, the Judge decided that he had not intended to kill his wife because he had not been in trouble with the law before, had been provoked by the break down in his marriage, his fear that his wife would take his children away and the fact that he had been drinking. Judge Foxcroft stated that: "He did intend to threaten her. It is however most improbable that he would shoot her in bed where his beloved child was sleeping." He concluded: "It is never a good idea to have a gun in the home in times of domestic violence."²⁰⁰

Another more recent case, in June 2001, saw a Table View man receiving a six-year sentence for the murder of his wife. "He stabbed her 16 times before slashing her throat with a Leatherman penknife after she pushed him away when he tried to hug her." The Judge however decided that the killing had not been premeditated, and further ruled that: "circumstances justified a sentence less severe than the prescribed sentence of 15 years for unpremeditated murder."²⁰¹

In both of these cases, even the second which involved a sustained physical attack as well as murder, the Judges concluded that the murdered women somehow 'provoked' or 'incited' their partners to murder. One wanted to leave, the other refused a hug. Somehow, these judgments twist the situation so that the perpetrator becomes the victim of their partner's unreasonable

²⁰⁰ *Cape Argus*. 06/03/2001

²⁰¹ *Sunday Argus*. 16/06/2001

behaviour. The implication is that a man cannot be responsible for his own actions if a woman doesn't give him what he wants.

These two cases starkly illustrate the challenges women face in their relationships with the legal system and the personnel within it. If even in high profile, media-covered cases, judgments which are clearly prejudicial and based upon essentialist, misogynist assumptions about women are permitted to stand, we can only assume that thousands of lesser cases receive similar treatment on a daily basis.

Thus, the supposedly neutral legal system still all too often bases its judgments upon stereotyped constructions of women and assumptions about their appropriate behaviour – that women are the property of their male partners, that even the suggestion of infidelity or rejection is enough to incite rage and justify violence, that they are provocative, irrational creatures who carry much of the responsibility for the treatment they receive and that violence within the home is essentially a private matter. These stereotypes and assumptions are a powerful silencing tool. The message is spread through the media and through speaking to others who have made use of the legal system. It speaks powerfully of the fact that if you are female you stand a strong chance of not being 'heard' within the legal system and of being labeled and processed in a way which is deeply damaging.

While this is a stark generalization and our research clearly highlights that there is no single relationship between women and the legal system with some receiving better treatment and understanding than others (due to factors of race, class etc.), this is still a function of individuals within the system rather than holistic systemic transformation. As it stands, the present South African system still props up a large number of individuals whose attitudes and assumptions deny women a healthy and equitable relationship with the law, and so prevent them from accessing the justice which is their constitutional right.

2.4 Access to Justice

Questions of measuring or assessing access to justice are always slippery because so many intersecting factors are involved – an individual piece of legislation, the system responsible for its implementation and non-legal social, emotional or practical difficulties.

In the case of the DVA itself there are several barriers to women's access to justice. As uncovered in the Consortium's first year of research: "The forms are a barrier to access because not only is the language used ambiguous and the legalese confusing, but it is only available in some languages."²⁰² Education and publicity around the DVA has also been inadequate. While many people do know of its existence, as our research demonstrated, very few have a clear understanding of the protection it can offer, what the process of application will involve, and how far the responsibility for personal safety still rests upon the Applicant.

In addition to the forms, the fact that women have to make numerous journeys simply to secure a final order often causes many to drop out of the system: there is an initial journey to complete the application for an interim order, a return to pick up this order once the Magistrate has signed it, a journey to the Sheriff or SAPS to deliver the papers for service, another return to court for the warrant of arrest once service has been achieved and a final trip to court for the finalization process, let alone if the process enters the criminal system if the order is breached.

As discussed above, the implementation of the DVA by the criminal justice system has also denied many women true access to justice. Police and other criminal justice staff failures to provide adequate information or support to potential applicants deter many. The time commitment involved in securing an order – waiting for attention, numerous journeys involved etc. – also denies many access to justice. It is often simply not possible to take time off work, find childcare, escape abusive partners or scrape together the transport costs necessary to go through the lengthy legal process.

²⁰² Parenzee, Artz & Moulton. 2001. p.113

This ties in to barriers which are external to the legal system including fear of retaliation from an abuser, concern about involving a partner in the legal system due to loyalty or reliance on their income, lack of access to finances, transport, information or physical distance from the police or court systems.

No piece of legislation can single handedly overcome all the problems of access to justice. The fact that the DVA has increased women's options is positive, however this research has shown that the extent of the protection provided by this option is in fact fairly limited, and in many cases more or less non-existent. Therefore, the creation of the DVA can only be seen as partially successful. The next step is comprehensive transformation of the criminal justice system responsible for its implementation.

3. Remembering race and class

It is important to note that there is no single relationship between survivors of domestic violence and the criminal justice system. Many barriers to access to justice are experienced by women in different ways, depending on their identity – race, class, age, sexuality etc. If we take the cases of Pam and Marilyn described in chapter five above, it is more than likely that Pam found the criminal justice system more sympathetic and successful because her class and race gave her access to some legal support as well as financial and information sources unavailable to Marilyn.

Women trying to navigate the system alone are undoubtedly at a disadvantage – this system was designed to protect white, male, middle class, heterosexual (business)men – failure to match any of these identities is likely to limit access to justice. Therefore, exclusion from the criminal justice system is also not a problem unique to women. I observed over twenty non-domestic violence appearances and trials randomly including everything from drunk-driving to maintenance, theft and assault cases. Many of the problems highlighted in chapter five above held true for these cases, even where the Complainant or Defendant was male. This was the particularly the case where intersecting identities such as race and class excluded those involved from holding 'insider' status to the legal system. More than anything it seems to be the lack of understanding of the labyrinthine legal system, its systems, procedures, policies, rituals and

codes which excludes all but the privileged few who can afford lawyers who have spent years learning to navigate this system.

4. Conclusions: the relevance of a legal solution

Many of the women we worked with were dealing with multiple traumas. The other issues which came up during our workshops included rape, abduction, being held hostage, incest, positive HIV status, psychiatric and mental health difficulties. In addition practical survival concerns such as child custody, maintenance, housing, food and employment were often top of the list of women's concerns, needing urgent attention. These critical concerns often meant that they simply were not in a position to deal with the legal system and pursue their legal options. This was particularly the case because the majority of the women we spoke with had very little, or no, access to financial resources. The South African social context, within which millions live below the poverty line, means that critical basic needs have to be met before more complex solutions, such as those offered by the legal system, become realistic options.

I have made it clear throughout this research that I believe that legal solutions are only one of the tools which need to be put in place to increase safe choices for women. This is particularly the case within the South African context where the experiences and needs of women are so diverse. No single solution is capable of fitting the needs of women who are experiencing abuse, a fact that is confirmed by our research. While it is clear that the majority of women are having a mixed experience of making use of the criminal justice system, and that for many it is a difficult and negative experience, it is a system and solution which works for some women and as such has value. While 'colluding' with imperfect systems, such as the legal system, is problematic, it would be foolish to rule out options which are capable of providing relief to some women, even if they are the minority. It is only through engaging and challenging such mainstream systems, employing them for positive ends and pushing for changes within them that we can work towards a genuine breadth and depth of change across society.

Chapter 7 – Conclusions

1. Final thoughts

This research project has sought to uncover some of the experiences women are having with the Domestic Violence Act in order to assess whether or not it is successful in reducing violence against women. This enquiry, rooted in feminist jurisprudential thinking, has based itself upon women's experiences and voices in an attempt to challenge the numerous assumptions made about both the neutrality of the legal system and women's experiences within it.

