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Vetten, Lisa

2014-06-19
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Deserving and undeserving women:

A case study of South African policy and legislation addressing domestic violence

Dissertation submitted in fulfilment of a Master's Degree in Political Studies

Lisa Vetten

December 2013

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LIST OF ACRONYMS

African National Congress	ANC
Agisanang Domestic Abuse Prevention and Training	ADAPT
Centre for the Study of Violence and Reconciliation	CSVR
Civilian Secretariat for Police	CSP
Commission for Gender Equality	CGE
Commission on the Status of Women	CSW
Convention on the Elimination of all Forms of Discrimination Against Women	CEDAW
Co-ordinated Action for Battered Women	CABW
Declaration to End Violence Against Women	DEVAW
Democratic Alliance	DA
Department of Justice and Constitutional Development	DoJ&CD
Department of Social Development	DSD
Domestic Violence Act	DVA
Family and Marriage Association of South Africa	FAMSA
Family Violence, Child Protection and Sexual Offences	FCS
Gender Advocacy Programme	GAP
Gender, Health and Justice Research Unit	GHJRU
Independent Complaints Directorate	ICD
Independent Police Investigative Directorate	IPID
Joint Monitoring Committee on the improvement of the quality of life and status of women	JMC
Members of Parliament	MP
National Crime Prevention Strategy	NCPS
National Network on Violence Against Women	NNVAW
National Prosecuting Authority	NPA
Office on the Status of Women	OSW
Parliamentary Monitoring Group	PMG
People Opposing Women Abuse	POWA
Prevention of Family Violence Act	PFVA
Rape Crisis Cape Town	RCCT
Reconstruction and Development Programme	RDP
Sexual Offences and Community Affairs	SOCA
South African Police Service	SAPS
South African Law Commission	SALC
Technikon South Africa	TSA
Tshwaranang Legal Advocacy Centre	TLAC
United Nations	UN
Victim Empowerment Programme	VEP
Women, Children and Persons with Disabilities	WCPD
Women's National Coalition	WNC

Chapter 1: Domestic Violence and Policy Making:

An Introduction to the Problem

In 1999 South Africa's female homicide rate was six times that of the global average, with half of these deaths caused by women's intimate male partners (Seedat et al, 2009). Rewritten in more eye-catching, headline terms, this translated into four women killed every day by the men in their lives (Mathews et al, 2004). Only a year earlier, in 1998, one in four (25%) women in the provinces of Limpopo, Mpumalanga and the Eastern Cape reported being physically assaulted by a male partner over the course of their lifetimes, while one in ten (10%) had experienced such violence in the past year (Jewkes, Levin, Penn-Kekana, 2001). These exceptional figures did not decline significantly with time. Indeed, their ubiquity was only confirmed by the national South African Stress and Health survey where domestic violence emerged as the most common form of violence experienced by women – and one reported by 13.8% of women as opposed to 1.3% of men (Kaminer et al, 2008). Most recently, in 2010, just less than one in five (18.13%) women in Gauteng reported an incident of violence by an intimate partner (Machisa et al, 2010). And while the prevalence of intimate femicide (or men's killing of their intimate female partners) decreased from 8.8/100 000 in 1999, to 5.6/100 000 in 2009[1], this rate did not decrease as rapidly as the proportion of non-intimate homicides, with the result that intimate femicide is now the leading cause of female homicides (Abrahams et al, 2013).

This high level of domestic violence is one prominent feature of post-apartheid South Africa and stands in stark contrast to the prominent image of South Africa as a country committed to gender equality. The shocking statistics also belie the vigour with which both civil society and the post-apartheid state have mobilised around the problem in a sustained fashion over almost two decades. This engagement with the problem began prior to the transition to democracy, but was accelerated as a result of the unique political opportunities afforded by the re-design of institutions, coupled with the introduction of democratic norms and values in the post-1994 era. It is these gaps between democratic values, activism and the conditions of violence circumscribing women's lives that form the starting point for this dissertation.

Two sets of questions are explored:

> *Which arenas of the state are responsive to the problems of domestic violence? What remedies are offered to address the problem of domestic violence? What do these remedies and their location tell us about how the problem of domestic violence is constructed? To what extent can the state be the locus of strategies to end such violence?*

The issue of women's citizenship is equally central here. South Africa is a country in which women enjoy political as well as social rights, framed by the Bill of Rights and supported by the Constitution and legislation. Yet the conditions of fear in which women live acts as a significant barrier to their enjoyment of these rights. This raises further questions:

[1] But as the researchers point out, this decline is not statistically significant (Abrahams et al, 2013).

What kinds of state-civil society interactions have been effective in producing legislative and policy change? What do these policy changes tell us about the nature of women's citizenship? What does the persistence of violence against women indicate about the relationship between women's movements and the state?

Domestic violence offers a particularly interesting lens on these questions for at least two inter-related reasons. Firstly, because it occurs in the family, domestic violence has traditionally been designated private violence and thus outside the reach of the state. Tracing the transformation of a private grievance into a public concern thus lays bare one realignment of the public-private divide. The notion of civil society as a sphere intermediate between state and family, or public and private, further reinforces this separation by constituting yet another realm from which women are excluded. The consequence has been to treat women's organising as politically negligible and to dismiss the substance of their demands as not properly political (Hassim and Gouws, 1998). Tracing women's engagements with the state around domestic violence is thus illustrative of the expansion of the public sphere on a range of dimensions.

This dissertation takes the approach that policy interests are not fixed and self-evident but are constituted in the process of formulating and implementing policies, and in the interactions between individuals, social movements and states. I show too how the very concept of domestic violence emerged as a political and policy problem in South Africa, tracing not only the discursive elements in the crafting of legislative policy documents, but also those residing within the messy and contested processes giving effect to broad policy frameworks. I aim to explore the ways in which bureaucratic logics and sectoral obligations play a key role in constituting women's citizenship rights in practice, and indeed in facilitating or constraining that citizenship. Close attention to the multiple sites of power and contestation within and around the state, I argue, is crucial to understanding the relationship between women's movements and the state.

Little study has been undertaken in this regard, with the modest body of South African research in this field largely either epidemiological in focus; or focused on describing the state's implementation of domestic violence legislation and policy, with a smaller sub-set of studies in this category examining women's use and perception of these legal measures, as well as their policy proposals. At this point only one study (Meintjes, 2003) examines state and civil society interactions around domestic violence, with this discussion confined to the period leading to the promulgation of the Domestic Violence Act in 1998. A second, small study examines women's organising around gender-based violence post-1994 (Britton, 2006). Because Meintjes provides a narrow and even inaccurate record of events, while Britton, in some respects, mischaracterises the domestic violence sector, this calls aspects of their respective analyses into question as I will show in subsequent chapters.

While there is a substantial body of literature dedicated to parsing social movements and civil society, this study does not fall within that category. Following Hassim (2005b), I treat 'the women's movement' as a heterogeneous set of organisations, both feminine and feminist, displaying a diversity both of organisational forms, as well as ideologies but united by their focus on organising women. For the purposes of this study I focus only on those single issue women's organisations that make violence against women their cynosure.

Violence against women is an overarching category further sub-divided by the range of forms it takes, as well as the relationship between perpetrator and victim. Where rape denotes a sexualised

form of violence, ‘domestic' indicates both the locational and relational dimensions of such violence. Where possible I do not use the one sort of violence to stand in for the other, their political trajectories not being reducible to each other. Maintaining this distinction is also important within the context of a study examining the shifting boundaries between public and private spheres; it is possible for the state to respond to rape between strangers but resolutely ignore those rapes committed within marriages – as the apartheid state did. Although there are times when rape and domestic violence are intermingled in this study, this is largely for the purposes of comparison.

This research takes the form of a case study, a method chosen because it allows for detailed consideration of the development of a policy issue and the constitution of a political claim over time, in this instance state and civil society responses to domestic violence between 1994 and 2011. My method is both genealogical and sociological. In terms of the first I read records of state such as legislation, policy documents, guidelines, frameworks, speeches and media statements, Annual Reports, strategic plans and budget votes, as well as parliamentary minutes and reports. I adopted Carol Bacchi's 'what's the problem' approach to policy analysis which emphasises the following questions: how is the problem represented and what assumptions and presuppositions underpin this representation? What are the effects of this representation? How are subjects constituted within it? What exactly does the policy alter and for whom? What is not problematised in any particular representation? How would responses differ if the problem were represented differently? (1999: 12 – 13).

To explore the workings of these various schemes and plans and how people engage with them required methods more sociological, including participant observation, observation and semi-structured in-depth interviews. Thirty-two interviews were completed lasting between one to a maximum of three hours, with the parliamentarians' interviews being somewhat shortened to accommodate their time constraints. When further subdivided, this total comprised eight interviews with individuals attached to the National Assembly, including Members of Parliament (MP) and committee researchers and content advisers. A further 12 interviews were organised with women's organisations and a final 12 with government officials (including those formerly employed in government). Once consent had been obtained from participants, interviews were then taped and transcribed. Content analysis was used to identify the key themes related to the case study questions.

In recognition of the fractured and diverse nature of the state, two different state arenas were focused on for the study: the executive and the legislature. In relation to the bureaucracy this included the Department of Justice and Constitutional Development (DoJ&CD), as well as the National Prosecuting Authority (NPA); the South African Police Service (SAPS); and the Department of Social Development (DSD). In each instance senior programme managers with long-standing involvement in the issue were interviewed. In parliament I interviewed MPs, as well as technical support staff from the portfolio committees of the Police and DoJ&CD, as well as the portfolio committee for Women, Children and Persons with Disabilities (WCPD). MPs were drawn from the African National Congress (ANC), the Democratic Alliance (DA) and the Inkatha Freedom Party. Selection of these departments and portfolio committees was informed by the primary role they have played in shaping state responses to domestic violence.

In relation to civil society, established women's organisations with a history of addressing domestic violence were selected. These included shelters and counselling services, as well as research organisations. Selection of individual participants was purposive and based on two criteria: the length of time they had worked in the field of domestic violence; and their involvement in the processes and policy developments outlined by the document review. Both specific questions were posed to respondents based on their particular knowledge of processes, as well as broader questions intended to probe their thinking and experiences around the study's key themes. The study is therefore limited by the fact that the views represented here are those of individuals who have worked in the field for a decade or more and who largely self-define as feminist. Individuals working within faith-based organisations will, no doubt, have differing perspectives, as will those whose entry into the sector is relatively recent.

Finally, having been closely involved in many instances with the processes described in the subsequent chapters, I have also drawn on my experience of working within the domestic violence sector since 1991. This familiarity presents many of the benefits and challenges typical to ethnographic approaches (see for example, Nagar and Geiger, 2007). A frequent commentator in the media, I am often identified as a 'gender activist' which positions me in particular ways, not least that of 'government critic.' Some submissions to parliament that I have written have also resulted in strong criticism of government officials by MPs – a circumstance at least two interviewees alluded to. Further, as Karl von Holdt observed of the health sector (2010), criticism of South Africa's democratic government can evoke the racial gaze of white superiority and black incompetence. My racial category (white) likely added yet another layer of complexity to interactions with state officials (who were both black and white).

The interviews also took place within the context of somewhat tense and mistrustful relations between the state and civil society organisations broadly (which the interviews illustrate). Unsurprisingly, questions around this relationship probably elicited the blandest and least informative responses from state interviewees ("NGOs are very important to us" was the standard reply) and where interviewees were prepared to comment further, it was on the understanding that they would not be quoted and identified. At the same time, precisely because I am outside of the bureaucracy, some state interviewees were particularly frank about their personal experiences of being a bureaucrat, simultaneously invoking what they were publicly mandated to say, as well as what they privately thought. But holding this knowledge created its own set of ethical questions around how to use the information provided in a manner that did not expose state officials to the displeasure of their seniors and political principals.

But while outside the state, at the same time I am also inside state processes to some extent, such as law reform and policy development, programme design and workshops and meetings. This has created a certain degree of shared experience which was enabling of the interviews. 'Shared experience' presented a slightly different set of challenges in relation to the interviews with representatives of women's organisations. Here, exploration of topics sometimes had to be probed repeatedly because it was assumed that I 'knew these things' and they did not need to be explained. In turn, I too, needed to guard against assuming meaning, as well as bring some distance to my particular contributions to processes constituting women's gender interests. This involved some hard reflection on how my thinking and praxis is implicated in that which is critiqued.

My research is laid out in the following manner:

Chapter Two sets out the theoretical framework for the study, specifically exploring the notions of women's interests, citizenship and the state in feminist and post-structuralist theory. In Chapter Three I trace the genesis of the Domestic Violence Act 116 of 1998 (DVA), locating its origins within the abortive attempt to criminalise rape in marriage in the 1980s. Chapter Four explores the implementation of the Act, as well as other state initiatives addressing the problem within the spheres of policing and justice. Chapter Five examines alternative conceptualisations of domestic violence, providing a genealogy of its articulation with crime, violence, victimisation and family while Chapter Six shifts the emphasis to the domestic violence sector where I examine the on-going constitution of domestic violence as a policy problem by the sector, as well as state-civil society contestation in this regard. Chapter Seven concludes the study.

Chapter 2: Women's Interests, Their Citizenship and the State: A Theoretical Framework

Domestic violence locates women between pre-modern and modern power: between the highly personal and arbitrary violence of their intimate partners; and the impersonal – even disciplinary – programmes aimed at their reform and well-being (Westlund, 1999). The state is the interface between the two, constituting the realm of the intimate and private as it simultaneously holds out the promise of public recourse and relief. Politics is the solvent that mediates and disrupts these relationships, its practice enabling women to constitute their interests and exercise their citizenship. In this chapter I provide a theoretical framework for examining this transformation of private misery into a political and collective claim, combining notions of interest, citizenship and the state, with a brief discussion of the public-private division serving as the backdrop to this framework.

