

Confronting the scourge of violence against South Africa's women

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Thousands of women throughout South Africa participated in the #TotalShutDown marches to draw attention to what the mainstream media has described as “the war on women”. The nation-wide grassroots mobilisation has been distinctly feminist, articulating anti-patriarchy sentiments. What challenges

need to be confronted in order to affirm South African women’s rights to safety, security and equality?

Gender-based violent crimes within families, communities and society at large have been increasing at an alarming rate. The statistics are grim, with one in two women predicted to experience some form of violence within their lifetimes. Over time the South African government has drafted various pieces of legislation and policies to address violence against women. Although acknowledged for creating an infrastructure to enable effective support for women, there is currently much criticism of state institutions for poor interventions, few prosecutions and inadequate implementation of policy.

In the organised waves of protest against male violence, it is important to reflect on what the state offers, why it consistently fails to deliver and what could be put in place to make its programmes work? The following South African

legislation in some way addresses gender violence in the country:

The Constitution of the Republic of South Africa, Act 108 of 1996. Chapter two of the South African Constitution, the Bill of Rights, protects the rights of all South Africans. These include the rights to equality, dignity and freedom from all forms of violence, maltreatment, abuse and exploitation while protecting access to justice and fair treatment (amongst others).

The Domestic Violence Act (DVA), Act 116 of 1998 was intended to provide victims of domestic violence with protection from abuse. The DVA takes account of the variety of family and co-residential relationships existing in South Africa within which violence can occur.

The Criminal Law (Sexual Offences and Related Matters) Amendment Act, Act 32 of 2007. This Act is more specific than the DVA in that it defines rape, sexual assault, compelled rape or sexual assault, and the compelling of persons older than 18 years to witness a sexual offence. All the aspects of gender-based violence referred to in the Sexual Offences Act are covered in the DVA, with the main difference being the relationships between victims and



perpetrators. The DVA refers to “an intimate relationship” whereas this does not have to be the case under the Sexual Offences Act.

ACTIVATING THE LEGISLATION TO EMPOWER VICTIMS OF ABUSE

In order to effectively enact the various pieces of legislation, *The National Policy Guidelines for Victim Empowerment* (NPGVEP) were developed to ensure a co-ordinated, multi-sectoral and departmental approach to addressing the needs of victims (women, domestic violence and rape survivors, abused children, abused elderly people, abused people with disabilities, victims of trafficking, farmworkers and others) (Republic of South Africa, Department of Social Development, 2009:14). Based on these identified groups, the NPGVEP also invoked a number of Acts and Guidelines such as the Constitution, the DVA, the Children’s Act, Act 38 of 2005, and international frameworks such as the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

These guidelines determine which national government departments, civil society organisations, and academic and research institutions would play a key role and *work together* to ensure effective implementation and thereby empower survivors of violence. Several departments and government entities now comprise the core of the Victim Empowerment Management Forum (Republic of South Africa, Department of Social Development, 2009:17). They are the Department of Social Development (DSD), which is the lead and co-ordinating Department, the Department of Justice and Constitutional Development (DoJCD), the South African Police Services (SAPS), the Department of Correctional



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Services (DCS), the Department of Health (DoH), the Department of Education (DoE), Provincial Victim Empowerment Programme coordinators from provincial Departments of Social Development and relevant civil society organisations, academic and research institutions.

The NPGVEP was followed by the *National Policy Framework: Management of Sexual Offence Matters*, which attempted to enhance its effectiveness. In addition to the victims of violence identified by the NPGVEP, the framework importantly added Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons, immigrants and refugees, and awaiting-trial detainees and incarcerated offenders. The additional entities that then became relevant were the National Prosecuting Authority (NPA), the Department of Women, Children and Persons with Disabilities (DWCPD), the Department of Basic Education (DBE), Legal Aid of South Africa and the National House of Traditional Leaders (NHTL).

The DWCPD was later dissolved, and when the Department of Women (DoW) within the Presidency was established it was probably assumed that this would now fall to the DoW, although this is not indicated on its website. The various pieces of legislation, policies and treaties provide an armament of strong protection for abused women and children irrespective of social background, nationality

or sexual orientation. Yet as the protest marches suggest, good policy if not effectively applied becomes inconsequential. What challenges then do victims of gender violence face when reporting cases, charging perpetrators or seeking protection?