There is not, and never will be, a unitary relationship between women and the legal system or particular pieces of legislation. However, these different voices weave together to form a persuasive tapestry of exclusion, secondary victimization and legal failures. While some of the women involved in the research process have had some positive experiences with the criminal justice system, these have been a result of committed individuals, rather than comprehensive institutional transformation.

While I have repeatedly stated that it is important to separate the DVA from the system responsible for its implementation, in practice this is difficult to do. The two are so bound together in the implementation stage that any dissection of whether it is the paper legislation or the people responsible for implementation which lead to failures is difficult to conclude. Much as I fully appreciate the huge burdens which criminal justice personnel labour under professionally, their service must be improved if meaningful access to justice for all is to be achieved. It is these 'coal-face' workers – the police, clerks and prosecutors in particular – who need intensive training, sensitization and motivation to work effectively with what are complex and emotionally demanding cases. In most cases these personnel are severely overworked, underpaid and under-resourced. They themselves experience secondary trauma in dealing with huge volumes of emotionally traumatic cases on a daily basis. Unsurprisingly they burn out and switch off, and are unwilling to involve themselves any more than necessary.

Perhaps, for this reason more than any other it is clear that the DVA has done little to decrease the secondary trauma and victimization which women experience within the criminal justice system. Without doubt this is a form of violence in its own right – emotional, psychological and sometimes verbal. Marilyn’s experience of the police turning her away time and again, their refusal to act without a protection order, the collusion with abusive partners, the failure to provide for the protection women request on the application forms and so on, all add significantly to women’s emotional and practical burdens, and can place them in even greater danger.

While the Domestic Violence Act itself is not actively ‘responsible’ for this secondary trauma, it is this piece of legislation which is pulling more and more women into the criminal justice arena in their desperate hope that it will bring an end to the violences they are experiencing. It is therefore critical to consider whether or not the outcomes are beneficial enough to justify what is often a marathon of return trips to a largely unsympathetic system.

The central question which motivated this research was whether the DVA actually increased violence in the home, rather than decreasing it as hoped. Clearly there will never be a simple answer to this question. Many women who apply for protection orders don’t even complete the process, others have not (to date) returned to the legal system for further assistance. We simply do not know what happens when the majority of women take their protection orders home – either in the short or long term. What this limited research project has however highlighted is that the outcome of securing a protection order is by no means clear. While some women report a reduction in violence, many have confirmed that the violence simply changes or escalates, sometimes fatally.

In my opinion, this question, regarding the actual efficacy of the DVA in providing the service desired by the women who secure protection orders – a reduction in violence – is perhaps the only important one. It is also a methodological Gordian knot. As with all work in the field of domestic violence, research projects tread a wobbly ethical tight-rope. If the only ‘safe’ access points service providers specifically targeting domestic violence survivors, but the women accessing these services at crisis point (and in any case only represent the tiny tip of the iceberg

able to access services at all) how is it ever going to be possible to assess the effectiveness of any intervention, legal or otherwise? Domestic violence remains an experience so shrouded in secrecy, shame and fear – at worst it has taboo status, at best it is ‘something that happens to other people.’ Until we can find ways to make it safer to speak out it is likely that many of the interventions attempting to address the issue of domestic violence will be doing little more than groping around in the dark.

The difficulty is that while we want to ensure that the services provided are as good as possible, it seems self-defeating to over-criticize the limited options available. While feminist jurisprudence is criticized for its collusion with the entrenchedly patriarchal legal systems worldwide in its failure to de-centralise its role, it would be a mistake to boycott legal solutions altogether. The DVA is not a perfect solution in any way, and it may very well endanger more women than it helps. However, even this small study has uncovered some positive experiences and perceptions of the criminal justice system and the DVA. At this point in time where, if anything, domestic violence is on the rise, we need to hold onto any systems or interventions which provide some relief, even if it is only to a minute proportion of those experiencing abuse. It is impossible to measure the importance of hope. Survival strategies are woven from numerous straws, and the mere existence of a system and an Act which says that violence against women is wrong may be something to hold on to. If nothing else, the hope is that the beliefs underpinning the Act gradually filter into the norms and values of South African society. This again is impossible to measure, but the DVA is worth keeping even if this is only a distant possibility.

Carol Smart has long advocated a focus on non-legal strategies to avoid the fetishization of the law. I believe that we need to do both. Clearly both the DVA and the criminal justice system can be improved to provide a more effective and relevant service to women experiencing domestic violence. However, this solution will only ever provide relief for a few. What is needed is a co-ordinated, holistic strategy of service provision which integrates challenges to domestic violence into every other sphere

This vision is however utopian, and it is unfair to set it up as the solution to the struggling legal system. Perhaps the problem with critical feminist jurisprudence is that it is rather like shooting fish in a barrel – it is all too easy to find the limitations and failures of profoundly flawed systems such as the criminal justice system. It is a far harder task to pose workable alternative solutions which actually improve women's safe choices, hold abusers accountable and reduce violence throughout society.

In the development arena successful projects are now seen to be those which are small, context specific and responsive to the needs of localised groups and individuals. The buzz-words are all about community involvement, participation, partnership, co-operation and inclusion. However, while small scale, locally focused projects which respond to needs and contexts of particular communities are the ideal, large scale institutionalised solutions (like the DVA) are profoundly attractive in that they allow for a blueprint 'solution'.

It is clear that domestic violence interventions are also more effective where they take the contextualised, small-scale approach. It is not enough to expect the state to step in and provide solutions – and it is highly unrealistic. We need to look for alternative, micro-political strategies. The ever-present question of course is what these should be. There is very little research within South Africa as to the relative effectiveness of the different interventions in place. Most focus on curative, short-term, crisis interventions, for example shelters. While such work is necessary, there is an additional need to look for creative preventative work. Simply patching women up and sending back to the abusive situation they come from, or leaving the perpetrator to move on to another partner is not enough. We always use the excuse that we don't have the resources to expand or alter our services. Is this the whole story, or is it that we really don't know what else to do? We need long term, preventative strategies with a truly transformative agenda, however developing these, particularly within the resource constraints of the South African social environment is challenging. As a start a few of the suggestions we have come across during the research process follow.

2. Recommendations

The suggestions and recommendations which have come up during our research, both within the group and individual work, and in other discussions fell into three separate categories. Firstly, there were practical suggestions for improvements to the service delivered by the criminal justice sector. These included providing comprehensive and ongoing training and debriefing for all front line staff including police, clerks, prosecutors and magistrates to ensure that they are aware of the complexity of domestic violence and supported in carrying out their demanding work. In addition it was felt that the application forms could be simplified, and provided in languages other than English to make them accessible to a wider number of women. It was also felt that translators and interpreters should be trained and made available where possible. Domestic violence cases should also be given top priority on the court roll to prevent unnecessary delays and return journeys to court. Some also felt that sentences should be harsher where a perpetrator is actually convicted of breaking a protection order, though this was a contentious area due to issues such as loss of household income, loyalty to the perpetrator and fear of repercussions from other family members.