The distinction between what is private and what public has been central to liberal political thought and practice. Where the public exists as the rightful sphere for all matters political and economic, the private is the emotional, familial realm into which citizens escape from this hurly-burly. While the one is legitimately subject to regulation, the other represents freedom from such supervision and is the realm of personal autonomy and private choice (Rose, 1987). This demarcation has also operated in gendered ways with men made the rightful occupants of the public and women the keepers of the private, the home specifically. A sexual division of labour is also entrenched through this separation, with the work of caring and reproduction chiefly made women's responsibility.

Law has been central to this separation between the public and private through the particular relationships it has constituted between the state and the family. On the one hand the family has been deemed outside the intrusions of criminal law, while on the other, legislators working within the realm of family law have regulated inheritance and the disposal and accrual of assets and property; constituted relationships of subordination and authority between adults, as well as between adults and children; and created duties and obligations between family members, in addition to defining what is a family, who may enter into a marriage and how marriages may be terminated.[2] The public supervision of family relations is, thus, selective with the borders separating the public from the private drawn according to class, race, culture and state policy (Manicom, 1992).

In showing how privacy can be reinvented as men's right to terrorise and subjugate women, feminists have raised questions around the nature of women's citizenship, for what is experienced in private may be perceived as isolated and individual, rather than pervasive and systematic. Thus instead of domestic violence becoming a matter of public concern, it remains a private trouble (Schneider, 1986). Additionally, where women are subject to the control and domination of their male partners, they may literally be prevented from participating in a range of activities outside of

[2] To provide but a few recent examples: under colonial and apartheid rule the traditional and indigenous was deemed part of the private sphere, ensuring that marriages in terms of customary law between African men and women were ignored by the state. The Recognition of Customary Marriages Act of 1998 brought such marriages within public regulation. The Civil Union Act of 2006 also altered the heteronormative basis for marriage by granting legal recognition to the unions of same sex couples (even as it simultaneously refused to describe such unions as marriages).

the home. The consequences of violence may also sap their confidence and self-belief, so diminishing their ability to act within the public realm.

It was on the basis of these and other arguments that the women's movements of the 1970s and 1980s mobilised around domestic violence.

Women's interests

Globally, violence against women has become one of the few women's issues capable of transcending divisions created by race, class and culture. Indeed, because it illustrated women's subordination in a way no other issue had been able to do, violence against women, and domestic violence in particular, is considered the issue that cemented the idea internationally that women's rights are human rights (Fraser, 1999). Does freedom from violence thus represent that elusive object of feminist theory, a 'women's interest'?

The notion of interest has a long history in political thought, informing theories of the state, agency and collective action, as well as political representation (Jonasdottir, 1988). Broadly speaking, interest refers to the idea that individuals or groups have a stake in supporting or opposing some state of affairs which affects their life chances or well-being. Typically characterised as either subjective or objective in nature, subjective interests accord a central place to people's feelings, demands and attitudes while objective interests depend less on individuals having certain feelings, attitudes or desires and are understood instead as that which is embedded in the relations of production. This is at the level of the general. More specifically, 'women's' interests may be designated in either general or particularistic terms and include those social, political and economic responses and solutions conducive to women's welfare and advancement (Stevens 2007: 73). This formulation, however, glosses over a contentious prior set of questions: do women as a group experience distinctive social, political or economic problems not shared by other groups which require particular responses and solutions (their objective situation); and are they conscious of their interests as being distinct (their subjective condition)(Sapiro, 1998)? Further, to what extent can gender distinctiveness be isolated from other forms of discrimination and inequality such as race and class, or geographical location? Gender is also a bivalent category comprising two sorts of injustice, one constituted by the gendered division of labour and the other by the cultural devaluation of the feminine. It thus comprises dilemmas both of redistribution rooted in the political economy, as well as recognition, derived from cultural norms and standards (Fraser, 1997).

One line of argument is that divisions of labour and stratification within the private sphere of the family, determined in part by law and public policy, place women in disadvantageous social positions different to those of men, regardless of any other kinds of stratification that may exist (Sapiro, 1998). Because these disadvantageous circumstances may be obvious to others, they give rise to objective interests which exist irrespective of whether they are subjectively perceived or not (Kabeer, 1994). But women’s interests cannot be so easily read off the facts of their oppression, with some women perhaps disagreeing that they are oppressed, or being unsupportive of strategies to challenge their disadvantages – as well they might, for where does the authority to decide and act upon women’s interests come from? Who is to decide what is to women’s benefit? The danger of objective interests

lies in how they open the way for others to impose ‘solutions’ on women, thus devaluing their perceptions, priorities and needs.

Domestic violence illustrates this dilemma well.

Violence against women is arguably distributed indiscriminately, with neither class nor racial privilege seeming to correlate with lower levels of vulnerability to violence. There can be little question then, objectively speaking, that domestic violence poses a major risk to women's health and even their lives. But when women, on subjective grounds, withdraw criminal charges, or return to dangerous personal circumstances, they appear to act against this interest, leading some policy makers to propose removing women's choice entirely, either by not permitting women to withdraw criminal charges against their partners and/or threatening women with sanctions should they do so (Newman, 2004). Yet arguing that women only have subjective interests makes it all but impossible to address those disparities that disadvantage women specifically as women (Fierlbeck, 1997).

For Jonasdottir (1988) the solution to this problem lies in understanding interest as that which increases citizens’ control over the range of options or conditions of choice; or which promotes citizens’ ability to choose. Interest may thus be said to consist in two aspects: a form aspect – the demand to participate in, or have some control over, society’s public affairs; and a content or result aspect – the substantive values that politics puts into effect and distributes. This formulation directly links interest to participation and also creates a distinction between agency and the result of agency; in actively participating, and satisfying needs and desires. By emphasising the formal, participatory aspect of interest, the subjective content of people’s needs and desires remains open.

Jonasdottir’s formulation draws attention to the importance of women's inclusion within decision-making fora but evades the question of how decisions are to be evaluated for their potential to improve both women's conditions and position in society (and thus leads to the heart of contemporary debates around women's descriptive representation and its assumed relationship to improved gender equality outcomes). It is to Molyneux's distinction (1985) between practical and strategic gender interests that we must turn for these evaluative analytic tools.

Molyneux's point of departure is the acknowledgement of differences and inequalities between women – social cleavages deep enough to make talk of a unitary and generalisable set of women's interests impossible. To avoid the homogenising effect produced by reference to 'women', she proposes the concept of gender interests instead to refer to those certain general interests which women do have in common. These gender interests arise specifically from the social positioning of men and women in relation to one another and may be categorised as either practical or strategic (Molyneux, 1985). Practical gender interests are derived inductively by women themselves and usually in response to an immediate perceived need based on women’s placement within the sexual division of labour (childcare facilities for working mothers would fit into this category, for example). While important and beneficial to many categories of women, the realisation of practical gender interests does not require the achievement of gender equality and nor does it challenge gender subordination. These goals more properly fall within the ambit of strategic gender interests which seek to transform gendered social relations by reordering responsibilities for childcare and domestic labour, or the abolition of institutionalised forms of discrimination (such as the lower value accorded 'women's work'). Derived deductively, such interventions are intended to improve women’s position and transform gendered social relations (1985: 232-233).

This formulation has been influential (one of its variants finding its way into South Africa's 1999 National Policy Framework for Women's Empowerment and Gender Equality [Office on the Status of Women, 2000]) and even if it can be overdrawn and applied in an overly rigid and prescriptive manner, it nonetheless provides a useful heuristic device for analysing how states define and take up women's gender interests. As Molyneux observes, certain practical gender interests may be taken up by states precisely because they can be subordinated to policy makers' own predetermined agendas and made to satisfy other ends; they provide an avenue through which states can demonstrate responsiveness to women without in any way having to grapple with more politically controversial matters such as the reordering of family relations (Molyneux, 1985).

Nonetheless, theorists remain who argue that problems shared by many women still cannot be reduced to a 'women's interest.' Laurel Weldon (2011) contends that because the search for commonality comes at the cost of those concerns most pressing to marginalised groups of women, or that are group or context-specific, the notion of 'women's interests' ought to be abandoned altogether in favour of notions of women's perspective. But substituting talk of women's common interests with talk of a range of women's perspectives misses the point: individuals do not come together, their aspirations, interests and perceptions fully-formed. Rather, their interests (or perspectives) are formulated through on-going processes of redefinition and interpretation which are also varied by political, cultural and historical context. The ways in which these collective processes of political agency and abstract processes of meaning-creation come together to create a political claim are clearly illustrated in the international campaign to recognise violence against women as a violation of human rights. In this campaign we can see clearly that interests are defined in the process of political engagement, rather than providing a pre-existing basis on which to mobilise constituencies.[3]

Violence against women was raised in 1975 at the United Nations' (UN) First World Conference on Women in Mexico and again the following year at the first International Tribunal on Crimes Against Women in Brussels, Belgium. Little agreement could be achieved amongst women's groups in these two meetings, as well as during a second UN conference in Copenhagen in 1980 and the Second World Conference on Women in Nairobi in 1985. Multiple broader political conflicts around Palestine and Israel and, at one point, the South African apartheid state too[4], compounded by divisions between Northern and Southern countries, prevented consensus around the identification of priorities, as well as action (Weldon, 2006).

By the mid-1980s active attempts were being made to work across these multiple conflicts of interests. These included developing norms of inclusivity that reduced the dominance of Northern women, separate organising by Southern women, as well as a broader framing of violence against women to include political violence and poverty. In addition, between 1990 and 1993 the US-based Campaign for Women's Global Leadership convened a series of Leadership Institutes bringing together women from 20 countries to plan the campaign asserting that women's rights were human rights. At about the same time, in 1991, the UN's Commission on the Status of Women (CSW) convened an Expert Group Meeting on Violence Against Women in All its Forms. The 16 Days of Activism Campaign to End Violence Against Women was launched internationally in the same year

[3] This reading is diametrically opposed to Laurel Weldon's who uses the same campaign to argue for the impossibility of a women's interest.
[4] See Hassim 2006: 107.

on November 25. A petition against gender violence, translated into 24 languages, was also circulated and eventually signed by nearly half a million people from 124 countries (Weldon, 2006). Months of preparation went into the centre-piece of the 1993 Conference on Human Rights in Vienna – a transnational Women's Tribunal that emphasised the multiple ways in which women's rights were violated (and which included testimony by ANC member Gertrude Fester on her experience of political imprisonment in South Africa [Fester, 1994]).

The effect of this planning and preparation was such that violence against women became the defining issue of the 1993 UN Conference on Human Rights, which culminated in the Declaration to End Violence Against Women (DEVAW) and the appointment of a Special Rapporteur on violence (Fraser, 1999). DEVAW framed violence against women in unambiguously feminist terms as a manifestation of the historically unequal power relations between men and women that had allowed men to dominate over and discriminate against women. Violence was highlighted as a social mechanism crucial to forcing women into positions subordinate to men and its continuing and endemic nature noted as limiting women's opportunities to achieve legal, social, political and economic equality.

Interests therefore do not exist in some pristine, ideal form awaiting discovery through the proper application of objective method and readily available as the basis of political action. Instead, as the 18 year campaign to recognise violence against women as a violation of human rights illustrates, women must form conceptions of their interests through a range of political processes of interpretation and contestation, as well as across a variety of arenas, which may range from the local to the supra-national (Connell, 1987; Pringle and Watson, 1992; Molyneux, 1998). Discourses which construct social systems of meaning are central to these processes – creating identities which matter in political terms (like 'woman/man', 'Southern/Northern'), staking out and (de)legitimising political claims and determining the rules of the game (Pringle and Watson, 1992). This creates a “universe of political discourse” whose parameters define what is open to contestation, as well as by whom (Jenson, 1987). This struggle to deny or legitimate the political status of a claim constitutes the first of three analytical moments in the politics of claims-making. The second and third moments include the struggle to define both the claim and its satisfaction; and finally, the struggle to secure or withhold the satisfaction of the claim (Fraser, 1989).

Precisely because women’s interests must be constituted within this larger universe, they are brought into conflict with the many other occupants of this discursive space. With identity being multiply-derived, this means that 'woman' can be pitted against other sources of identity – as the contestation over the replacement in 1998 of South Africa's State Maintenance Grant with the Child Support Grant showed. Because the State Maintenance Grant was allocated along racialised lines, few African women had been eligible for the grant which, as a consequence, had largely been distributed to poor coloured and Indian women. To address this inequity, the size of the former State Maintenance Grant was decreased to ensure that a larger pool of ‘primary care-takers’ could draw the new child support grants. Thus while a large group of poor women gained access to a state benefit from which they had been previously excluded, another group of poor women’s circumstances were reduced as a result (Hassim, 2003). In this way poor women were divided along racial lines, illustrating the point that policy gains for some women are not necessarily gains for all women (Pringle and Watson, 1992).

In sum, how a ‘women’s interest’ is conceptualised and articulated at any given time and place is a matter for empirical investigation. It is no more a foregone conclusion than it is ever permanently fixed.

Citizenship: status and practice

Treating ‘women’s interests’ as tenuous – even fragile – creations is particularly apposite within the South African context where gender can no more be isolated from the multiple axes of difference structuring social relations in the country, than it can be subsumed within those categories of difference. For rich and complex as the history of women’s organising in South Africa is (see Walker, 1991; Kemp et al, 1995; Fester, 2005; and Hassim, 2006), it has nonetheless been complicated by women’s multiplicity of identities and differing political orientations – feminism, nationalism, motherism – whether in combination or opposition.

Within the context of the national liberation struggle, nationalism was the basis for the majority of women’s political mobilisation. However, both as ideology and practice nationalism subordinated women's interests to those of the nation, the people and the masses and was largely dismissive of feminism as a white, middle-class, Western woman’s irrelevance. One consequence of this was to create something of an historical tension between needs and rights, with the former associated with black, third world women's struggles and the latter with white, feminist first world movements (Hassim, 2006). The transition to democracy enabled an important discursive shift from nationalism to the language and ethos of rights and citizenship, allowing for the emergence of 'women' as a political constituency in their own right, with correspondingly specific citizenship claims (Hassim, 2002). The political transition also facilitated the creation in 1992 of the Women’s National Coalition (WNC), the unquestioned apogee of women organising specifically around their gender interests. But it flowered briefly, only to wither on the election of the woman-friendly ANC into government in 1994. Nonetheless, the WNC left an important legacy: the institutionalisation of women’s interests within the state through the national gender machinery; the sort of political capital that is engendered by success (Hassim and Gouws, 1998); entrenchment of gender equality within the Bill of Rights; and the entry of a significant number of women into the state with links to women in civil society – initially at least. Undeniable as these achievements are, they also contained the seeds of their contradiction.