CHALLENGES FACING THE IMPLEMENTATION OF ACTS

- *Problem of socio-cultural and political discourses:* Although it is reasonable to assume that there is often a lag between drawing up Acts and their implementation, action is often weakened by prevailing socio-cultural practices and political discourse. While 2018 celebrates 20 years of the DVA (Republic of South Africa, 1998), there are media reports on the complicity of some senior state officials in sexist stereotyping or acts of violence against women (including their intimate partners). Reporting of violence has thus been inhibited by a social environment in which hegemonic male-dominated systems and discourse persist and where women are frequently ‘blamed’ for their own abuse. The lack of empathy and support adds to their trauma. CEDAW (Republic of South Africa, Department of Social Development, 2009:10) recommended adopting measures to start a dialogue about socio-cultural practices and institutions that perpetuate prejudices, misogyny, heteronormativity and gender inequality.
- *Strains of the family context:* The family has become the site of extremely violent incidents in South African society – both for women and children. Studies by the Centre for the Study of Violence and Reconciliation show that more than 50% of women in Gauteng have been victims of violence with about 80% of men in these studies admitting to >>

being violent towards a partner. Married women are a particularly 'high-risk' category in domestic violence with 83% of abused women having children living with them at the time of their abuse (CSV, 2016: 3). However, while the site of violence is often within the parameters of family life, there is often reluctance to move beyond the family to seek recourse. Family interventions commonly represent attempts to keep partners together and not to give an abused spouse the option of moving into an autonomous safe space. Compounding this are religious leaders who offer advice that maintains patriarchy, encouraging wives to forgive perpetrators, drawing on the scriptures asking both women and men to change and to accept the status quo (Memela and Ayogu, 2005).

- *Inadequate responses of service providers:* It is often the case that abused women feel stigmatised and aggrieved by the dismissive attitudes of service providers. When reporting abuse at a police station, they face poor service, long waiting times or insensitive questioning by a member of the SAPS (Heard, Tshwaranang Legal Advocacy Centre & Aids Foundation South Africa, 2015:22). The Tshwaranang Legal Advocacy Centre (2009) found that the police were usually either not recording domestic violence or were recording it but not as required by the DVA in a domestic violence register. Poor data capture has led to perceptions that domestic violence and rape have in fact declined. The police have also been found to be non-compliant in serving notices and warrants on perpetrators. Additionally, those in breach of protection orders are often not arrested. A common reason cited is that



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- offenders cannot be easily traced (Tshwaranang Legal Advocacy Centre, 2009). Apart from the police, clinic and hospital health workers are often described as extremely unsympathetic and highly judgmental. This is particularly the case when healthcare workers come from the same cultural traditions as the victim and are themselves also survivors (FirstRand, 2014; Kim & Motsei, 2002).
- *Misdirected and insufficiently trained officials:* All state-run structures are performance-managed and thus accountable for productivity and delivery. Striving to show competence and good annual practice is being linked to periodic declarations by the SAPS that rape, femicide, and domestic violence in the country (or parts of the country) are in decline.

Officials often find themselves pressurised to make claims that levels of gender-based violence are under control or have dropped in their constituencies. SAPS performance indicators show a reduction in the number of rape cases reported (South African Police Service, 2014). This illusion of a decrease in sexual offences and domestic violence would in turn reduce the focus on, and funding of, gender-based violence interventions. Financial support for the NGO-sector and for shelters have been cut as more funds have been diverted towards government departments' marketing and campaigns on gender-based violence. It would be useful if more funds were to be invested in training and maintaining specialised and dedicated staff in the SAPS, NPA and DoH. Police officers are often untrained, unable to interpret the law adequately, or correctly collect and use medico-legal evidence. This results in postponement of proceedings and the mishandling of cases (Memela and Ayogu, 2005).