Secondly it is clear that there is a desperate need for improved practical resources for women experiencing abuse. This includes the much-stated need for further provision of safe places for women in crisis situations to stay. The development of service provisions within such shelters was also seen as a logical extension of the work they are already doing. Ideally both individual and group counseling would be provided to all women within these organisations, as well as practical skills training and opportunities for work experience. Effective outreach work within communities to reach women who are unable or unwilling to enter a shelter environment is also critical. Bearing in mind the massive shortage of resources within the South African context, training of existing social services and health personnel could fill this gap. Positive screening, early intervention and effective referrals would support many women far earlier on in their experiences of abuse than is the case at present. Currently services are largely operating on a crisis intervention model, it is often only when violence has escalated after a long history of abuse that women access services as a last resort. The group exercises which we carried out asking women to chart the various informal and formal services they would be likely to use over

time all showed clearly that the criminal justice system is the last place women turn for help. Before this point a woman would often have talked to a health or social worker, family, friends or religious organisation. It is at these contact points that clear information about rights and options would be particularly beneficial.

The third mode of intervention which is potentially transformative is preventative awareness raising work aiming to build community intolerance for violence in the home. This could include work in schools such as peer education, student-led drama, relationship skills training and general awareness raising. Partnerships with the media, such as the high impact Soul City drama series, or information provision in the print and radio media are also able to reach vast audiences and slowly begin to infiltrate cultural norms and values.

I will end with a quote from one of the workshop participants. While she is talking of the personal responsibility of individuals for their future, the key to effective change is for each organization and individual to take collective responsibility for creating a future where violence against women is no longer acceptable.

“Happy endings. That’s what we all want to go to... it is just entirely up to yourself if you want a happy ending ... if you are positive, what you want in the future – you will have it.”²⁰³

²⁰³ SBS 2. P.4

Appendix One: Ethical Guidelines

RESEARCH ETHICS RELATING TO VIOLENCE AGAINST WOMEN²⁰⁴

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On behalf of The Western Cape Network on Violence Against Women

“RESEARCHING HUMAN SUBJECTS IS NOT A RIGHT, IT IS A PRIVILEGE”

1. GENERAL

Research should always be carried out --

- (a) with social sensitivity and responsibility; and
- (b) with respect for the dignity and self-esteem of the individual and for basic human rights.

2. THE PRACTICE OF GOOD RESEARCH

In conducting research, researchers should --

- (a) plan, and if appropriate implement, research in consultation with those with expertise concerning any special population under investigation or likely to be affected by the research;
- (b) ensure that they are equipped and qualified to work with special population groups;
- (c) plan research in such a way that the findings have a high degree of validity (for instance, does “data” really address, answer or speak to the problem?);
- (d) report their findings, and their limitations, so that these may be subject to peer review and public scrutiny;
- (e) point, where relevant, to the possibility of alternative interpretations;
- (f) respect the decision of fellow researchers to research from a variety of paradigms, and to use a range of methods and techniques;
- (g) in the communication of their findings, adhere to the principles of honesty, clarity, comprehensiveness and accountability;
- (h) honour and recognise the authority of professional codes relating to their specific disciplines; and
- (i) not misuse their positions as researchers for personal gain.

3. CONSENT

Informed consent is a basic ethical tenet of research on human populations. Researchers must not involve a human being as a subject in research without the informed consent of the research participant or the participant’s legally authorised representative. Researchers must fully recognise the possibility of undue influence or subtle pressures on participants that may derive

²⁰⁴ Some of these guidelines and principles have been adopted from the UCT research ethics guidelines, the Canadian Psychological Association and the American Sociological Association. They have been modified for the specific purpose of research on gender-based violence.

from researchers' expertise or authority, and they take this into account in designing informed consent procedures. As such:

- (a) Participation in research requires the informed, un-coerced, consent of participants.
- (b) The researcher must obtain informed consent (either written or orally) by the research participant.
- (c) Consent by research participants is considered "informed" when, in a language that is understood by participants, researchers explain:
 - the nature of the research;
 - that participants are free to participate or to decline to participate or to withdraw from the research at any time;
 - factors that may be expected to influence their willingness to participate (such as risks, discomfort, adverse effects, emotional trauma or recall, limitations on confidentiality and so on); and
 - any other aspects about the research which prospective participants inquire about, at any point during the research process.
- (d) The research participant, therefore, must have a complete understanding of the aims and processes of the research, its intended outcome as well as any consequences that may follow from its publication in the public domain.
- (e) Researchers must also explain that refusal to participate or withdrawal from participation in the research involves no penalty or consequence.
- (f) Informed consent may not be obtained *by proxy*.
- (g) Any deviation from a 'consent form' or verbal agreement must be agreed to by both parties, and signed to.
- (h) In undertaking research with vulnerable populations (e.g., youth, recent immigrant populations, the mentally ill), researchers must take special care to ensure that the voluntary nature of the research is understood and that consent is not coerced.
- (i) Payment is considered coercion under most circumstances. However, minimum payment to cover costs of attending interviews may be considered.
- (j) The research results must not be used for any other purpose other than those originally intended and consented to by both parties.
- (k) If, under such circumstances, researchers have any doubt whatsoever about the need for informed consent, they must consult with their institutions, faculties, organisations, supervisors or lecturers or with any another authoritative body with expertise on the ethics of research before proceeding with such research.

4. FORSEEABLE CONSEQUENCES

- (a) In the planning of research, researchers must consider the ethical acceptability and the foreseeable consequences of their research.
- (b) Researchers must protect participants against foreseeable physical, psychological or social harm or suffering which might be experienced in the course of the research or as a result of the research.
- (c) Researchers should be especially sensitive in their protection of the rights and interests of more vulnerable participants, such as children and the aged. When there is risk of harm, discussion of this with participants or their guardians must precede the research and be included in the informed consent procedure.
- (d) No research should be undertaken on such vulnerable subjects if the required information can be obtained by other means.

5. PARTICIPATION

- (a) Research participants must not be forced, threatened or bribed into research in any way.
- (b) Researchers must respect the right of individuals to refuse to participate in research and to withdraw their participation without prejudice to them at any stage of the research.
- (c) If conflict arises between the interests of researchers and those of research participants, the principle holds that the interests of the research participants take precedence.

- (d) The researcher must insure that participants are informed of the degree of confidentiality with which the material that they provide will be handled, prior to participation in the research.
- (e) The research should be done at a time and place at the convenience of the research participants so that their income and work is not affected in any way.
- (f) Research participants must be comfortable with and consent to the method(s) in which the research is undertaken (i.e. video, tape-recording, scribing etc.).
- (g) Researchers must always be aware of over-exhausting respondents. Researchers must be sensitive to research participants' levels of fatigue. As a general rule, interviews should be limited in time.

6. CONFIDENTIALITY

Researchers have an obligation to ensure that confidential information is protected. They do so to ensure the integrity of the research, the privacy of research participants, and to protect sensitive information obtained in research, teaching, practice, and service. When gathering confidential information, researchers should take into account the long-term uses of the information, including its potential placement in public archives or the examination of the information by other researchers or practitioners.

- (a) Confidential information provided by research participants, employees, clients, or others must be treated as such even if there is no legal protection or privilege to do so.
- (b) Information obtained in the course of research, which may reveal the identity of a participant, is confidential unless the participant agrees to its release.
- (c) The obligation to maintain confidentiality extends to members of research or training teams and collaborating organisations who have access to the information. To ensure that access to confidential information is restricted, it is the responsibility of researchers, administrators, and principal investigators to instruct staff and colleagues to take the steps necessary to protect confidentiality.
- (d) Guarantees of confidentiality and/or anonymity given to research participants must be honoured, unless there are clearly *exceptional reasons* to do otherwise. Note: need to define *exceptional reasons* (such as, "if it prevents harm to another person").
- (e) Researchers must not use research as evidence for the arrest or exposure of a research participant or client.
- (f) If the participant is involved in other activities that are endangering themselves or others, e.g. participation in murder, serious assault, kidnapping or blackmail, a different set of ethics apply and the researcher may then have to make a report on those activities. It is advised that the researcher seek legal advice before doing so.
- (g) If the 'raw data' is to be made available in any form (i.e. for submission of a higher degree) the researcher must remove *any* information that would identify the research participants in any way (even basic demographic data: "the redhead at so-and-so escort agency; medical status: HIV").
- (h) The research should not expose the specific identity or location of a research participant in any way, unless consent has been given to do so.