To begin with, this wholesale incursion of women into the state weakened women’s civil society organisations (Geisler, 2000; Hassim, 2006). And while many women in the state initially understood the importance of creating mechanisms of communication, support and accountability between themselves and women in civil society, these were neither entrenched nor maintained to significant effect (Hassim and Gouws, 1998; Geisler, 2000; Shifman, Madlala-Routledge and Smith, 1997). At the same time, the altered political environment allowed for the proliferation of new women’s organisations which, in the absence of a discernible centre, hastened the fragmentation of the women’s movement into a host of issue-based organisations while new structures such as the Reproductive Rights Alliance and the New Women's Movement coalesced around the policy reforms being initiated by the state in relation to reproductive rights and welfare benefits (Hassim, 2006).

These sorts of coalitions represent one arena of women's organisations' operation post-democracy. National policy-making organisations represent a second arena and local-level community initiatives, many linked to social movements protesting the inadequate provision of services, constitute a third (*ibid*). Because organisations active in each arena may also be distinguished by their access to national political decision-makers, as well as their access to resources and ability to engage with policy processes, Shireen Hassim suggests that these arenas correspond with the stratification of women's organisations, local-level community organisations scoring lowest on all three dimensions. While these distinctions also largely map onto race and class and so generate their own set of conflicts between women's organisations, they also ensure that poor women's interests are often only weakly represented in policy-making (Hassim, 2006). Overall the women's sector has been characterised as relatively weak in two respects, one in its capacity both to articulate women's interests, as well as mobilise in defence of those interests; and the other to develop strategies independent of the state and other groupings, while retaining the possibility of forming alliances in pursuit of its aims (Hassim 2005b: 176).

In seeking to characterise the nature of women's engagement with the state, Shireen Hassim (2005a) has distinguished between strategies of inclusion and strategies of transformation, echoing to some extent Maxine Molyneux's conceptual distinction between women's practical and strategic interests. Inclusionary strategies seek to institutionalise women's interests within state and party structures through a range of measures designed to promote women's representation. By contrast, transformatory strategies, which reflect the imperative to do away with gendered power inequalities, seek to effect structural and social change (*ibid*). In terms of this argument, inclusionary strategies will take formal political structures as their focus, while transformatory strategies engage a greater diversity of actors outside of state and party and often in opposition to these structures. But as Hassim notes: "[t]he transformatory and the inclusionary approaches to defining women's interests are not mutually exclusive. Rather, they need to be seen as part of a continuum of women's struggles for full citizenship. These may take a linear historical form (that is, a shift from inclusionary demands to transformatory demands over time), or may be present within a single movement at a given moment, with some sectors pursuing alliances with political elites for inclusionary purposes and others insisting on a more radical set of demands" (2005a: 13).

The unfolding of this debate locally has been constrained by Elaine Salo's misreading of its original terms, namely that these categories are mutually exclusive rather than points on a continuum (Salo, 2005). But closer reading of Salo's article suggests her quarrel is really with how Hassim applies these categories, rather than the categories themselves. This misstep aside, her article begins the valuable project of exploring the gradations and shading that necessarily form part of a continuum of engagement. But her argument against opposing transformatory strategies with inclusionary strategies has obscured this more subtle and interesting aspect of her discussion, such that other theorists have also become focused on how best to characterise women's engagements with the state[5], rather than understanding how the universe of political discourse shapes the use of strategy at any given point in time. This returns us to some of the points made earlier about women's interests because if these are discursively constructed, then so too are the strategies and processes

[5] Hannah Britton and Jennifer Fish thus posit the notion of "pragmatic feminism" as a third way between these two points to capture "the complex, multi-layered activities, sometimes engaging the state and sometimes opposing it" that women's organisations adopt (2009: 20).

crafted in pursuit of their realisation. And these too will be shaped and fashioned within the parameters of available discursive resources which are themselves the result of past discursive struggles (Pringle and Watson, 1992). The question therefore is not one of how best to characterise women's engagements with the state, but on exploring what strategies are deployed when and under what conditions.

Nancy Fraser (1989) has identified the sorts of discursive resources available to groups in which to articulate their citizenship claims. While this chapter has emphasised interests as one political idiom in which to frame claims, rights and needs represent other equally important idioms. Each denotes a different sort of claim upon the state and positions political subjects in diverse relation to the state, so bestowing different sorts of status upon both individuals and groups. Needs, because of their association with what is essential and basic, exert a powerful political pull. Indeed, because they are so fundamental and self-evident, they may appear to require neither argument nor interpretation – only satisfaction. Yet as Nancy Fraser (1989) has shown, interpreting both the content and satisfaction of a particular need is often the central political stake. Needs also define people in particular ways – as homeless, abused, or dysfunctional – who once categorised as being 'in need' may find themselves subject to a host of curative practices designed to remedy their defects (Pringle and Watson, 1996). Being categorised as 'needy', 'disadvantaged' or 'vulnerable' for example, is disempowering and positions people as supplicants of the state, which retains the power to define those various needs, disadvantages and vulnerability, as well as their administrable satisfactions. The results may well be a degraded, rather than affirming, form of social citizenship (Fraser 1989).

Because they can be instantiated in law, rights confer a stronger and more actionable claim than needs do. And while rights frameworks have been criticised for their universalising and individualising tendencies (Pringle and Watson, 1996), in the case of domestic violence a right to be free from violence, unvaried by culture, religion or the exemptions of the private, is precisely what is needed. Nonetheless, where a right is framed in terms of women's victimisation and vulnerability to harm it may have the effect of relegating women to a status warranting protection and thus something less than a free citizen (Bush 1992: 601). Further, while the recognition of a harm in rights terms is symbolically significant, this acknowledgement, in of itself, does not transform the conditions which necessitated the right in the first place (Manicom, 2001) and nor does it guarantee the realisation of the right in practice either. Indeed, drawing on social contract theory, Sandra Bartky has argued that when legal systems through their design and practices intimidate abused women to the extent that they are deterred from using the law, women are effectively returned to the 'state of nature and war of all against all' despite the ostensible existence of state protections (Bartky, 2005). State discourses thus construct women's citizenship as they simultaneously constrict its realisation (Gouws, 2005).

Therapeutic, administrative, feminist or legal vocabularies also shape political talk (Fraser, 1989). Domestic violence, when framed within the lexicon of mental health for instance, typically individualises and pathologises abusive behaviour, while encouraging organisations to professionalise (i.e. employ social workers and psychologists rather than lay counsellors) and become 'client-centred' (Bush, 1992; Matthews, 1994). Effectively this transforms domestic violence from a political cause to a matter of clients and cases (Meyer, 2003).

Another type of discursive resource resides in narrative conventions, with the testament to violation employed in the 1993 Tribunal being a much-favoured narrative convention in human rights discourse, for example. Finally, where the particular interpretation of claims is contested various paradigms of argumentation may be appealed to in resolving such conflicts (Fraser, 1989). Within South Africa, legal arguments presented to the Constitutional Court with their concomitant reliance on the Bill of Rights have been particularly successful in developing and clarifying women's claims upon the state.[6]

Discursive resources are not available to all equally and some ways of pressing or opposing claims are more dominant and accepted than others, affecting the extent to which women's groupings are able to mobilise public opinion for their advancement (Fraser, 1989). As Banaszak, Beckwith and Rucht (2003) have noted, major arenas such as parliament and the courts are more closely regulated and controlled by the state, while the streets and mass media are more open (although the media applies its own set of rules around what warrants coverage). Activities and outcomes within different arenas are often inter-related; an issue failing in parliament may be taken to the courts, while media engagement may precede campaigns for legal reform in parliament.

Strategies are then inevitably temporal and contextual in nature. Returning to the South African debate, it is clear that strategies of inclusion focused on women's representation within the South African state were most intensely pursued during the transition and the period immediately post-94 when the national gender machinery was established and the use of gender quotas promoted. While this emphasis has been maintained subsequent to this period through the 50/50 campaign around women's representation in parliament, this focus has largely been confined to organisations such as the Gender Advocacy Programme (GAP) and Gender Links (Gouws, 2006). This suggests that while the institutionalisation of women's interests in the state may have been the interest of some it was not the central pre-occupation or strategy of the various women's movements in post-apartheid South Africa as Britton and Fish claim (2009: 21; Britton, 2006) and is implicit in Hassim's argument (2005a; 2005b). Indeed, in the face of the well-documented fragmenting of the women's movement post-1994 arguments proposing a shared and coherent intentionality to both the aims and strategies of these various movements are not easily sustained.

Examining the temporal and contextual dimensions of women's interactions with the state also demands close attention to the political culture and climate, as well as the configurations of power at play at any given point (Banaszak, Beckwith and Rucht, 2003). A range of international examples illustrates how this culture and configuration affects different domestic violence movements and their capacity to make claims upon their respective states. For instance, as Russia has grown more authoritarian under President Putin, political opportunities for openly feminist activism have diminished, while activism has had to be framed in ways that do not trouble neo-traditional gender norms (Johnson and Saarinen, 2013). Close and early cooperation with the 'woman-friendly' Swedish state facilitated the marginalisation and eventual dismissal of the shelter movement from shelters (Elman, 2003), while in Australia, being in receipt of state funding contributed to muzzling criticism by women's organisations of reversals in state domestic violence policy and practice (Phillips, 2006). In the Netherlands it was the programme of privatisation pursued by the state during the late 1980s

[6] See for example *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC); *K v Minister of Safety and Security* 2005 (9) BCLR 835 (CC); and *Van Zijl v Hoogenhout* 2005(2) SA (93) SCA

and early 1990s that decimated the Dutch shelter movement. Discursive shifts in policy, couched in the language of gender neutrality, also made programmes and policies emphasising women, or specific to women, appear discriminatory (Roggeband, 2012). The British shelter movement, by contrast, retained a degree of autonomy by choosing to work with local authorities. For while local-level partnerships resulted in less financial support, organisations were largely able to retain control over their operations and practices, while workers in statutory agencies were legally obliged to make the family, rather than the woman, their first priority (Charles, 2000).

As these various examples show, women have succeeded in demanding greater state responsiveness to domestic violence. But once located within the ambit of the state, these claims have not always produced the results hoped for. Indeed, while women's organisations have succeeded in changing state practices and policies, they too have been changed in the process. David Meyer (2003), assessing activism in the USA, has observed that the failures and limited successes of national mobilisation and national politics around domestic violence shifted the locus of politics to federal and local level where domestic violence activists felt they could more easily influence police officers', prosecutors' and health professionals' practices. Making claims in expectation of concrete results, he also noted, changed the nature of claims advanced, creating a focus on defining practical ways of implementing policies. Working with people and institutions not immediately sympathetic to anything beyond an immediate programmatic goal also changed activists, who became narrower and more pragmatic in their claims, their analyses more modest. They also became more successful in the short-term in achieving relatively ordinary reforms.

But it is not only engaging with the state that has effected change to women's groupings. Working in broad-based coalitions representing a broad spectrum of political views and theories of violence may lead to the loss of ideological coherence and a dilution of political claims in an attempt to reduce intra-group conflict and minimise conservative backlashes. As a strategy this may have allowed for large, diverse and multi-layered networks, but it also led to European and North American women's movements becoming so highly fragmented that they no longer exhibited an identifiable ideological and social core, thus limiting their capacity for strategic action (Bush 1992; Banaszak, Beckwith and Rucht, 2003).

Given the tiny body of literature, it is difficult to provide a comprehensive outline of women's organising around domestic violence in South Africa. What does exist must also be treated with some caution, given that a number of claims are neither referenced nor supported with empirical data, reducing aspects of the authors' analyses to the level of unsubstantiated opinion.

Sheila Meintjes (2003), in her article examining the development of the DVA, argues that the legislation was made possible by the existence of "necessary and sufficient" conditions both within the state, as well as amongst women's organisations. These included the political mobilisation of women in civil society; the presence of networks both amongst women politicians and bureaucrats supportive of gender issues; the existence of a democratic discourse and framework inclusive of gender to enable key alliances to function effectively; and civil society activists capable of engaging with complex state apparatuses and policy processes. As crucial were key male and female individual champions in the state, sympathetic to the issue at stake and willing to drive processes of reform (2003: 140-141). While these conditions were enabling of law reform, Meintjes suggests that other

factors were equally important in bringing about change. These were that women's organisations had already forced the issue of domestic violence onto the political agenda some twenty years before the transition to democracy and, in the process, forged various strategic alliances. This argument will be examined more closely in later chapters.

But, as has been the experience internationally, engaging the state also changed South African women's organisations. According to Meintjes professionalism began emerging within violence against women organisations during the democratic transition because "grassroots activists" lacked the expertise to engage with the complexities of policy and law reform in the areas of policing, welfare and counselling services. The subsequent control of organisations by professionals with these skills tended to blunt their "political edge" (Meintjes 2003: 143). What precisely the political edge of those organisations entailed, as well as how it was blunted, is not elaborated upon however. The implied relationship between professional skill and dilution of political strategy is also not explained.

Hannah Britton also suggests that the transition changed the structure and nature of women's organisations, including in ways that depoliticised their work. Her analysis however, assumes that women's structures active in the liberation struggle persisted into the democratic era by translating themselves into non-governmental organisations with a prominent – even exclusive – focus on addressing violence against women (Britton 2006: 150-151). As Chapter Six will show, this representation misunderstands the history and evolution of this sector – including the particular relationship between the Department of Social Development (or Department of Welfare and Population Development, as it was then) and the voluntary welfare sector. Historically, social services in South Africa have been provided since 1937 through a partnership between the state, the private sector and the voluntary welfare sector (Patel, 2005). Thus when women's organisations began receiving funds from government to provide services in counselling, sheltering, violence prevention programmes and the like, communities, this transformed them not into the "technocratic handmaidens of the state" (Britton 2006: 155) but the newest recruits to state-sponsored welfare services.