- *Lack of coordination and leadership issues:* A lack of coordination between different departments has a bearing on what is delivered and in particular on whether perpetrators are apprehended and brought to court. Thus, in the event that a woman reports her husband as a wife-beater, she has no guarantees that she (and her children) will receive protection and counselling, that he will face legal and correctional consequences, and that the violence will end. For this to happen, coordinated action of the SAPS, DSD, DoH, NPA and possibly Victim Empowerment Programmes is required. A 2015 Soul City study (Tshwaranang Legal Advocacy, 2015) highlights the problem of



duplicate mandates and confusion of roles which negatively affects implementation of the DVA. There is also a high turnover of key officials; often effective agents are replaced by less effective and unskilled functionaries. With this may come a loss of institutional memory and a growing cohort of leaders who may not have independent track records or credibility. Internal dynamics and egocentrism may lead to attempts to wipe out previous managers' legacies and go back to the drawing board to build new and possibly less-effective approaches. Lack of strategic assessments and evaluations of the performances of programmes and departments undermine the potential positive effects of the Domestic Violence and Sexual Offences Acts.

- *Necessity for shelters and post-shelter services:* A lack of government funding has offered fewer prospects for new shelters to be built, particularly in the rural areas, or for the existing shelters to be properly maintained. In a study on shelters in South Africa, Bhana et al. (2012) suggest that although shelters offer a space in which women can make life-changing decisions, it is often a struggle to get the state to pay to keep them functioning and optimally serviced. While accepted globally as a vital crisis-intervention step towards emancipating abused women, they are yet to be acknowledged by the state as essential for saving the lives of women and their children. Evidence shows that children exposed to violence at a young age experience depression, withdrawal and other behavioural problems, and if uncounselled may have a high likelihood of living out troubled, anti-social adult lives. Thus, follow-up programmes that

cater for the needs of women and their children are important to keep them safe and stress-free. This may include assistance in finding employment, skills-upgrading, educational needs, advice on how to gain access to legal aid, counselling or specialised health care. The move to the shelter represents a break from the family and the cycle of abuse. Arguably, in South Africa the tendency is to seek to reconcile the abused woman with her violent partner. Where men have not faced any consequences, the return home usually results in repeated exposure to violence.

- *Absence of a feminist-informed political will:* South Africa is currently described as the rape capital of the world, with overall levels of gender-based violence akin to a country in a state of war. The #TotalShutDown marches represented a historic moment for women working to bring gender-based violence to an end. With the slogan “enough is enough” shouted across the length and breadth of the country, the campaign has highlighted the need for collective action, for strong leadership, for raising awareness about the statutory Acts that are intended to protect women and for the perpetrators of domestic violence, wife-beating and rape to be apprehended and sentenced. With a specifically feminist agenda, the call has been for a strengthened political will – and for the President himself to influence change and to listen to the voices of women. The point about the “entrenchment of patriarchy” (Bennett, 2001:90) and the difficulties entailed in dislodging such an amorphous edifice has been raised for the past few decades. A feminist-informed political will can confront

patriarchy at every level, whether in the home, the workplace, on campuses or in public arenas. Such resolve can potentially transform attitudes and behaviours, rally progressive men into supportive action, and keep state officials accountable for how they attend to, and serve the interests of, abused women.

CONCLUSION

The legislation and treaties presented in this paper provide a broad overview of the legal framework governing gendered violence in South Africa. While it can be shown that the infrastructure of available policy is strong, the persistence of gender-based violence – wife-battering, rape, femicide and other forms of abuse – highlights the barriers to implementation that need ➤



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to be addressed. Since most violence against women emanates from within the 'private politics' of family life, there needs to be mechanisms and interventions that draw out these private, intimate and familial conversations into the public domain. In doing so, however, socio-cultural and political discourses will need continuous tackling. Re-training of service-providers and getting the police to deal decisively with apprehending offenders and recognising gender-based violence as a human rights violation would be a good beginning. More funds need to be invested in the provision of shelters. Coordination between departments – perhaps driven via a dedicated coalition of cadres with a coherent game plan – is critical and needs support. Above all, an invigorated feminist-informed political will needs to spread from civil society to the upper echelons of the state.

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