7. ANONYMITY

- (a) Researchers must not disclose in their writings, lectures, or other public media confidential, personally identifiable information concerning their research participants obtained during the course of their work, unless consent from individuals or their legal representatives has been obtained.
- (b) When confidential information is used in scientific and professional presentations, researchers must disguise the identity of research participants.

8. PRIVACY

- (a) Researchers must respect the privacy and dignity of the research participant on the participant's terms.

- (b) The researcher shall, at the design stage of any project, thoroughly explore the degree of invasion of privacy and the risks of breach of confidentiality that are involved in the project, weigh them against potential benefits, and make therefrom a recommendation as to whether the project should be executed, and under what conditions.
- (c) Interviews (whether focus groups or one-on-one) must be conducted in private.
- (d) Researchers must take reasonable steps to ensure that records, data, or information are preserved in a confidential manner consistent with the requirements of this Code of Ethics.
- (e) When researchers transfer confidential records, data, or information to other persons or organisations, they obtain assurances that the recipients of the records, data, or information will employ measures to protect confidentiality at least equal to those originally pledged.

9. INFORMED CONSENT IN RESEARCH FILMING OR RECORDING

- (a) Researchers must obtain informed consent from research participants prior to filming or recording them in any form, unless the research involves simply naturalistic observations in public places and it is not anticipated that the recording will be used in a manner that could cause personal identification or harm.
- (b) Researchers must never deceive research participants about significant aspects that would affect their willingness to participate, such as physical risks, discomfort, or unpleasant emotional experiences.
- (c) Researchers must provide a prompt opportunity for participants to obtain appropriate information about the nature, results, and conclusions of the research, and attempt to correct any misconceptions that participants may have.
- (d) Researchers must take reasonable measures to honour all commitments they have made to research participants.

10. INTERVENTION AND SUPPORT

- (a) Researchers and assistants are permitted to perform only those tasks for which they are appropriately trained and prepared.
- (b) The design of the study must include strategies to reduce any possible distress that may be caused to the participants by the research.
- (c) The researcher must not provide advice on any medical, psychological or legal matter, unless professionally trained to do so. If medical, psychological or legal issues or questions are raised by the research participant, the researcher must make the appropriate referrals.

11. WORKING WITH NON-GOVERNMENTAL ORGANISATIONS

- (a) The aims, objectives, operational definitions and terms of reference for the research must be reviewed and approved by the NGO or any other relevant party (such as the board of trustees), prior to the commencement of the research.
- (b) The nature, purpose and the intent of the research must be explicit and in writing.
- (c) If the NGO agrees to the research, the NGO has the right to review and comment on the research prior to publication.
- (d) The NGO will ensure that the clients they introduce to the research understand the implications of being photographed, audiotaped, appearing on TV/video or giving their real names.
- (e) In cases where clients do not want to be identifiable, the NGO will inform them of their right to speak to the researcher using pseudonyms.
- (f) The NGO will also encourage journalists to practise responsible journalism by respecting the confidentiality of clients and obtaining written permission from the participants in the event of the publication of any visual materials featuring their clients.
- (g) The NGO's relationship with their clients must be treated with respect and confidentiality at all times.
- (h) The NGO will not be responsible for any costs or injuries incurred by the researcher or his/her organisation during the course of the research.

12. STUDENTS

(This section details additional obligations on students who would like to conduct research within NGO structures)

- (a) Students must obtain appropriate approval from host institutions or organisations prior to conducting research and must provide detailed and accurate information about their research proposals.
- (b) NGO's may prescribe to prospective researchers, what areas of research need to be undertaken.
- (c) Research proposals submitted to NGO's must be approved by the student's faculty (the professor, supervisor or lecturer).
- (d) The faculty (the professor, supervisor or lecturer) should have the primary responsibility for ensuring that human subjects used in social research are protected adequately by the application of the appropriate code of ethics to every project involving human subjects in their faculty. The NGO must agree to and add to this code of ethics.
- (e) The faculty should ensure the documentation relating to consent and intent of the research is complete.
- (f) The student/researcher should make every attempt to fully understand the mission, vision and operational definitions of the host organisation.
- (g) As a general rule, student researchers should always consider methods other than interviewing human subjects to acquire research information.
- (h) The student must submit a copy of the full research to the NGO (including interviews and other "raw data"). Refusal or negligence to submit research work will be considered a breach of the agreement with the NGO.
- (i) Failure to forward the research should be considered a limitation of the research methodology.
- (j) The NGO has a right to archive the research and to utilise the results for advocacy purposes.
- (k) The NGO has the right to withdraw from the research at any time.

13. WORKING WITH GOVERNMENT AND GOVERNMENT RECORDS

- (a) Researchers are not "entitled" to government records. Ethical access must be negotiated and all principles within this Code of Ethics apply to working with government.
- (b) The researcher should make a reasonable effort to ascertain whether other organisations are working with the state (in a similar field) to avoid compromising both parties research.
- (c) The aims, objectives, operational definitions and terms of reference for the research must be reviewed and approved by the state department, prior to the commencement of the research.
- (d) The nature, purpose and the intent of the research must be explicit and in writing.

14. PUBLICATION OF FINDINGS

- (a) Copies of reports/documentaries should be forwarded to the NGO who participated in the research, prior to publication. Feedback sessions should also be considered as a way of sharing research findings with participants and any other relevant parties.
- (b) If the language of the report is very technical or academic some attempt should be made to translate the content of the report for the benefit of any NGO or NGO client that is unable to understand it (i.e. in an executive summary format).
- (c) If appropriate, the NGO should have the right to check the analysis and nature of the reporting to avoid sensationalism.
- (d) If reasonably possible to do so, the research participant(s) should be allowed to check whether the report accurately reflects their contribution to the project.
- (e) The research report must avoid using language that directly or indirectly discriminates against anyone on the basis of race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.
- (f) The researcher shall make efforts to anticipate and prevent misunderstandings and misuse of reports within the institution by careful presentation and documentation in original reports, and follow-up contact with institutional users of those reports.

- (g) If a research report has been altered, intentionally or inadvertently, to the degree that its meaning has been substantially distorted, the researcher shall make reasonable attempts to correct such distortions.
- (h) When research requires maintaining “personal identifiers” in databases or systems of records, researchers must delete such identifiers before the information is made publicly available.
- (i) The NGO (or host organisation) is entitled to pursue independent arbitration against the researcher or research organisation if the research findings are in any way falsified, sensationalised or breach any conditions of the working agreement between the host organisation and the researcher.

15. CONFRONTING ETHICAL ISSUES

If, under such circumstances, researchers have any doubt whatsoever about the ethical implications of their research, they must consult with their Institutions, faculties, supervisors or lecturers or any another authoritative body with expertise on the ethics of research before proceeding with such research.