A second, inter-linked change identified by Hannah Britton is the increasing institutionalising of the violence against women sector, or its 'NGOisation', referring both to the increase in the actual number of women's NGOs post-democracy, as well as a change in the form and structure of the women's movement (Britton 2006: 162-163). Her argument in this regard is largely undeveloped and rests on the assertion that NGOs run the risk of losing the radical edge of their agendas and their potential for assertive and militant protest because of their partnerships with government and concomitant reliance on government for funding. These however are problems not of organisational structure *per se* but of relationships that create dependencies.

NGOisation as both a process and form of organisation, as well as its potential implications for women's organising, has been fleshed out in more detail by researchers reflecting on the phenomenon in other parts of the world (e.g. Alvarez, 1999; Henderson, 2000; Hemment, 2004; Jad, 2004; Alvarez, 2009). First noted in Latin America, 'NGOisation' emerged in the mid- to late 1980s and 1990s with the return of electoral politics and democratic processes to the continent, creating the space for some feminist groups to turn their attention to policy-making intended to advance gender equality aims. In developing research, advocacy and policy development skills, Sonia Alvarez

(1999: 182) argues that these NGOs developed hybrid political strategies and identities – learning the technocratic skills required to advocate for gender policies and feminist reforms, while maintaining their dedication to transforming gendered power arrangements and engaging in activities aimed at women's empowerment (suggesting some obvious parallels with those South African women's organisations identified by Shireen Hassim (2006) as focused on influencing national policy-making). However, the introduction of structural adjustment programmes and the changes these produced in state practices and processes threatened to dilute and undermine this hybrid approach in three ways. These included governments engaging with feminist organisations as gender experts, rather than citizens' groups promoting women's rights; treating NGOs as substitutes for civil society; and finally, drawing feminist organisations into contractual relationships with the state to design and implement government programmes. These developments resulted not only in the exclusion of voices outside the feminist NGO sector, but also potentially limited these NGOs' scope to contest policy, as well as critically monitor its impact (Alvarez, 1999). As a further consequence of these shifts feminist NGOs de-emphasised their movement work in favour of meeting donors' short-term impact targets (Alvarez, 2009). These were the bases for concerns around NGOisation.

However, in a later review of her 1999 argument, Sonia Alvarez argued in 2009 that feminist NGOs had played a more complex and dynamic role in sustaining feminist civil society politics than her earlier article suggested. Producing, as well as disseminating, feminist knowledge, they have sustained and diffused feminist discursive fields and developed new forms of doing politics with different actors (Alvarez, 2009). Read in conjunction with the literature on post-communist Russia, as well as Arab women's movements, Alvarez's (re)assessment makes it clear that NGOisation is a complex phenomenon shaped by individual countries' social, economic and political contexts; donor programming and presence; supra-national fora and relations between states, as well as the horizontal linkages between NGOs and other civil society movements and structures (Alvarez, 2009; Johnson and Saarinen, 2013; Hemment, 2004; Jad, 2004; Henderson, 2002).

It is to theorising the strange alchemy wrought by the state on women's political claims that the chapter now turns.

The state

Classic western theories of the state paid little attention to either women or gender, a favour some feminists have been happy to return, seeing the state as either an irredeemably-patriarchal monolith (MacKinnon, 1989) or irrelevant (Allen, 1990). However, the past three decades have seen an upsurge of interest in the state, as debates about the importance of women's representation have grown in momentum, and in the context of various experiments with creating specialised mechanisms to advance gender equality concerns in policy making processes.

Just as the transitions to democracy in Latin America, Eastern Europe and Africa in the last two decades of the twentieth century opened opportunities for new forms of theorisation on the state, so too has this been the case for South Africa's transition to democracy in 1994. The central role played by the women's movement in state formation, both in the writing of the Constitution and the institutionalisation of women's interests within the state, has been detailed by a number of authors (Albertyn, 1994; Geisler, 2000; Hassim, 2003; Seidman, 2003; Gouws, 2006), while others have

examined the effects of gendered policy making processes (Friedman, 1999; Walker, 2003; Hassim, 2010), providing a range of less than salutary insights into the workings of the South African state.

One theme central to a number of these articles is state (in)capacity. Thus while many state policies generally reflect high level commitments to gender equality these are eroded by the inability of the state to effectively apply these commitments. It is this dissonance between policy intention and policy outcome that so effectively undermines the South African state's transformative ambitions (Hassim, 2010). Karl von Holdt (2010) adds another dimension to arguments about state capacity by examining how the relations of rule inherited from the colonial and apartheid state continue to mark the democratic state. Drawing on his work within the health sector, he argues that this manifests in struggle over the purpose, objects and meaning of the bureaucracy, with the existence of contradictory rationales making it difficult for state employees to establish efficient routines or to grasp the real problems and seek innovative solutions. Importantly, he notes that this analysis does not apply to the state as a whole; the Treasury, the South African Revenue Service (SARS) and the now-disbanded Scorpions, all exhibiting a more corporate, meritocratic rationality than Departments such as Health and Social Development.

It therefore does not benefit to analyse the state as a monolithic, unitary whole. Instead 'the state' may be understood as a kind of descriptive shorthand for an ensemble of institutions, networks and organisations with their own sets of interests, which are themselves not always coherent (Franzway, Court and Connell, 1989; Manicom, 1992). Political power is exercised through a profusion of shifting alliances between diverse authorities in diverse projects to govern a multitude of facets of economic activity, social life and individual activity (Rose and Miller, 1992). These various strands and networks comprise the matrix of government: a field of activity in which those confronting certain social conditions attempt to make sense of their environment, imagine ways of improving conditions and devise means for doing so (Rose, O'Malley and Valverde 2006: 99). The state is constituted within this grid, both an outcome of and contributor to political activities (Finlayson and Martin, 2006), a process vividly illustrated by the South African transition to democracy.

During the 1980s there was an upsurge in the formation of civic associations and student, youth and women's organisations (including those opposing violence against women), as well as people's courts, street committees and community development organisations. In addition to their affiliation with the movement to end apartheid, many of these groupings also introduced programmes different to those in the formal welfare sector, as well as in areas neglected by the apartheid state (Patel, 2005). As was acknowledged in the Reconstruction and Development Programme (RDP), these non-governmental organisations (NGO) functioned in many ways like a proto-state, having taken over many of the planning, policy development and support roles that a democratic government would have played; in addition to supporting those political formations the state denied resources. Because most governments refused to supply aid to the apartheid state, aid was largely channelled to the NGOs comprising this sector (Ministry in the Office of the President 1994: 40). It was from within this dense matrix of networks, relationships and programmes – local, national and international – that the post-1994 state was constituted.

A state rules on the basis of the relationships established between the complex of apparatuses, institutions and organisations comprising the state, as well as the networks between state and non-state institutions (Rose and Miller 1992: 176). Women's organisations addressing domestic violence,

along with religious and charitable organisations, now form part of this regulated network. Their supervision is neither entirely private – because constructed within a set of legal mandates that also support public funding, as well as by agents publicly accredited to provide such services – nor conducted under the aegis of an organ of political power (such as a government department). This means that such bodies do not operate according to the decrees and logics of political forces; rather their practices and objectives are informed by moral principle or professional expertise (Rose 1987: 70). In Africa and some Latin American countries, domestic violence may be further regulated through parallel, indigenous systems of justice (Macauley, 2006).

Power does not circulate equally within these networks but is concentrated in some sites while diffused across others. This may result in the practice of citizenship being reduced to weak forms of participation in arenas and channels which women have little control over and little ability to raise new issues or challenge dominant discourses (Gaventa 2009: xii). Indeed, as a site of politics, states act to govern by demarcating the domains of the political, opening some matters to contestation while closing down others by holding off alternative ways of understanding situations (Finlayson and Martin, 2006).

Each site of regulation will bring its own distinctive rationality to the management of domestic violence, which may well conflict with feminist aims. For instance, when funding was finally won for women's shelters in the USA, it came through an amendment to child abuse legislation and in a punitive law and order climate also focused on the rights of victims of crime (Charles, 2000). Many in the domestic violence movement have come to question the value and efficacy of partnering with the state – and law enforcement agencies in particular, pointing to how such partnerships have de-emphasised a broader welfare and social justice agenda (Stark, 2005). By contrast, the UK movement emphasised access to services enabling women to be independent of the abuser. This led to domestic violence being defined as a problem of housing and the promulgation of the Housing (Homeless) Persons Act of 1977 which enabled local authorities to fund women’s refuges (Charles, 2000).

In still other countries, feminists within the state (or femocrats) and/or women’s bureaucracies have been central to devising policies and programmes addressing domestic violence. Australian femocrats used their positions to significantly increase the number of shelters and create both a task force addressing violence against women, as well as a federal grants programme to support autonomous women's organisations. Many of these reforms were subsequently unravelled following the change in political power in the mid-1990s (Phillips, 2006). At other points and in different contexts, women bureaucrats have been neither influenced by feminism, nor the representations of women's organisations (Santos, 2004; Boesten, 2006; Franceschet, 2010). Indeed, Laurel Weldon's research (2004) examining the effect of women’s presence within political structures on policy-making around violence against women in the USA found the number of women in legislatures, as well as the presence of women's caucuses and effective women's commissions to have no impact on policy responsiveness. Civic and political activity was most effective when independent of state institutions, while women's organising within the state seemed to have little impact on policies addressing violence against women (Weldon, 2004).

Regulatory institutions also connect women with disciplinary practices like law, medicine and psychiatry (Westlund, 1999). Abused women, the long-stigmatised subjects of psychological theories

emphasising their disordered provocations, are readily transformed into a sub-population requiring reform and correction. Shelters, depending on the outlook of those who run them, may literally become sites of surveillance and normalising judgement. But as Andrea Westlund argues, disciplinary practices are not inherently oppressive; shelters may equally serve as sites of empowerment that encourage transcendence of the abuser (*ibid*). Programmes focusing on the capacities of those victimised, rather than the practices through which one group dominates another, lend themselves particularly well to disciplinary solutions. As such, these discursive framings lend themselves to the depoliticisation of domestic violence. Depoliticisation is also accomplished when programmes locate domestic violence within the familial and alcoholic and make conciliation and family unity their primary aims, as is the case in Finland and a number of Latin American countries (Hearn and McKie, 2010; Franceschet, 2010; Macauley, 2006).

State domestic violence initiatives may serve a range of ends which are not necessarily feminist in intent. For the first Brazilian civilian government, the establishment of all women's police stations[7] (the *Delegacia de Policia dos Direitos da Mulher* [*delegacia*]) represented an opportunity both to rally the female constituency, as well as demonstrate a kindlier and more caring side to a police force heavily implicated in upholding 20 years of authoritarian rule. *Delegacias* were also the least expensive option to introduce, costing less than the typical feminist domestic violence policy package of shelter, counselling service, telephone hotline, and legal clinic (Hautzinger, 1997). The subsequent popularity of the *delegecias* (which even gave rise to a weekly television series) led to their indiscriminate establishment by Sao Paolo politicians, often without either the minimum human and material resources, or training, to run effectively (Santos, 2004).

Gender projects may also serve to illustrate the modernising credentials of nationalist, post-colonial states (Rai, 1996; Manicom, 2001) – a tendency encouraged perhaps by the 1993 UN Conference, as well as the 1995 Beijing Conference. These served to locate domestic violence as a state problematic within a grid of networks and influences extending well beyond individual states, which not only required reporting to supra-national structures but also came with the promise of development aid.[8] Following the collapse of the Soviet Union, for example, foreign aid flowed in post-communist Europe such that in countries like Moldova, domestic violence was manufactured as a women's interest – only to be reinvented later as a concern with trafficking when aid priorities altered (Johnson and Brunell, 2006). In other parts of post-communist Europe, feminist Transnational Advocacy Networks (TAN) developed, along with professionalised and ephemeral NGOs more connected to foreign aid than to local populations. These developments, it is suggested, restricted local mobilisation and supplanted local women's organisations (Hemment, 2004; Henderson, 2000).

Jelke Boesten (2006) also argues that these internationalised discourses of women's empowerment and the measures they promote (such as domestic violence legislation), can usefully be deployed by states to distract from their other less democratic activities. Peru's first law against domestic violence,

[7] The first *delegacia* was opened in 1985 in Sao Paolo, Brazil to exclusively investigate crimes against women, with all services to women only provided by female officers. Privacy, separate entrances and all-women staff also became characteristic of these stations (Jubb and Izumino, 2003).The creation of a police station specialising in the investigation of a particular category of crime was not unusual within the Brazilian context, there being an existing tradition of establishing police stations focusing on particular crimes (such as robbery, burglary, or theft of antiquities) (Santos, 2004).

[8] See Erwin (2006) on funding and the exportation of US "best practices" around domestic violence.

she argues, was introduced in 1993 along with other measures to advance Peruvian women's position (such as a Ministry for Women and quotas for women's political representation) in order to rehabilitate President Fujimori's democratic legitimacy following an *autogolpe* that effectively rendered the country a one party state *(ibid).*

In conclusion, the arenas, institutions, technologies and apparatuses of the state are a significant site of struggle. State discursive practices and processes have very real effects on women and men's lives, constituting subjects and subjectivities in some ways and not others; monitoring and regulating some aspects of people's lives, while hiving off others as private; and extending some protection and material benefits at the same time as others are withheld. Policy programmes' modes of operation also reveal the tacit norms and implicit assumptions which inform state practices – assumptions and presuppositions that carry real implications for the institutional location and control of a particular policy, its programmatic orientation with respect to funding, the design of services, as well as who will be eligible for the service (Fraser 1989: 173). Discourses are however, open-ended and productive of new possibilities and it is in reshaping particular constructions of reality and meaning that political gains are made (or losses incurred).

Chapter 3: A Genealogy of the Domestic Violence Act 116 of 1998

Women's social and legal subordination is well-documented. To cast this in stark and simplified terms: Considered out of their element in the public realm, they have been confined instead to the private world of the family, there to create a soothing haven in a heartless world for their children and husbands where law would not tread. But within this haven and subject to their husband's authority, women enjoyed neither rights to property, nor custody of their children. Legal minors, they were subject to the reasonable chastisement of their husbands, who also enjoyed control over their movements, as well as conjugal rights. While life within the family may have been unbearable, life outside of the family was unimaginable; for if not wives and mothers, what were women? So, through patriarchal ideology and structure, were the conditions created that allowed domestic violence to flourish.

However, the subordination of women to the private sphere does not take a universal form, as close attention to African systems of kinship and their mediation of public and domestic realms pre-colonialism makes clear (Mikell, 1997). The subsequent grafting of colonial gender norms onto indigenous gender systems, coupled with the institutionalised racism of apartheid, ensured a qualitatively different experience of family life for black women in South Africa. Indeed, the practice of migrant labour, forcible removals and resettlements and the routine harassment, detention and imprisonment of those opposing apartheid showed scant regard for any notion of black families as inviolate or outside the reach of coercive state authority. Thus for black women it was the apartheid state which constituted the primary force of oppression in their lives, rather than the family (Kemp et al, 1995).

Domestic violence is thus embedded within a set of foundational and inherited discourses around family, privacy and household. At the same time the term is also an amalgam, where the stress on 'violence' introduces notions of crime and victimisation, as well as gender equality and rights. The intermingling of these conceptual lineages, as well as where the emphasis falls, will determine how the problem of domestic violence is framed; who is made the custodian of the problem; and what remedies are offered to address domestic violence. In this chapter I provide a legal genealogy to the DVA, exploring how the intervention of law into the familial realm in South Africa has been conceptualised over time.

The 1980s: Families, domestic violence and the state

By the 1980s the marital power was in the process of being abolished for women classified as white, Indian or coloured. The apartheid state being even less attentive to gender relations within black African families, it took until the Recognition of Customary Marriages Act of 1998 before the last vestiges of marital power were abolished for black African women. But by the 1980s a husband's right to moderate chastisement of his wife no longer existed, any more than did his authority to restrict her movements, while signs of judicial discomfort with the marital rape exemption had also been glimpsed in a 1985 Supreme Court decision (Kaganas and Murray, 1991). But this cautious nod in the direction of the criminal law was unusual; for the most part the state was neglectful of domestic violence, as this 1990 utterance by the Minister of Law and Order, Adriaan Vlok, illustrates:

> The apparent reluctance of the South African Police to act on charges of assault brought by

> women against their husbands is based on moral and humanitarian grounds and must generally not be regarded as insensitive behaviour (Minister of Law and Order, 1990 cited in Posel 2005: 25).

In a similarly-justificatory vein the then-South African Police submitted the following to the Police Board in 1994:

> It is a world-wide belief that the police should not interfere or get involved in household disputes. The rationale behind this relates to law enforcement as the primary function of the police – and law can only be enforced when someone lodges a criminal complaint with the police. Once they get involved in household disputes, the police are blamed for interfering in private matters.
>
> The priorities of policing are determined by the community. Figures of other serious crimes reported to the SAP confirm this fact. More attention has to be devoted to those serious crimes, which are more frequently reported (cited in Olckers 1997: 131).

Legal protection from domestic violence was equally negligible prior to 1993, being available only through High Court interdicts and peace orders. The interdicts were expensive because they required women to pay for the appearance of an advocate in the High Court, while peace orders were not well enforced and resulted in light punishment if violated. Indeed, the peace order process relegated domestic violence to nuisance behaviour on a par with barking dogs and other forms of neighbourly incivility.

It was this absence of legal protections, argues Sheila Meintjes, that became the subject of considerable lobbying in the 1980s through a "carefully orchestrated" process involving "strategic alliances between particular champions in civil society and influential actors, decision makers and legislators in the state" (2003: 146). Two processes are offered in support of this claim: the South African Law Commission (SALC) taking up the issue of violence against women in 1986; and the creation in 1989 of the Family Advocate's Office, described as a structure instituted to deal with intimate family violence and "a path-breaking move on the part of the inherently conservative legal establishment" (2003: 147).

According to Meintjes (2003), the SALC enquiry originated as a result of the interventions of Frances Bosman (Advisor to the Minister of Justice, Kobie Coetzee, on family matters), Margaret Lessing of the Women's Bureau and the Minister of Justice Kobie Coetzee, said to be pivotal to ensuring that a women's policy agenda was in existence. The outcome of this enquiry was the inclusion by Frances Bosman of rape crisis organisations' arguments around secondary victimisation in the SALC's project report. There is however, no record of an enquiry into violence against women being initiated by the SALC in 1986 – although there was a SALC report issued in 1985 (project 45) entitled *Women and Sexual Offences in South Africa.*[9] There is also little evidence to suggest that rape crisis organisations, Frances Bosman or Margaret Lessing played a significant role in prompting the SALC's investigation. In fact, it appears to have come about largely as a consequence of a sustained attempt by the Western Cape Attorney General between 1979 to 1982 to highlight through the media both the

[9] See *Investigations included in Commission's Programme Since its Inception* for a list of SALC investigations from 1973 onwards (SALC, 2011).

prevalence and seriousness of rape[10] (Kaganas and Murray, 1991).

In May 1982 questions based on press reports highlighting the trauma and stigmatisation experienced by rape survivors, as well as the humiliation of giving evidence in public, were put to the Minister of Justice in parliament, who responded by establishing the SALC investigation (SALC 1985: 1). In July of that year SALC decided to widen the initial scope of the investigation to include related offences (such as indecent assault), in addition to absorbing a related investigation by the Standing Penal Reform Committee which was focused on shielding rape survivors from publicity and cross-examination of their sexual histories (*ibid*).

In formulating their initial questionnaire around the scope and nature of the investigation, SALC took into account the "now well-known demands that regularly emanate from these groups [*women's groups and other interested groups in South Africa today*]" (SALC 1985:2) and requested comment on a number of these recommendations, one of which was the removal of a husband's immunity from prosecution for the rape of his wife.[11] The questionnaire was then distributed to 223 interested parties (such as the legal fraternity, academia, welfare organisations, women's organisations, churches and government departments). Somewhat acidly the Commission jibed: "It may be mentioned that the relatively limited response from women's organisations and the general public has made the Commission wonder whether there really is so much dissatisfaction in South Africa with the law relating to rape as is generally made out by the press" (SALC 1985: 11).

The report issued in 1985 was a disappointment and, not infrequently, dismissive of feminist demands for particular reforms[12] (Kaganas and Murray, 1991) – which made the SALC's recommendation to remove a husband's immunity from prosecution for the rape of his wife all the more startling. And, paradoxically, in arriving at this proposal, it is clear that their thinking was influenced by the first legal article written on the subject by feminist legal academics Felicity Kaganas and Christina Murray (1983). Jurisprudential arguments related to the status of parties to a marriage, as well as a series of inconsistencies that the marital rape exemption introduced into law, had persuaded them of the need for such reform. However, noting the equally strong opposition to criminalising rape in marriage, they also recommended that no such prosecution be instituted without the consent of the Attorney-General (SALC 1985: 35-36).

[10] The historical background to this campaign appears to have originally been provided by an undated, untitled paper held by the Institute of Criminology at the University of Cape Town (see Kaganas and Murray 1991: endnote 2). Twenty-two years later, it would not appear to have survived in the public domain.

[11] Other questions canvassed included the need to amend the definition of rape; prohibit cross-examination around the complainant's previous sexual history; abolish the cautionary rule applicable to sexual offences; introduce greater flexibility in the application of the "hue and cry" rule; abolish capital punishment for rape; make district surgeons responsible for providing victims with prophylactic treatment for venereal diseases and pregnancy; introduce abortion on demand for rape survivors; and abolish the irrebuttable presumption that a boy under 14 cannot commit rape (SALC 1985: 2-3).

[12] The SALC's treatment of the demand to amend the definition of rape illustrates this hostility well. SALC noted that it was only rape crisis organisations and certain women's organisations which wanted the definition amended and commented on law reforms internationally in this regard as follows: "Feminists made use of the current national preoccupation with crime control to induce legislators, prosecutors and the police (who could not be motivated to law reform by the need for the realisation of feminist values) to introduce reform. The latter allowed themselves to be influenced by this, and the result was radical reform of the law relating to rape. The feminists were not so much concerned with law reform on the grounds of real and identified needs, as with a mighty and symbolic means to obtain equal rights for women" (SALC 1985: 15).

The SALC had also supported in principle Francis Bosman's recommendation that sexual crimes committed within families (such as marital rape and child sexual abuse) be removed from the criminal courts altogether and heard in specialised family courts instead (but where all the provisions of criminal procedure would still apply). This recommendation was Bosman's alone and introduced upon her appointment as an additional member to the commission for this particular investigation. This recommendation was not actively pursued because no family courts were in existence at the time, the legislation still in the process of being drafted (SALC 1985: 111-114).[13]

When the SALC's Bill was introduced to Parliament in 1987 it was first sent to a parliamentary joint committee for consideration – a two year process well-documented by Felicity Kaganas and Christina Murray (1991). The committee was decidedly not in support of removing a husband's immunity from prosecution for the rape of his wife and while they solicited opinions around the marital rape provisions, ultimately disregarded those in favour of the proposed clause. Unmoved by the SALC's technical legal arguments, they rejected the provision on many of the usual grounds: that the provision was in conflict with the marriage vows and essence of marriage and would contribute to increasing the already high divorce rate; that the crime would be difficult to prove; the authorities would be inundated with complaints and the protection was unnecessary: women already had enough remedies in law to protect them from violence. The emotive clincher was the ghastly image of husbands being hauled to the gallows for the rape of their wives (Kaganas and Murray, 1991). The provision was thus revised to reduce marital rape to an aggravating circumstance for purposes of sentencing following a conviction for assault.

All three houses of South Africa's tricameral parliament accepted the new provision, the only opposition coming from Helen Suzman, who found a surprising ally in the Conservative Party (rape, they stated, was rape regardless of what it was named). Judge van den Heever, South Africa's only female judge of the time, argued that it was every woman's duty to submit to her husband, while Mrs Chait, (one of a tiny number of female National Party MPs) claimed that the revised provision was as ground-breaking as the legislation granting white women suffrage in 1930 (Kaganas and Murray, 1991).

The number of rape crisis organisations who participated in the SALC's processes of public consultation was indeed small (exceeding perhaps no more than seven such organisations) and outnumbered both by the voluntary welfare sector, as well as women's organisations. The latter grouping was by no means feminist either, being comprised largely of Afrikaans and religious women's groupings.[14] Their numbers alone mitigated against rape crisis organisations exerting a significant influence upon SALC recommendations. And if the few feminist organisations active against violence towards women had been unable to sway the SALC, they were equally unable to influence subsequent parliamentary processes (Kaganas and Murray, 1991). The Bill's appearance in parliament in 1989 took feminist activists by surprise and at a time when their attention was diverted elsewhere (the authors do not however, specify what fixed activists' attention at that point). Small and over-stretched as it was, the sector's belated efforts to challenge the dilution of the SALC's recommendation could only prove ineffective and parliament's revised provision became law as part of the Criminal Law and Criminal Procedure Act Amendment Act 39 of 1989. It was not only the

[13] The legislation remains unfinalised to this day.

[14] The SALC report (1985: 186-200) provides a comprehensive list of all those participating in its various consultations.

content of this particular provision that caused dismay; it was the fact that codification closed the door on developing the criminal law through a process of precedent (*ibid*).

The establishment of the office of the Family Advocate did not represent an advance in women's interests either.

The Office of the Family Advocate originated in the 1983 Hoexter Commission of Enquiry into the Structure and Functioning of the Courts which, amongst other juridical matters, was concerned with the prevalence of divorce and its effects upon children. One of the principal recommendations of the Commission was the establishment of family courts and the creation of procedures attentive to children's interests during divorce proceedings. This led to the Mediation in Certain Divorce Matters Act 24 of 1987 which created the office of the Family Advocate tasked with protecting the interests of children affected by divorce. It was emphatically not a structure intended to deal with intimate partner violence. Indeed, in its assessment of the Family Advocate's Office, the Law, Race and Gender Unit of the University of Cape Town specifically noted as a weakness the inability of its mediation procedures to detect domestic violence or remedy the power imbalances between couples (Kaganas and Budlender, 1996).

What the pre-1994 state did offer abused women in place of legal protection were services via the voluntary welfare sector derived from the partnership between the church, state and private initiative. These services were largely provided by the Family and Marital Association of South Africa (FAMSA), the Mental Health Society, and Child and Family Welfare, as well as organisations dealing with substance abuse, like the South African National Council for Drug and Alcohol Abuse (Vogelman and Eagle, 1991). But with welfare services and benefits being distributed in a racist and racialised manner, all women did not enjoy access to these services.

Social work services within this sector were shaped not only by the ideological context of apartheid and the residual welfare system but by patriarchy too. In practice this meant that family preservation tended to be the chief aim of social workers, with clinical interventions largely drawing on theories of individual pathology that located domestic violence within abused women's assumed personality disorders (these included being 'masochistic', 'passive-dependent', 'paranoid' or 'borderline'). In corralling domestic violence within the realm of the individual and personal, the socio-political dimensions of such violence were obscured, severely circumscribing the scope and nature of assistance offered abused women (Segel and Labe, 1990). This led social worker Tracy Segel (who was also the coordinator of People Opposing Women Abuse (POWA) at the time) and colleague Dana Labe to argue that in offering therapeutic services in place of material assistance, as well as services that were inadequate and inappropriate, social workers effectively reproduced the practices and structures enabling of domestic violence (Segel and Labe 1990: 269).