University of Cape Town

Appendix two: Workshop outlines

2.1 Consortium on VAW: Complainant's Workshop 1: Introduction

Session	Activity	Content	Time	Resources	Who leads
1 Intro	Introduction	<ul style="list-style-type: none"> • Introduction to: <ol style="list-style-type: none"> i. Us: names ii. Inst Crim & Consortium iii. previous work iv. Ask if they know why we are working with the group: Do you know why are we here, what were you told? v. Stress that we are really interested in hearing about their experiences – we all come with different experiences and can learn from one another. vi. The sessions will be an exchange – if they have any uncertainties about the systems we are talking about we can explain them. vii. Any questions about what we're going to do? What are your thoughts on all this? 	15 minutes	<ul style="list-style-type: none"> • Flip chart paper • pens 	
	Icebreaker	<ul style="list-style-type: none"> • Give each participant outline portrait (Penny & I as well) • Give time for group to 'dress' their portrait – colour in with favourite colours, add any detail wanted. • Ask c.4 questions: <ol style="list-style-type: none"> i. How many children do you have? (give cut out 'little people' to add to portrait.) ii. Favourite food (draw or write on) iii. Where are you from? (where born, or live now) iv. How old are you? (give coloured strips representing different age groups: 16-24, 25-34, 35-44, 45-54, 55-64, 65 and over) – participants can add specific age if they are happy to as well. 	5 mins 5 –10 mins	<ul style="list-style-type: none"> • Outline portraits • Pens • Children outlines • Coloured age strips • Coloured & plain paper 	

		<ul style="list-style-type: none"> • Ask each participant to share the details of their profile with their neighbour • Each to report back on partner's profile (getting to know each other – building trust etc.) • N.B. These portraits will be built on each session 	5 mins 10 mins		
Setting ground Rules		<ul style="list-style-type: none"> • First make clear that their confidentiality is our primary concern – we will not use anybody's names when we write up the research etc. and that they may leave the sessions whenever they wish if it becomes too difficult or painful. • ask if they've worked in groups before – explain our working style so they know what to expect & ask about their needs/hopes: <ol style="list-style-type: none"> i. How would you like these groups to be run? ii. What needs to be in place for you to take part and talk in a group? iii. Do you find it difficult to talk when others are talking or laughing? iv. What are your fears about being part of this group? v. What does it feel like if people talk about the group to other people? vi. It is important that you only share ideas and information that you are happy and comfortable to share vii. What do you think we as a group should do if someone does talk about what goes on in the group to other people? viii. The most important thing is that we respect everybody else in the group and treat them as we want to be treated. 	15 – 20 mins		
		<ul style="list-style-type: none"> • Unpack terms 'confidentiality' and 'trust' as a group – ensure shared meanings and why they are important • Draw up a list of group rules which we will reiterate at the start of each session • Ask if the group would be happy for us to tape-record some of the sessions • Talk about how these sessions are about mutual learning and exchange – everyone has vital information to contribute 			
Closing / wrap up		<ul style="list-style-type: none"> • Outline the topics we want to cover in the next few weeks • Ask what times would suite the group & ask if they would like weekly reminders or 'invitations'. • Clay models – in partners – mould into shapes • Tea & coffee 	5 mins 5 mins 15 mins	<ul style="list-style-type: none"> • Tea / coffee / biscuits 	

2.2 Consortium on VAW: Complainant's Workshop 2: Support Choices – focus on health and SAPS

Activity	Content	Time	Resources	Who leads
Intro	<ul style="list-style-type: none"> Recap on group rules – need for confidentiality, trust etc Re-confirm that their names will never be used Ask if we can record parts of the sessions 	5 mins		
Icebreaker	<ul style="list-style-type: none"> Develop portraits further -Where do you come from (where born, where live now?) -Jobs: do you have a job, have you ever had – what? (make symbols?) -What do you like to do? E.g. spend time with friends/family or whatever Each to report back on another's portrait 	15-20 mins	<ul style="list-style-type: none"> Pens/crayons Job symbols 	
Time line of services used	<ul style="list-style-type: none"> Divide group into 2 or 3 sections. Give each a set of buildings/symbols representing the main support services: family, friends, religious organizations, schools, counseling organizations (NICRO, MOSAIC etc) social workers, health, SAPS, Justice & ask them to chart case study 'Evelyn's' journey over time (what order does she go to each support, after how much time, and why?). Each group to report back. 	20 – 30 mins	<ul style="list-style-type: none"> Org symbols Large paper pens press-stick 	
Discussion of service use	<ul style="list-style-type: none"> Discussion: 'Why do you think Evelyn goes to X first' 'Which services are the most difficult to go to' 'How do the different people treat her?' 'Does she understand what her options are?' etc. 	20-30 mins		
Health & SAPS	<ul style="list-style-type: none"> Unpack experiences with health & SAPS further Outline positive duties of SAPS 			
Closing / wrap up	<ul style="list-style-type: none"> Clay models – mould partners into shapes 	5 mins		
Tea / coffee		15 mins	Tea , coffee, milk, sugar, biscuits	

2.3 Consortium on VAW: Workshop 3: Focus on the Court system

Activity	Content	Time	Resources
Intro	<ul style="list-style-type: none"> Recap on ground rules – confidentiality, trust etc. 	5 mins	
Icebreaker	<ul style="list-style-type: none"> Add to portraits – cut out things from magazines which represent you in some way. 	10 mins	<ul style="list-style-type: none"> magazines
Introduction to DVA	<ul style="list-style-type: none"> Explore their understanding of the DVA: <ul style="list-style-type: none"> -‘Have you heard of DVA?’ -‘What do you know about the DVA?’ -‘What do you think it can do for women?’ etc Back to Evelyn: ask group to outline step by step process for her to achieve a PO, breaches etc as they understand it including obstacles and successes What happens when Evelyn goes home with IPO/PO in short & long term? 	20 mins	<ul style="list-style-type: none"> Flip chart & paper
Training on DVA	<ul style="list-style-type: none"> Outline step by step process of achieving PO, breaches and laying a separate criminal charge etc. using training posters 	1 – 1 ½ hours	<ul style="list-style-type: none"> Training posters
Closing / wrap up	<ul style="list-style-type: none"> Ask each person to close eyes for a few minutes and imagine their favourite place. Then describe it to the group, including why it is important. 	5-10 mins	
Tea		20 mins	

Appendix four: Interview schedule

Research Schedule: Experiences of Complainants of the DVA

1. Interviewee Details

- Area of residence
- Age
- Race
- First language
- Relationship to abuser

2. Sources of support (esp. health)

- What other services have you made use of in the past: social worker, health system etc.? Good, bad, indifferent?
- Access to the **health sector** -is it a place you go to for help or not. If yes, why, if no, why not ?
- Who would you access?
- Experiences with the health sector and health workers : both positive and negative in terms of attitudes, blame, nature of medical care received
- Ideas, suggestions and recommendations for improved health sector response to DV i.e what would they like to have happen when access the health sector and how should health and criminal -justice work together to provide more comprehensive service..
- Who else have you informed about the abuse – family, friends, professional?

3. SAPS

- Which police station did you go to?
- Did the SAPS inform you of your rights and legal options (PO and/or criminal charge)
- Did they take a statement? What did they ask?
- Did you lay a criminal charge? If so, what?
- Did they refer you anywhere else – shelter, health care etc?
- Were any weapons confiscated?
- Time span between reporting and receiving assistance?
- Were you accompanied to collect property?

4. Legal System

- Have you used the legal system before – against the abuser or at all?