Thus by the close of the 1980s rape, as one form of violence against women, had attracted somewhat more legal and political attention than domestic violence. Domestic violence had been similarly neglected in the field of family violence, where child abuse and familicide[15] had commanded more public and theoretical interest. The poorly resourced nature of services to women

[15] This refers to a particular form of family murder that attracted a good deal of attention in the 1980s, not least because it appeared largely confined to South Africa's white, Afrikaans-speaking population, as well as being relatively uncommon in other parts of the world. It referred to circumstances where a parent, frequently the father, killed their children and spouse before committing suicide (du Toit, 1990).

further reflected low levels of public concern around domestic violence (Segal and Labe 1990: 251). The assertion that the apartheid state championed domestic violence during the 1980s and introduced significant measures addressing the problem is therefore not borne out by closer scrutiny of the evidence. Apparent instead was the trivialisation of rape in marriage, as well as the subordination of women's interests to the preservation of families and marriages.

As the discussion of the abortive attempt to criminalise rape in marriage shows, there was also no carefully orchestrated partnership between the state and civil society. Feminist organisations had not yet learnt to engage with law reform processes (Kaganas and Murray, 1991), while state structures such as the SALC appeared dismissive of women's organisations. Instead, those who attempted to drive reforms were largely drawn from a legal fraternity generally unmoved by feminist projects – although open to suasion when arguments were couched within the more familiar terrain of legal discourse. Parliamentarians however, both male and female, were largely unconvinced by such jurisprudential argument and successfully resorted to emotive appeals around family preservation to quash the proposal. Yet even here, unusual and unexpected alliances emerged in support of the proposal. At the same time, confirming former Justice Albie Sachs' contention that patriarchy was "one of the few profoundly non-racial institutions in South Africa" (Sachs, 1990: 1), all three houses of South Africa's racialised parliament demonstrated opposition to criminalising rape in marriage.

The Transition: The Prevention of Family Violence Act (PFVA)

In February 1990 the National Party unbanned a range of political parties and set in motion the handover of power to a government elected under democratic conditions. Legal reforms relevant to domestic violence accelerated.

In 1991 Judge Heath, sitting in the Ciskei High Court, ruled that there was no legal justification for the marital exemption to the crime of rape and convicted one Mr Ncanywa accordingly. Judge Heath was able to do so because the homeland of Ciskei was nominally independent and therefore not bound by South African legislation. Reprising aspects of the SALC's position (and Murray and Kaganas' arguments [1983]), he found unacceptable the fiction introduced by English law that a wife, upon marriage, irrevocably gave consent to sexual intercourse. He also rejected the position in Roman-Dutch law that permitted the exemption as a legal consequence of marriage[16] (*S v Ncanywa* 1992 (1) SACR 209 [Ck]).

The decision was an important one which had the potential to exert persuasive influence on South African law. But it was overturned early in 1993, the Ciskei appeal court agreeing that marriage did not confer irrevocable consent to sexual intercourse, but upholding the exemption in terms of Roman-Dutch law (*S v Ncanywa* 1993(1) SACR 297 [Ck A]). Months later, the exemption was abolished for good when the Prevention of Family Violence Act (PFVA) 133 of 1993 was introduced in December. With some initial reluctance and after three drafts (the first leaving the 1989 provision intact, the second allowing for prosecution but only with the written permission of an attorney-

[16] Roman-Dutch law treated marriage as a hierarchical relationship that subjected wives entirely to the guardianship of their husbands who had authority both over their property, as well as their persons. A husband's dominion over his wife included marital privileges and an entitlement to meet resistance with force or violent conduct (*S v Ncanywa* 1992 (1) SACR 209 [Ck]).

general, and the last finally removing all caveats [Novitz, 1996]) marital rape finally became a crime.

The PFVA was introduced by the National Party during the last days of its rule with political transition thick in the air and perhaps in belated recognition of the fact that women were a political constituency (as the formation of the WNC had shown). [17] The process of public consultation around the Bill was rushed (Bonthuys, 1997; Meintjes, 2003) (prompting suspicion around the motivations of the legislators [Fedler, 1995]) and its enactment not supported with adequate funding (Fedler, 1995). The Act's express purpose was also to promote family unity, rather than protect women, which once again subordinated women's individual rights to their roles as wives, mothers and home-makers (Novitz, 1996; Fredericks and Davids, 1995). Nonetheless, for the first time in the history of the South African state, legislation had been introduced for the specific purpose of combating domestic violence.[18]

The chief innovation of the PFVA was the legal procedure that it created for obtaining interdicts prohibiting violence between intimate heterosexual partners. To decrease costs, these interdicts could now be applied for at magistrates' courts instead of the High Court. They could also be obtained fairly quickly. The applicant completed an affidavit setting out the domestic violence perpetrated against her and the protection requested. The magistrate, on reviewing the order, then had the discretion to issue an interdict to stop the abuser from assaulting or threatening the applicant, and/or from entering the home. The order was also issued with a suspended warrant of arrest that came into effect if the abuser breached the terms of the interdict. Commentary and critique of the PFVA appeared almost immediately (Grant and Jagwanth, 1994; Fedler, 1995; Fredericks and Davids, 1995; Novitz, 1996; Padayachee and Manjoo, 1996), with amendments already being proposed at the 1994 national Women's Health Project conference (Women's Health Project, 1994).

The PFVA was limited in a number of ways. First, even if its name implied this, it did not apply to family members broadly but only to parties in a marriage or intimate partners who cohabitated. Abuse among family members, same-sex partners and intimate partners who did not live together was excluded from the ambit of the Act. The Act also did not define domestic violence, which limited its application to women suffering from physical abuse alone. The practical application of the Act further limited women's access to justice. There was little instruction to the police and magistrates on how to use it and when to use their discretion to protect women (*ibid*). This allowed police and magistrates to avoid intervention into domestic violence completely, or to apply stereotypes and bias in deciding when domestic violence warranted legal protection (Human Rights Watch, 1995). Magistrates also typically did not hear interdict applications over weekends and in the evenings when most incidents of domestic violence occurred.

Ultimately, the PFVA proved as transitional as the era that produced it. But it was its unusual legal procedure (the issuing of an interdict on the basis of the victim's version alone), rather than its workings in practice that led to the review of the legislation.

[17] However, it took until June 1997 before women living in the former homelands of Transkei, Bophutatswana, Venda and the Ciskei became able to apply for interdicts in terms of the PFVA.

[18] The PFVA also placed an obligation on certain categories of persons to report child abuse.

Creating the Domestic Violence Act

In July 1995 the legal firm of Pincus, Matz, Marquard and Hugo-Hamman wrote to the SALC arguing that the PFVA represented a "radical and unjustified departure from the *audi alteram partem* principle...and not one which should be abandoned under any circumstances" (SALC 1997a: 2). Urgent revision of the PFVA was recommended to create a procedure more in keeping with traditional applications of the law (*ibid)*. After soliciting the opinions of the Department of Justice, the Chief Family Advocate and various Chief Magistrates, the SALC established Project 100 in February 1996 to investigate the problem of family violence. Issue paper 2 was subsequently released for comment.

In its evaluation of the PFVA the Issue Paper drew considerably on concerns raised by magistrates of the Cape Peninsula, as well as a convention held at UNISA on 22 September 1994 entitled *Convention on Domestic Violence: heal the family*. Submissions were then requested in response to four broad questions: was there a need to revise the PFVA and if so, in what way should it be amended? Could amending the PFVA address all matters of family violence and if not, what other measures should be introduced; and finally, was there a need to address violence against women more specifically, rather than subsuming it within a broader investigation of family violence and, if so, what should the point of departure be (SALC 1996: 10)? Responses to these questions were then collated by the SALC in Discussion Paper 70.

Comments on Discussion Paper 70 closed on 30 May 1997 and in September of that same year a Project Committee on Domestic Violence was established. Its composition represented something of an innovation for SALC. Where project committees had traditionally been drawn from the ranks of academia this one represented an active attempt to include those working in the arena of direct service provision to abused women. The rationale behind this step was provided by feminist legal academic Elsje Bonthuys who had argued in the *South African Law Journal* that it would assist the SALC to cooperate with NGOs working directly with victims of domestic violence because of the insights they brought into such women's particular needs. Additionally, the knowledge brought by non-legal persons like health and social workers, would provide other valued approaches to the problem of domestic violence (SALC 1999: 4; Bonthuys, 1997).

The Project Committee, which met for the first time on 7 October 1997, comprised the feminist lawyers Joanne Fedler (of the Tshwaranang Legal Advocacy Centre [TLAC]); Helene Combrinck, a former prosecutor then employed in the Women and Human Rights project of the Community Law Centre established by the University of the Western Cape; Rashida Manjoo of the Advice Desk for Abused Women; the magistrate Heinz Kuhn; Futhi Zikalala of the South African Human Rights Commission; and attorney Fiona Stewart. Representatives of women's organisations working with domestic violence included Lesley-Anne Foster of Masimanyane Women's Support Centre; Mandisa Monakali of Ilitha LaBantu; Mmatshilo Motsei of Agisanang Domestic Abuse Prevention and Training (ADAPT) and Lilly Makhura. Selection of Project Committee members was based on responses received to Issue Paper 2 and even, in a few instances, a certain serendipity.

Helene Combrinck, for instance, had compiled a submission to parliament in collaboration with the Community Law Centre, Rape Crisis Cape Town and the parliamentary ANC Women's Caucus. With the final Constitution having just been adopted, as well as the recent ratification of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) by the state, the

submission had paid particular attention to the implications for South African domestic violence legislation of international law. Michael Palumbo, the SALC researcher responsible for the Domestic Violence Bill, was present when Combrinck made a presentation to Parliament on the submission, which led to her being invited onto the Committee.[19] It was also Lesley-Anne Foster and Rashida Manjoo's work around CEDAW (and the compilation specifically of a shadow report on the South African government's progress on its commitments) that led to their inclusion on the Committee, in addition to their direct work with women.[20] Fedler is reputed to have been included following a strongly-worded phone call to Palumbo expressing serious reservations around the SALC approach set out in Issue Paper 2, both for its lack of gender sensitivity and inattentiveness to the actual needs and experiences of abused women.[21] As Helene Combrinck recalls, attorney Fiona Stewart, who had written an article on the implementation of the PFVA, was invited to represent the legal profession.[22]

This combination of feminist lawyers, practitioners and legal technocrats created some initial friction. At the first meeting of the committee, members arrived to find the Commission had already identified the issues for discussion, drawing on the Issue Paper and responses received. It therefore took as given a particular definition of domestic violence, as well as the nature of the legal interventions required. Both Joanne Fedler and Helene Combrinck objected to having these central questions pre-decided, asking "Why are you getting people that you regard as experts if you're not going to listen to us?" Lesley-Ann Foster and Futhi Zikala took a similar position and, at this early juncture, these four members of the committee came close to withdrawing from it altogether. But with agreement reached that these matters were up for discussion, the committee then settled to its work of drafting the legislation.[23]

It then fell to the Project Committee to formulate a final report based on responses to Discussion Paper 70, as well as craft a Bill for parliament's consideration. However, no final report was published by the SALC because the Domestic Violence Bill appeared in Parliament before it could be completed. Instead, what would have been the final report was released in April 1999 in the form of a research report. These three documents – the Issue Paper, Discussion Paper and Research Report – detail how the Domestic Violence Bill evolved.

Deciding the scope and content of legislative change

The SALC considered Issue Paper 2 to be the first issue paper "on a matter in which people at all levels of society had a direct interest" (the novelty of this claim being diluted somewhat by the fact that this was only the second issue paper to be released by the SALC). An "excellent" response was elicited (SALC 1997a: 3), including 37 submissions from individuals, NGOs and government departments, as well as a further 17 from different magistrates' courts.

As a result of this first set of public comments, the focus of the enquiry shifted from being one on 'family' violence, to one on 'domestic' violence. This was on the recommendation of Lawyers for Human Rights which suggested that the word 'family' was limiting while use of 'domestic' expanded the class of persons eligible for the Act's protection.

[19] Interview Helene Combrinck November 2012.
[20] Interview Lesley Ann Foster December 2012.
[21] Interview Helene Combrinck November 2012.
[22] *ibid*
[23] *ibid*

Domestic violence was not initially conceptualised as a problem of gender inequality by the SALC. Instead Discussion Paper 70 rooted the need to address domestic violence within its consequences and effects: its drain on the economy; its devastating impact on individual victims, families and communities; and its role in encouraging children to use violence as a problem-solving mechanism. A further rationale for the legislation was section 12(1)(c) of the Constitution – the right to be free from all forms of violence, whether public or private (SALC 1997a: 3).

The Project Committee widened this rationale considerably. Democratisation processes, they noted, often brought problems of gender inequality to the fore. It was thus entirely appropriate that domestic violence be the focus of law reform at this point in South Africa's political and constitutional development. Government had committed itself to a number of international instruments addressing violence against women, while domestically it had committed itself to achieving a criminal justice policy responsive to the "special needs of vulnerable groups such as women and children" (SALC 1999: 2). Government's concern about violence against women had been further evinced in the on-going public campaign launched by the Deputy Minister of Justice on 25 November 1996, International Day of No Violence Against Women. The country's constitutional commitments to upholding gender equality and ensuring freedom from violence made law an essential part of these initiatives (*ibid)*. This framing, unlike that provided by the previous discussion paper, squarely located the DVA within the post-apartheid state's founding narrative of liberation, transformation and democratisation.

The document was also explicit in stating that women constituted the majority of domestic violence victims. On this basis, it drew on international human rights frameworks addressing gender-based violence such as CEDAW, DEVAW and the Beijing Platform of Action. The model framework for domestic violence legislation developed by the UN's Special Rapporteur on Violence Against Women in 1994 was also extensively consulted in the Bill's drafting (SALC 1999: 15). Finally, by drawing on CEDAW SALC was able to characterise domestic violence as a form of discrimination and an obstacle to the achievement of women's equality.

The final research report (which most obviously reflected the Project Committee's thinking) noted that the gendered dimensions of domestic violence could not be adequately captured in the gender-neutral language of law and on this basis introduced a preamble to the Domestic Violence Bill. The preamble was also intended to contextualise domestic violence legislation and declare that domestic violence would not be tolerated in a society based on freedom, equality and dignity (SALC 1999: 219).

The preamble read:

> **RECOGNISING** that domestic violence is a serious crime against society; that many persons are regularly beaten, tortured, and in some cases even killed by their partners or cohabitants; that many victims are unable to leave abusive situations due to social and financial factors; that victims come from all social, economic, cultural, ethnic and religious backgrounds; that children suffer deep and lasting emotional effects from exposure to domestic violence, even when they are not assaulted themselves; that the health and welfare of the elderly and disabled is at risk because of incidents of domestic violence and neglect; that many people are subject to abuse based on their actual or perceived race, colour, religion, sex, gender, sexual orientation, disability or age;

RECOGNISING FURTHER that the majority of victims of domestic violence are women; that many pregnant women are assaulted; that the home is often the most violent place for women; that many women caught in the cycle of violence are most at risk of being killed by their partners when they attempt to leave the abusive relationship; that domestic violence is an obstacle to achieving gender equality; that due to societal attitudes, acts of domestic violence have been perceived and treated as lesser offences than similar offences committed beyond the domestic sphere:

RECOGNISING FURTHER that the primary duty of the South African Police service and the judicial system, when responding to domestic violence, is to enforce the laws allegedly violated and to protect the victim; that the training of all police and judicial personnel in the procedures and enforcement of the Act is expected;

AND HAVING REGARD to the Constitution of South Africa and the international commitments and obligations of the State towards ending violence against women and children, it is the intent of this Act to afford the victims of domestic violence the maximum protection from abuse the law can provide and the official response to domestic violence shall communicate the attitude that violent behaviour shall not be excused or tolerated.

This was strong stuff. It did not survive.

Because the SALC was primarily concerned with how best to expand the protections offered by the PFVA, its focus was largely legalistic in nature and addressed to matters such as the service and duration of interdicts, jurisdiction, the *audi alteram partem* rule, the hearing of oral evidence and the like. This framing ensured that most of their enquiry was confined to addressing the first of the two questions raised in the Issue Paper. As to the third, the SALC noted that there was a need to embed a legislative response to domestic violence within a broader range of services. But for reasons not explained, they chose not to compel such a response through legislation, looking instead to the victim empowerment and support programme initiated by the National Crime Prevention Strategy (NCPS) to provide this (SALC 1997a: 193). But what disappeared completely between Issue Paper 2 and Discussion Paper 70 was the question of whether or not there was a need to address the problem of violence against women generally.[24]

While submissions may have differed in relation to the detail of the legal process proposed, they did not significantly disagree with the overall approach put forward by the SALC. However, a magistrate from Port Elizabeth recommended that the new legislation contain a proviso that those applying for interdicts make contact with social workers or the Family Advocate first before approaching the courts. According to this particular magistrate, much domestic violence had its origins in substance abuse which, as the underlying cause of the violence, needed to be addressed first (*ibid*: 182). A minority view not taken up at this juncture, this proposal nonetheless anticipated what was to come later in the law reform process.

[24] Indeed, Elsje Bonthuys went further, arguing that SALC ought to investigate gender inequality broadly, including violence as one manifestation of such inequality. Additionally, she recommended that this investigation be carried out in partnership with the just-constituted Commission on Gender Equality (1997: 387).

Another proposal not considered, not least because it was raised at a fairly late stage in the process (3 April 1998), was then-Minister of Justice Dullah Omar's urgent request to the SALC to investigate the possibility of authorising Justices of the Peace (which include police officers and traffic police officers) to grant interim interdicts, particularly at nights and over weekends when magistrates were not usually available. The Minister hoped to appoint Justices of the Peace in rural areas (Parliamentary Monitoring Group (PMG), 18 August 1998) in order to increase rural women's access to legal protection. This proposal was also not pursued, chiefly because it required further debate around the training and appointment of these Justices of the Peace, as well as the extent of their powers (PMG, 24 August 1998).

Another point of contention raised by some feminist commentators was the appropriateness of a civil, versus criminal, remedy for domestic violence. Because men's violence towards their intimate female partners was traditionally located within the private sphere, it had a long history of being both neglected and tolerated by the criminal justice system and its status as a crime contested. As some commentators argued, labelling violence between people related to one another as 'family violence', rather than violence *per se,* potentially implied that it was a different order of violence, an interpretation reinforced when this violence was dealt with in the civil, rather than criminal, courts and subject to lesser sanctions. Not only could this suggest that such violence was different, but also that it was less serious (Kaganas and Murray, 1994). Further, a civil remedy placed the burden of initiating legal processes upon the victim, effectively treating the victim as an equal despite the fact that it was precisely the lack of equality which resulted in the victim's abuse. And while the violation of a civil order did carry criminal consequences these were for flouting the court's authority – not the harms inflicted upon the woman (Fredericks and Davids, 1995). While the Committee ultimately decided that both a civil and criminal remedy was required to address domestic violence, they specifically sought to criminalise police officers' non-intervention in domestic violence matters.

Issue Paper 2 noted that the police tended to treat domestic violence as a civil matter in which they were reluctant to interfere and that they were also unwilling to accept criminal charges unless an interdict had first been obtained. Further, contrary to the provisions of the PFVA, they were releasing those who violated the interdict with a warning and without a presiding officer's order. The Project Committee's solution to these problems and the numerous other complaints raised around the police's management of domestic violence matters, was the introduction of a series of duties for law enforcement agents. They argued: "Duties imposed, without a sanction for dereliction of those duties has often resulted in careless attitudes by law enforcement agents in taking the issue of domestic violence seriously" (SALC 1999: 232).

Due to the repercussions for the police of this and other proposals it had become apparent by the Project Committee's second meeting of 15 October 1997 that there was a need to consult with the Secretariat for Safety and Security and the SAPS. The latter was subsequently granted observer status on the Project Committee (SALC Minutes, 15 October 1997), so bringing together two sets of processes around domestic violence which had largely been taking place in isolation from one another (described in Chapter Five).

But while the draft Bill was still being finalised by the Project Committee, parliament requested its tabling in the legislature.

Parliamentary processes

Parliament was an important site of gender activism post the elections, constituting one arm of the National Gender Machinery (the other two being the Commission for Gender Equality (CGE) and the OSW). The parliamentary component of the National Gender Machinery was established in 1996 by the Speaker of the National Assembly, Frene Ginwala, when she appointed an *ad hoc* committee (later the Joint Monitoring Committee (JMC) on the improvement of the quality of life and status of women) to monitor government's implementation of its international commitments. These included CEDAW (ratified without reservation in December 1995) and the 1995 Beijing Declaration and Platform for Action emerging from the Fourth UN Conference on Women. Government was now placed under a series of obligations to address the multiple forms of discrimination women were subject to, including violence.[25] The JMC comprised a number of powerful ANC women including Pregs Govender, its first chair. Feminism was almost credible and respectable (Seidman, 1999).

On 20 March 1998 the Justice Portfolio Committee and the JMC conducted a joint hearing around different aspects of gender-based violence. The SALC appeared during this meeting to state that it was drafting new legislation addressing domestic violence (PMG minutes, 20 March 1998). Some two months later on 13 May 1998 the JMC met to discuss their key legislative and policy priorities, identified from the 1994 Women's Charter and further refined by hearings conducted with women's organisations in 1996 (Govender, 2007). This particular meeting noted the need to prioritise violence against women and the legislation on domestic violence and sexual offences. The SALC however, had only just finalised a draft Bill and were still planning consultative workshops, the standard next step in law reform process. But if this process were to be followed, it ruled out the possibility of the Bill being tabled in parliament that year. To prevent this, the chair proposed that the Bill be tabled as a matter of urgency and the parliamentary public hearings around the Bill be treated as the opportunity for consultation (PMG, 13 May 1998).

However, persuading both the ANC and parliament to also prioritise these issues was more difficult. Govender describes an interaction with the chair of the Justice portfolio committee as follows: "[he] shouted, 'To hell with this! We've got other priorities! Since when are women's laws the priority!'" (Govender 2007: 158) Govender and eight women from the ANC women's caucus subsequently met with then-Deputy President Thabo Mbeki in order to put women's legislative priorities onto the agenda, as well as discuss the absence within the party of internal disciplinary procedures and structures for dealing with acts of gender-based violence committed by party members. According to Govender, Mbeki responded by instructing them, as ANC women, "to get their act together." At this point Govender handed over the list of legislative priorities to Mbeki to illustrate "how ANC women often got their act together but lack[ed] the power and access to crucial structures such as cabinet to ensure things are taken further" (*ibid*: 159).

A week later Govender was informed that Mbeki had called a meeting of senior staff in his office and instructed them to act on the JMC's priorities. The SALC felt the effect of this intervention almost immediately, an acquaintance of Govender's in the Commission asking what had been done to prompt the "strong" political will now being asserted (*ibid*: 160).

[25] Indeed, the high levels of sexual violence being experienced by women led to an official country visit by the UN Special Rapporteur on Violence Against Women in 1996 (Coomaraswamy, 1996).

On 22 July 1998 the Domestic Violence Bill made its first appearance in parliament where aspects of its constitutionality were questioned. At the same time an internal battle around the content and approach of the Domestic Violence Bill simmered in the SALC's committee rooms.

Judge Olivier, the vice-chairperson of the SALC, did not agree with the recommendations and draft Bill produced by the Project Committee, having very different ideas as to what abused women needed. He was of the opinion that the proposed Bill re-introduced an expensive, cumbersome procedure which few women would be able to afford and also failed to address the underlying causes of domestic violence. In Olivier's opinion, the procedure proposed in the Bill not only left the "parties in the unhappy domestic situation", but also had the potential to cause "further alienation and resentment" (Olivier 1998: 2). What was needed instead was a process enabling the courts "to address the very cause of the domestic upheaval in an innovative, imaginary and effective manner" (*ibid:* 3). The solution was to amend and adapt section 384 of the 1955 Criminal Procedure Act (retained in the 1977 Act) – the old "binding over of persons to keep the peace", or much-criticised 'peace order' – even though the sanction it provided for was impractical. Nonetheless, Olivier thought the procedure perfectly suited to the problem at hand.

The process for obtaining a peace order necessitated a complaint to a magistrate or court of fear of future harm. If the court agreed that a peace order was necessary, it would require the abuser to pay a recognizance fee that he would forfeit if he violated the peace order within a six-month period. If the abuser failed to pay the recognizance fee he would be imprisoned. Until 1992, breach of a peace order resulted in the loss of a recognizance fee amounting to R50, or one month's imprisonment. In 1992 the penalty was increased to a maximum of R2000 or six months' imprisonment. It was the negligible nature of this sanction that rendered peace orders so meaningless in practice.

Olivier's proposed adaptation consisted in the following: where the respondent denied the allegations, the magistrate was to use his discretion regarding the next steps to be taken, including the issuing of an interim restraining order. Were the allegations to be confirmed by the respondent then the magistrate had the option of issuing a restraining order and/or imposing a sentence ordering the respondent to receive psychological treatment and treatment for drug or alcohol abuse (if indicated); or to order both parties to submit to marriage counselling, or counselling by the Family Advocate. Finally, the magistrate had the discretion to stipulate any other conditions he thought the circumstances warranted (Olivier, 1998).

This minority report was distributed on 3 August. On 25 August a second response critical of the Project Committee's work was provided by another commissioner, Advocate Jeremy Gauntlett. Much of Gauntlett's response was taken up with dismissing and correcting the Bill's language and grammar. But he too proposed important substantive changes to the Bill, deleting the preamble for instance, on the grounds that it was unnecessary and not normal SALC drafting style. He also favoured reducing the definition of domestic violence to an "economic and sensible general paragraph", and providing a similarly-economic definition of 'domestic relationship' (SALC, 25 August 1998). Although some of Gauntlett's critique was not unfounded, the irritated and superior tone of his assessment was guaranteed to sting.

On 27 August three members of the Project Committee compiled a response to Advocate Gauntlett in preparation for a meeting on the 28th. But on the day, on the grounds that it was not procedure, the two representatives of the Project Committee were denied the opportunity to address their

concerns to the Commission. They listened instead to discussions on how the Bill was to be amended by deletion of the preamble, as well as deletion of the different domestic relationships and the behaviours constituting domestic violence specified by the Bill. Finally Judge Olivier's minority report was also incorporated into this amended version of the Bill as an alternative to the procedure devised by the Project Committee.[26]

By 2 September some concessions had been granted by the Commission: Gauntlett agreed to the reinstatement of the original definition of domestic relationship; and Olivier's proposal had been worked into the report in such a way as to suggest that it had been considered (and by implication rejected) by the Commission; it was not to be considered an alternative.[27] On 9 September 1998 both Olivier's Bill and the SALC's Bill were presented to the Justice portfolio committee. Olivier's Bill was briefly discussed but then rejected on the grounds that it had not taken into account the issues raised by the public hearings which had taken place on 17 and 18 August already (PMG, 9 September 1998). Some members of the project committee had themselves not agreed with aspects of their draft (although not those issues problematized by Gauntlett and Olivier) and when the public hearings were held, made submissions around their particular concerns.[28] The Project Committee's original Bill was then presented to the portfolio committee and a preamble reinstated, as well as the list of behaviours constituting domestic violence. The portfolio committee also substantially simplified the procedures for obtaining a protection order, to the Bill's advantage.[29]

The committee voted to adopt the Bill on 3 November 1998.

The Domestic Violence Act (116 of 1998)

The DVA was promulgated less than two weeks later on the 15th of November 1998 but it took another full year before it finally came into operation on the 15th of December 1999.

The much-contested preamble was reintroduced, albeit in a more neutral and somewhat shortened form. That which disappeared included the consequences of domestic violence, as well as specific recognition of women and other categories of people as being particularly at risk of violence. Presaging things to come, these categories were subsumed instead within the catch-all phrase "vulnerable members of society." Where the earlier preamble had stated that domestic violence was an obstacle to gender equality, the final preamble was content to have "regard to the Constitution of South Africa, and in particular, the right to equality and to freedom and security of the person." Particular injunctions to the police and judicial system around their role in enforcing the legislation also did not return.