A. Civil

Application

- After how many years of abuse did you apply for a PO?
- Why did you finally decide to apply for a PO?
- How did you find out about the PO?
- [What were the main types of abuses that you asked to be prevented in the Order?]
- What did you expect/hope the PO would do for you?
- Do you think a PO still works even if the abuser has not been served with a copy?

Family Court

- Which Court did you go to?

Clerks

- Did the Clerk explain how to apply for a PO or give assistance with the application?
- Did you understand what was going to happen, what your options were etc?
- Did you have any language problems (e.g. talking to Clerk or filling in forms)
- Did the Clerk explain what to do if there is a breach of the Order?

Volunteers

- Did a volunteer help you apply for a PO?
- Did they explain the process to you?
- Did you understand what was going to happen, what your options were etc?

Translators

- Were you able to use your first language?
- Were you given the option of using a translator?
- Were they helpful?

Magistrates

- Did the Magistrate explain the process to you?
- Did you understand what was going to happen, what your options were etc?
- Were they helpful/friendly/approachable?

Costs

- How much did it cost you to apply for a PO? E.g. days off work, time spent in Court, travel, daycare, cost of service etc.

Breaches

- What happened when your partner was served with the order?
- Did you have any problems with your partner between the IPO and PO?
- Did you have any problems with your partner after the PO?
- Did you report any breaches – if not why?
- Did the SAPS arrest the Respondent if there was a breach?
- Did the case go to court? If not, why?

B. Criminal Court

- Which Court did you go to?
- Did you have a lawyer or legal aid?

Clerks

Prosecutors

- Did you have a pre-trial consultation?
- Did they explain the trial process?
- Did they check the statement?

Court Orderlies

Translators

Magistrates

- Did the Magistrate explain the process to you?
- Did you understand what was going to happen, what your options were etc?
- Were they helpful/friendly/approachable?

Bibliography

- Abrahams, Jewkes & Lausher. (1999). **Men's Relationships With and Abuse of Women** Medical Research Council
- Amnesty International. (2001). **India: The battle against fear and discrimination. The impact of violence against women in Uttar Pradesh and Rajesthan.** www.amnesty.org (31/05/01)
- Artz, Lillian & Rondi, Alanna; (2000) **Violence Against Women as an Obstacle to Development.** (unpublished position paper)
- Artz, Lilly. (1999) '**Violence Against Women in Rural Southern Cape: Exploring Access to Justice Within a Feminist Jurisprudence Framework**': Institute of Criminology, University of Cape Town
- Bellack, Alan; Hersen, Michel; Morrison, Randall & Van Hasselt, Vincent (eds) (1988) **Handbook of Family Violence.** New York: Plenum Press
- Bennett, J. (1999). **A Preliminary Assessment of Current South African Research Being Undertaken (or completed) on connections between Gender-based Violence, Peace-building and Development Initiatives in South Africa.** African Gender Institute, University of Cape Town.
- Bird, Roger (District Judge) (1996) **Domestic Violence – The New Law. Part IV of the Family Law Act 1996.** Bristol. Jordan Publishing Limited.
- Bollen, Artz, Vetten & Louw. (1999) **Violence against women in metropolitan South Africa: A Study on Impact & Service Delivery.** Institute of Security Studies, Cape Town
- Bridgeman, J & Millns, S. (1998). **Feminist Perspectives on Law: Law's Engagement With the Female Body.** London: Sweet & Maxwell.
- Brophy, J. & Smart, C. (eds). (1985) **Women in Law: Explorations in Law, Family & Sexuality.** London: Routledge & Kegan Paul plc.
- Budlender, Debbie & Goldman, Tanya (1999) **Making the Act work: A Research Study into the Budget Allocations for the Implementation of the Domestic Violence Act.** Cape Town: Gender Advocacy Programme
- Budlender, D (2000) **Doing something with nothing: The family center pilots.** Cape Town. University of Cape Town Law Race & Gender Research Unit

- Bunch, C. & Carrillo, R (eds) (1991). **Gender Violence: A Development and Human Rights Issue**. New York: Centre for Women's Global Leadership
- Bunch, C & Frost, S (1997) **Women's Human Rights: An Introduction** (unpublished article) www.cwgl.rutgers.edu/articles.htm (11.05.01)
- Burman, S; Dingle, E & Glasser, N. (2000). **The South African Family Court: A First World Ideal in a Second World Country**. (Paper presented at the 10th World Conference of the International Society of Family Law, Brisbane, Australia). Centre for Socio-Legal Research, University of Cape Town.
- Butegwa, F. **International Human Rights Law & Practice: Implications for Women** www.cwgl.rutgers.edu/articles.htm (11/05/01)
- Cassell, C & Symon, G (eds) (1994) **Qualitative Methods in Organisational Research** London: Sage
- Centre for Socio-Legal Research (1999). **Report Submitted to the department of Justice on the Pilot Project Cape Town Family Court Centre**. Centre for Socio-Legal Research, University of Cape Town.
- Center for Women's Global Leadership (1994) **Gender Violence and Women's Human Rights in Africa**. New York: Centre for Women's Global Leadership
- Cole, Josette (March 2000) **Summary Report: Consultative Workshop on Gender-Based Violence, Development and Peace-Building Research Initiatives – Making the Connections?;** Social Trends Development Services C.C. for Oxfam Canada
- Collins (1986). **The Collins Dictionary and Thesaurus**. London & Glasgow: William Collins Sons & Co Ltd.
- Combrinck, H (1998) **Positive State Duties to Protect Women from Violence: Recent South African Developments** in Human Rights Quarterly Volume 20, Number 3, August 1998. Cincinnati: The John Hopkins University Press
- Dalton, C. (1988). 'Where We Stand: Observations on the Situation of Feminist Legal Thought'. In Olsen, F.E. (ed). (1995). **Feminist Legal Theory I: Foundations and Outlooks**. Dartmouth
- Daly, K. (1991). **Impact of Feminist Theory on Studies of Law and Crime**. Unpublished paper prepared for presentation and discussion at the American Society of Criminology 1991 Annual Meeting, San Francisco, November 20-23.
- Daly, K. (1997). 'Different ways of conceptualizing sex/gender in feminist theory and their implications for criminology' in **Theoretical Criminology**. (1997) London: Sage Publications.

- De Beer, Frik & Swanepoel, Hennie (2000) **Introduction to Development Studies Second Edition**. Oxford. Oxford University Press
- Deen, Hanifa (1998) **Broken Bangles**. New Delhi, India: Penguin
- Dobash, R.E. & Dobash, R (1979) **Violence Against Wives: A case Against the Patriarchy**. Somerset: Open Books Publishing Ltd
- Dobash, R.E. & Dobash, R (1992) **Women, Violence & Social Change**. London: Routledge
- Dobash, R.E. & Dobash, R (eds) (1998) **Rethinking Violence Against Women**. London: Sage Series on Violence Against Women
- Duner, B. (ed) (1998). **An End to Torture: Strategies for its Eradication**. London & New York: Zed Books
- E.U. Foundation for Human Rights in South Africa **A Resource Manual on Women, Gender, Human Rights & the Law: Making Women's Rights Real**. The Gender Manual Consortium
- Fonow, M. M. & Cook, J.A. (1991). **Beyond Methodology: A Feminist Scholarship as Lived Research**. Bloomington: Indiana University Press.
- Forrest, D. (ed). (1996). **A Glimpse of Hell: Reports on Torture Worldwide**. (For Amnesty International) New York: New York University Press.
- Fox Keller, E. (1978). "Gender and Science" in Harding, S & Hintikka, M (eds) (1978). **Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology, and Philosophy of Science**. London. D. Reidel Pub. Co.
- Freire, P. (1972). **The Pedagogy of the Oppressed**
- Friedman, Michelle. (1999) **Effecting equality: translating commitment into policy and practice** in Agenda 1999 Monograph. Durban: Agenda/African Gender Institute. pp.2-17
- Gelles, R.J (1983) 'An Exchange/Social Theory' In Finkelhor, D. et al (eds) **The Dark Side of Families: Current Family Violence Research**. pp. 151-165. Beverly Hills, CA: Sage
- Green, D. (1999) **Gender Violence in Africa**. London: Macmillan Press Ltd.
- Hadi, A; **Women's Productive Role and Marital Violence in Bangladesh**. Dhaka, BRAC Centre.

- Hadi, A; **Prevalence and Correlates of the Risk of Sexual Violence Within Marriage in Bangladesh.** Dhaka, BRAC Centre.
- Hansson, D. (1995). 'Agenda-ing gender: feminism and the engendering of academic criminology in South Africa' in Rafter, N.H. & Hedensohn, F. (eds) (1995) **International Feminist Perspectives in Criminology: Engendering a Discipline.** Buckingham: Open University Press.
- Harding, S (ed) (1987) **Feminism and Methodology: Social Science Issues.** Indiana University/Open University Press
- Harding, S & Hintikka, M.B. (eds) (1978) **Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology & Philosophy of Science.** London: D. Reidel Publishing Company
- Harris, A.P. (1990). **Race and Essentialism in Feminist Legal Theory.** In Weisberg, D.K. (ed) (1993) **Feminist Legal Theory: Foundations**
- Hartsock, N (1987) 'The Feminist Standpoint: Developing the ground for a specifically feminist historical materialism' in **Feminism and Methodology.** Harding; S (ed) Indiana University/Open University Press
- Heritage, J (1997) **Conversation Analysis and Institutional Talk in Qualitative Research** Silverman, D (ed) New Delhi: Sage Publications
- Hilton, Z (ed) (1993) **Legal Responses to Wife Assault: Current Trends and Evaluation.** California, Sage
- Himmelstrand, Ulf; Kinyanjui, K; & Mburugu, E (eds) (1994) **African Perspectives on Development: Controversies, Dilemmas & Openings** New York: St Martin's Press
- Huda, S; **Bangladeshi Women and the Law** (unpublished paper)
- Human Rights Watch. (1999) **Crime or Custom: Violence Against Women in Pakistan.** New York, Human Rights Watch
- Hyden, Goran. (1994) 'Part VII Conclusion: Changing Ideological & Theoretical Perspectives on development' in **African Perspectives on Development: Controversies, Dilemmas & Openings.** Himmelstrand, U; Kinyanjui, K & Mburugu, E (eds).. London. James Currey Ltd.
- International Center for Research on Women (September 1999) **Domestic Violence in India: A Summary Report of Three Studies**

- Jacobson, Ruth (June 1993) **Domestic Violence as a Development Issue**. in Focus on Gender Vol. 1, No. 2
- Jagwanth, S; Schwikkard, P.J. & Grant, G. (1994). **Women and the Law**. Pretoria: HSRC Publishers.
- Jewkes, Penn-Kekana, Levin, Ratsaka, Schrieger (1999) **Violence against women in 3 South African Provinces**. Medical Research Council, Pretoria
- Johnson, H & Mayoux, L 'Investigation as Empowerment: Using Participatory Methods' in **Finding Out Fast: Investigative Skills for Policy & Development** Open University Press 1998
- Kelly, L. (2001) **Specific Domestic Violence Legislation: Examples and Advantages**. Prepared for the Greater London Authority Domestic Violence Advisory Group. www.domesticviolencedata.org/3_notice/forum/liz_legn.htm (31.05.01)
- King, H 'The Qualitative Research Interview' in C. Cassell and G. Symon (eds) **Qualitative Methods in Organizational Research** London: Sage 1994
- Klugman, Barbara. (1999) **Mainstreaming gender equality in health policy** in Agenda 1999 Monograph. Durban: Agenda/African Gender Institute. pp.48-70
- Koss, M. (2000) **Blame, Shame, and Community: Justice Responses to Violence Against Women**. A Paper Based on the American Psychological Association Distinguished Contributions to Research in Public Policy Award Address. University of Arizona.
- Lerman, L. (1983) **Prosecution of Spouse Abuse: Innovations in Criminal Justice Response**. Washington. Center for Women Policy Studies
- Macdonald, Sprenger, E & Dubel, I (1997) **Gender and Organisational Change: Bridging the Gap Between Policy and Practice**. Amsterdam. Royal Tropical Institute
- MacKinnon, C. A. (1987). **Feminism Unmodified: Discourses on Life and Law**. U.S.A: Harvard College
- Maguire, Mike; Morgan, Rod & Reiner, Robert (eds) (1997) **The Oxford Handbook of Criminology, Second Edition**. New York: Oxford University Press Inc.
- Mama, A. (May 2000) **AGI Newsletter – Vol 6**
- Marcus, I. (1994) 'Terrorism in the home' in Albertson, M & Mykitiuk, R (eds) **The Public Nature of Private Violence**. London: Routledge

- Mbilyini, M. (1992) 'Research Methodologies in Gender Issues' in **Gender in Southern Africa: Conceptual and Theoretical Issues** Ruth Meena (ed), SAPES Books, Harare
- Mohanty, C. (1991) "Introduction – Cartographies of Struggle: Third World Women and the Politics of Feminism" in Mohanty, C; Russo, A & Torres, L. **Third World Women and the Politics of Feminism**. Bloomington: Indiana University Press.
- Morris, A. (1993) **Law Reform Initiatives on Violence Against Women: Successes and Pitfalls** (Occasional Papers in Criminology New Series: 1). Presented at the International Conference of Women Judges held to celebrate the centenary of women's suffrage in New Zealand. Wellington. Institute of Criminology, Victoria University of Wellington
- Morsy, S (1988). "Fieldwork in My Egyptian Homeland: Toward the Demise of Anthropology's Distinctive-Other Hegemonic Tradition" in Altorki, S & El Soh, C.F. (eds) **Arab Women in the Field: Studying Your Own Society**. New York: Syracuse University Press
- Moser, C (1991). "Gender Awareness: The Missing Element in the Third World" in Wallace, T & March, C (1991) (eds) **Changing Perceptions: Writings on Gender & Development**. Oxfam
- Moul, K (2000). **The court doors may be open, but what lies behind those doors? An observation of the workings of the Wynberg Sexual Offences Court**. Cape Town: Institute of Criminology, University of Cape Town
- Narayan, U (1989) 'The Project of Feminist Epistemology: Perspectives from a Non-Western Feminist' in Jaggar, A & Bordo, S (eds) **Gender/Body/Knowledge. Feminist Reconstructions of Being and Knowing**. New Brunswick: Rutgers University Press
- National Network on Violence Against Women (1996). Conference proceedings
- Oakley, A. (1981). "Interviewing women: a contradiction in terms" in Roberts, H. (ed) **Doing Feminist Research**. London: Routledge & Kegan Paul.
- Parenzee, P; Artz, L & Moul, K (2001). **Monitoring the Implementation of the Domestic Violence Act: First Research Report 2000-2001**. Institute of Criminology, University of Cape Town: South Africa
- Patai, D (1997) **U.S. Academics and Third World Women: Is Ethical Research Possible in Women's Words: The Feminist Practice of Oral History** Berger Gluck, S & Patai, D (eds) Routledge, London & New York
- Plummer, Ken (1995) 'Women's Culture & Rape Stories' and 'Recovery Tales' from **Telling Sexual Stories: Power, Change & Social Worlds**. London & New York: Routledge

- Policing and Reducing Crime Unit of the Home Office, U.K. (2000) **Reducing Domestic Violence... What works? Briefing Notes**
www.homeoffice.gov.uk/violenceagainstwomen (31.05.01)
- Pruitt, L. (1994). **A Survey of Feminist Jurisprudence**. In University of Arkansas at Little Rock Law Journal (Spring 1994 – Number 183).
- Rahman, Q. (1991?). **Reconceptualizing Violence Against Women as a Development Issue**. Center for Women's Global Leadership. Rutgers University Publications.
- Reihare, S. **Feminist Interview Research in Feminist Methods in Social Research** OUP 1992
- Reilly, N. (ed) (1996). **Without Reservation: The Beijing Tribunal on Accountability for Women's Human Rights**. Center for Women's Global Leadership. Rutgers University Publications.
- Reinharz, S. (1992). **Feminist Methods in Social Research**. New York: Oxford University Press.
- Russel, D.E.H. (1992). **Wife Rape and Battery as Torture**. Unpublished paper for the Social Justice Research Project. Cape Town: Institute of Criminology, University of Cape Town.
- Seddon, N. (1993). **Domestic Violence in Australia: the legal response** (Second Edition). Sydney. The Federation Press Pty Ltd.
- Sen, G & Grown, C (1987) 'Gender and Class in development Experience' in **Development, Crises and Alternative Visions: Third World Women's Perspectives**. Development Alternatives with Women for a New Era
- Smart, C. (1989). **Feminism and the Power of Law**. London: Routledge.
- Smith, P. (ed) (1993) **Feminist Jurisprudence**. Oxford: Oxford University Press.
- South African Law Commission (1999). **Research Paper on Domestic Violence**.
- Special Rapporteur on Violence Against Women, Its Causes and Consequences, UN Commission on Human Rights. **A Framework for Model Legislation on Domestic Violence**. www.unhchr.ch/html/menu4/chrrep/5396a2.htm
- Stanton, S; Lochrenberg, M & Mukasa, V. (1997) **Improved Justice for Survivors of Sexual Violence? Adult survivors' experiences of the Wynberg Sexual Offences Court and associated services**. Rape Crisis Cape Town, African Gender Institute: University of Cape Town, Human Rights Commission.

- Taylor, V (2000) **Marketisation of Governance: Critical Feminist Perspectives from the South**. DAWN Publication. Cape Town. SADEP
- Taylor, V; Mager, A & Cardoso, P (eds) (2000) **Cracks in the Edifice: Critical African Feminist Perspectives on Women & Governance**. DAWN Publication. Cape Town. SADEP.
- The Times of India. (09.03.01) **New legislation on domestic violence against women**.
- Thomas, A; Chataway, J & Wuyts, M (eds) (1998) **Finding Out Fast: Investigative Skills for Policy and Development**: London: Sage Publications
- United Nations Children's Fund. (2000). **Domestic Violence Against Women and Girls**. Innocenti Digest Number 6. May 2000. Florence. Innocenti Research Centre.
- Visvanathan, N; Duggan, L; Nisonoff, L; Wieggersma, N (eds) (1997) **The Women, Gender & Development Reader**. London. Zed Books
- Womens Aid Federation of England. (2000) **Domestic Violence: Your Legal Rights** (leaflet)
- Women and Law in Southern Africa. **Making the Law Work For Women: Challenging the Legal System and Customary Law**. Leaflet
- Women and Law in Southern Africa. (2000) **In the Shadow of the Law: Women and Justice Delivery in Zimbabwe**. Harare. Women and Law in Southern Africa Research Trust.
- Women and Law in Southern Africa (2000). **The Justice Delivery System and the Illusion of Transparency (Mozambique)**. Maputo. Women and Law in Southern Africa Research Trust.
- Young, M; Byles, J & Dobson, A. (2000) **The Effectiveness of Legal Protection in the Prevention of Domestic Violence in the Lives of Young Australian Women** in Australian Institute of Criminology: Trends and Issues in Crime and Criminal Justice March 2000. Canberra. Australian Institute of Criminology
- Zeldin, T. (1994). **An Intimate History of Humanity**. London: Vintage

Newspaper Articles

- Cape Argus. 06/03/01. 'Wife Killer Has Sentence Reduced.'
- Crime and Conflict 6. Winter 1996. 'Man shoots wife'

- Mail & Guardian. 14-19/04/00. '7,000 police still needed'
- Sunday Argus. 16/06/01. 'Activists fuming at wife killer's 'lenient' six-year sentence.'
- The Sunday Independent. 04/00. 'Government fails to do its bit for rape survivors'
- The Times of India. 27/05/01. 'Empowerment of women still a distant dream'.

Policy and Legislation Documents:

- **Beijing Platform for Action**
(13.04.00) <http://www.iisd.ca/linkages/4wcw/dpa-034.html>
- **Convention for the Elimination of All Forms of Discrimination Against Women: First South African Report (1997)**
(5.7.00) www.polity.org.za/govdocs/reports/cedaw1.html
- **Department of Justice Gender Policy Statement: Balancing the Scales of Justice Through Gender Equality (2nd Edition) (May 1999)**
(11.04.00) <http://www.doj.gov.za/DOCS/POLICY/gender01.html>
- **Domestic Violence Act, No. 116 of 1998, 02.12.98** in Government Gazette No. 19537
- **Masimanyane CEDAW Working Group. (1998) 'NGO Shadow Report to CEDAW South Africa - Focus: Violence against Women'**
(17.03.00) <http://womensnet.org.za/pvaw/campaigns/cedawsh.htm>
- **South African Constitution**
(15.04.00) www.constitution.org.za/drafts/sacon96.htm
- **SADC Declaration on the Prevention and Eradication of Violence Against Women and Children**
(06.05.00) <http://www.sadc.int/gender/gender.htm>
- **South African National Crime Prevention Strategy: Reducing Crime and Violence: Dealing With the Causes and Opportunities**
(29.05.00) www.ncps.rrc.co.za
- **South African Police Service (1999). 'Domestic Violence: The New Approach'**
(11.05.00) <http://www.saps.co.za/domestic/index.htm>
- **United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

(13.04.00) www.un.org/womenwatch/daw/cedaw/frame.htm

- **UN Declaration on the Elimination of Violence Against Women**
(17.03.00) <http://womensnet.org.za/pvaw/laws/declaration.htm>
- **U.S. Violence Against Women Act: 2000**
(10.04.02) http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_public_laws&docid=f:publ386.106.pdf

Websites:

- Development Alternatives with Women for a New Era website: About DAWN, Research Themes, Global Advocacy, Regional Engagements, Publications/Resources
www.dawn.org.fj (12.04.2001)
- Home Office. **Government Policy Around Domestic Violence**
www.homeoffice.gov.uk/cpd/cpsu/domviol98.htm
- NICRO Women's Support Centre (1998) Statistics on Violence Against Women in South Africa and Internationally
<http://womensnet.org.za/pvaw/understand/nicrostats.htm> (3.17.00)
- Ontario Women's Directorate website: www.gov.on.ca/mczcr/owd/english

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