The provision from the PFVA criminalising rape in marriage was retained and South Africa's first definition of domestic violence codified to include a broad range of behaviours within its ambit. These included physical, sexual, economic,[30] emotional, verbal and psychological abuse;[31]

[26] Correspondence to members of the Project Committee from Helene Combrinck dated 31 August 1998.
[27] Correspondence to Joanne Fedler by Helene Combrinck, dated 2 September 1998.
[28] Interview Helene Combrinck November 2012.
[29] *Ibid.*
[30] Economic abuse, as defined by section 1(ix) of the Act, comprises unreasonably depriving complainants of economic and financial resources to which she is entitled by law or necessity, or unreasonably disposing of household effects or other property.

intimidation, harassment, stalking, damage to property, and entering the victim's home without permission.

Domestic relationships covered by the DVA include married, divorced or separated couples; couples living together (including gay or lesbian couples); parents of a child; family members (including the extended family); people who are or were engaged or dating one another – including those circumstances where one party (but not the other) perceives some form of romantic, intimate or sexual relationship to be in existence; children; and people who share or have recently shared the same residence (such as flatmates, housemates).

Powers vested in the court by the DVA include being able to order the abuser, or respondent, not to commit any act of domestic violence (nor engage anyone else to perpetrate such behaviour), nor enter the family home or his/her partner's workplace. Respondents may also be instructed to leave the residence while continuing to pay rent or mortgage, as well as providing money for food and other household expenses. In some circumstances, respondents may be prevented from having contact with a child or children. In addition, courts may order the police to remove the respondent's guns or other dangerous weapons, as well as provide a protective escort to the victim, or applicant, while she fetches clothing or other personal items from the home.

Procedures for dealing with police officers' non-compliance with their duties are dealt with in section 18 of the DVA. This section made the then-Independent Complaints Directorate (ICD) responsible for overseeing that the police uphold their obligations in terms of subsection (4)(a) of the DVA and the National Instructions 7/1999; receiving complaints where the police have not complied with these obligations; making recommendations to the police around addressing such failures; and submitting reports to parliament every six months which detail the number and nature of complaints received, as well as the recommendations made. But where the Project Committee had recommended that such non-compliance be treated as a criminal offence, the Justice portfolio committee reframed it as misconduct in terms of the South African Police Service Act of 1995.

In turn, the SAPS was made responsible for informing the ICD of any complaints received; instituting disciplinary proceedings against police officers who failed to comply with their obligations (unless directed otherwise by the ICD); and submitting reports to parliament every six months detailing the number and nature of complaints received, the disciplinary proceedings instituted as a result (along with the outcomes of those proceedings) and the steps taken to act upon recommendations received from the ICD.

To address the fact that the PFVA had violated the *audi alteram partem* principle, the DVA introduced a two-stage process. If the applicant could show that she was in urgent and immediate need of protection, then an interim order would be granted at this stage in proceedings. This interim order however, could only be confirmed at a second, final hearing which included the respondent. If

[31] The DVA describes emotional, verbal and psychological abuse as a pattern of degrading or humiliating conduct towards a complainant including repeated insults, ridicule, or name calling; repeated threats to cause emotional pain; or the repeated exhibition of possessiveness or jealousy which is such to constitute a serious invasion of the complainant's privacy, liberty, integrity or security.

urgency could not be shown at the application stage, then no interim order would be issued but the final hearing would still follow.

Ultimately, concerns around the constitutionality of this particular process turned out to be unfounded when, in 1999 the matter *S v Baloyi* appeared before the Constitutional Court. The case had initially arisen in relation to the PFVA and its disregard for the *audi alteram partem* principle. Although the DVA had been promulgated by then the case was important for reinforcing the approach that in some instances women's urgent need of protection could override men's right to be heard. As important was the firm recognition that domestic violence violated rights contained in the Bill of Rights which imposed a positive duty upon the state to address domestic violence:

Read with section 7(2), section 12(1) has to be understood as obliging the state directly to protect the right of everyone to be free from private or domestic violence. Indeed the state is under a series of constitutional mandates which include the obligation to deal with domestic violence: to protect both the rights of everyone to enjoy freedom and security of the person and to bodily and psychological integrity. And the right to have their dignity respected and protected, as well as the defensive rights of everyone not to be subjected to torture in any way and not to be treated or punished in a cruel, inhuman or degrading way. (*S v Baloyi* 2000 (1) BCLR 86 (CC) at para 11).

Ultimately the DVA is a law widely regarded as one of the more progressive examples of such legislation globally (Combrinck, 2005) and one moreover, which has gone on to influence others on the African continent, including Botswana, Zimbabwe, Uganda and Kenya. The DVA also finally extended legal protection to women in their own right, rather than in the interests of family unity. But family preservation was not to be so easily side-stepped. Even when then-Minister of Justice Dullah Omar appeared before the Justice portfolio committee on 18 August 1998, he felt compelled to state that the Bill's purpose was not to break up families but protect the sanctity of family life (PMG, 18 August 1998).

Concluding discussion

Between 1985 and 1998 changes to the law reconstituted the boundaries between the state and the family in increasingly bolder ways, as they simultaneously reconfigured relations between family members. The impetus behind these reforms derived from different sources, including individuals and bodies within the state, the judiciary, parliament and private legal agencies. While none of these processes was directly provoked by feminist intervention, it is clear that feminist ideas were influential in shaping some of the content of changes. We see this most clearly in the contestation around marital rape but it is also evident in the SALC's decision to rethink who it typically selected to populate its project committees. And in so doing, the SALC opened the way to unparalleled feminist involvement in the design of the law.

This chapter also illustrates how political context enables – or disables – processes of law reform. With women largely mobilised in the 1980s around the struggle to end apartheid and the feminist violence against women movement of the time too small to exert any serious political influence, little could be accomplished. What the 1980s presented instead was a group of men concerned with questions of legal correctness and individual women who turned out not to be the automatic constituents of their cause. But with the political transition of the 1990s came the opportunity to

forge a greater commonality of interests between women, as well as increase women's presence in a range of state bodies. An international discourse around women's rights was also prominent in the 1990s, strengthening efforts to reform the law in ways that elaborated women's citizenship.

The discursive environment of the time, as well as the configurations of power, meant that efforts to provide reduced forms of protection, as well as therapeutic, rather than legal remedies, were ultimately unsuccessful. Yet even if pushed to the background, notions of domestic violence as the manifestation of individual pathology and its legal recognition a threat to family preservation, continued to lurk.

Jewel in the crown of gender activism that the DVA is, it nonetheless introduced a piecemeal approach to addressing domestic violence. By choosing a reform process focused on addressing the deficiencies of the PFVA alone, it neglected broad consideration of the various areas of the law impacting upon domestic violence, both directly and indirectly (such as custody of children and the distribution of matrimonial property, as well as the forgotten and abandoned draft family court legislation). In addition, it entrenched a policing and judicial response to the problem of domestic violence, but did not compel a wide-ranging strategy to address the gamut of abused women's needs (such as health care, housing and income), trusting to the victim empowerment programme instead. The ramifications of this policy choice are explored more fully in Chapter Five.

Chapter 4: Putting the Domestic Violence Act into Practice

The Act came into effect on 15 December 1999 and has been well-used, with some 225 232 applications for protection orders made at courts around the country in the 2009/10 financial year alone (DoJ&CD, 2010).[32] Over the years the overwhelming bulk of applicants have been women seeking protection from their intimate male partners and, to a lesser degree, other male members of their families (Vetten et al, 2009; Parenzee et al, 2001).[33]

A policy and legislative framework has also been developed in support of the DVA. Regulations ere issued by the Department of Justice and Constitutional Development (DoJ&CD) in 1999 and *Guidelines for the Implementation of the Domestic Violence Act for the Magistrates* in 2008. The police issued National Instruction 7/1999 to outline their obligations in relation to the DVA, supplementing these in March 2006 with the *National Policy Standard for Municipal Police Services Regarding Domestic Violence.* The Firearms Control Act of 2000 included a provision that prohibited those who had been convicted of any offence involving physical or sexual abuse within a domestic relationship, or who had breached a protection order in terms of the DVA, from possessing a firearm. And the temporary suspension of the *audi alteram partem* principle in favour of providing urgent, interim protection to applicants, survived yet another constitutional challenge (*Omar v Government of the RSA* 2006 (2) SA 289 (CC).[34]

Public attitudes to domestic violence may also have been altered by the Act. In 1998 the Medical Research Council conducted a survey in the three provinces of Mpumalanga, Limpopo and the Eastern Cape exploring different dimensions of women's perceptions of gender relations. More than a decade later a survey conducted in Gauteng in 2010 using the same attitudinal scales produced a very different picture. In 1998, for instance, 58.1% of women agreed with the statement "my community thinks that if a wife does something wrong her husband has the right to punish her." This percentage had more than halved by 2010 with only 26.9% of women agreeing with the statement (Machisa et al, 2010). Even taking into account the fact that the first survey was conducted in rural provinces and the second an urban one, the data does suggest some profound shifts in attitudes accepting of domestic violence. It is not unreasonable to assume, given that the DVA came into effect a year after the first survey that in combination with other factors, it has played a significant role in challenging the public acceptability of domestic violence. If so, then this clearly illustrates the symbolic value of law. But what else is the law effecting in practice? The evidence for this is ambiguous.

[32] This total is likely an undercount. In 2009/10 the number of applications for protection orders increased in every province but the Western Cape, which experienced an unexplained 40% drop in the number of applications from 67 415 in 2008/09, to 40 316 in 2009/10 (DoJ&CD, 2010).

[33] Men too were using the Act. But unlike women, men were seeking protection from other family members as often as they were seeking protection from their intimate female partners (Schneider and Vetten, 2006a). Children infrequently had recourse to the Act (Vetten et al, 2009), while lesbian and gay intimate partners almost never resorted to the Act (Vetten et al, 2009; Artz and Smythe, 2005).

[34] The Constitutional Court gave the matter short shrift and found yet again that there was a constitutional mandate on the state to enact effective legislation addressing domestic violence.

The majority of those who turn to the courts for protection never actually obtain the safety they seek. In 2009/10 just under two-thirds (63%) of applicants nationally were granted interim orders, while just over a third (34%) had their orders made final (Vetten et al, 2010). This was not unusual; a host of other studies completed prior to 2009/10 consistently point to how at almost all sites studied, less than half of applications for protection orders were confirmed and made final (Parenzee et al, 2001; Mathews and Abrahams, 2001; Vetten, et al, 2009).

Some study has been undertaken of factors correlated with the finalisation of protection orders, finding that the court where the application was made; whether or not the order had been served; the presence of the applicant at court; and whether or not the applicant was a victim of intimate partner violence or intra-familial abuse (the latter group being less likely to return to court) was associated with the likelihood of a protection order being made final (Vetten et al, 2009). Thus while some women are indeed disengaging from the system,[35] state practices are also acting as barriers to the law's protection.

The police are also responsible for some spectacularly egregious failures to comply with their legislated duties in terms of the DVA and National Instructions, leading to both the murder[36] and rape of women by their intimate male partners. In *The Minister of Safety and Security and Others v WH* (2009) (4) SA 213 (E) the police failed to effect a warrant of arrest in terms of the protection order resulting in Mrs WH being raped by her estranged husband. Similarly, in *The Minister of Safety and Security v Venter* (570/09 [2011] ZASCA 42) Ms van Wyngaardt was also raped by her estranged husband who, in addition, shot and injured her companion, Mr Venter.[37]

Analysis of the Act's implementation over the years reveals other persistent fault-lines against which state actors routinely founder. These have included inadequate budgeting, protracted and piecemeal processes of policy development, on-going disregard by the police of their legal duties and ineffectual training programmes.

The administration of the Domestic Violence Act

In the second edition of its Gender Policy Statement issued in May 1999 the DoJ&CD set out three policy commitments applicable to domestic violence. These included developing effective and

[35] See Artz's study (2010) of the attrition of domestic violence matters and its exploration of women's reasons for not returning to court to finalise protection orders in particular.

[36] On 28 June 2010 Sello Nthite killed his two children and committed suicide as his estranged wife begged the police to act on her protection order (van Schie, 2010). In January 2012 Christine Masemola was stabbed 17 times by her ex-boyfriend. A long history of abuse, which included burning her house down, preceded the attack. Again, despite Ms Masemola being in possession of a protection order, the police had failed to arrest her former partner following any of these incidents (Hoskens, 2012).

[37] Prior to this incident the couple had approached both the police and courts for help in stopping Mr van Wyngaardt's stalking, threatening and harassing behaviour (which on one occasion including threatening to kill the children while they were in his care) without the police ever informing the couple of the provisions in the DVA. In addition the police officers concerned had told the couple on a number of occasions that they could not assist them and failed to investigate complaints.

efficient responses to domestic violence through an integrated policy framework and guidelines facilitating implementation of the DVA; ensuring that adequate administrative arrangements were in place for effective implementation of the Act; and ensuring that responses to domestic violence prioritised the safety and dignity of victims (DoJ&CD 1999: 11).

Four actions in support of the Act's implementation were proposed. First was the creation of policy guidelines for service providers around their response to domestic violence, coupled with training of the relevant personnel (the guidelines to be completed by September 1999 and training to commence in November of that year). An audit of current levels of service delivery to provide baseline data against which to assess progress towards the implementation of the DVA was also proposed, with the audit and development of performance indicators to be completed by May 1999. The third action was the writing of a clear administrative strategy for the implementation of the DVA, to be informed by civil society and other government departments. This was to be completed by April 1999. Finally, a framework for the implementation of informal dispute resolution measures to domestic violence was to be completed by April 2000 (*ibid*: 11 – 12).

Minimal information is available publicly to describe the SAPS' initial plans to implement the DVA. But in September of 1999, the Secretariat for Safety and Security appeared before the Safety and Security portfolio committee to present their work around the revised NCPS, including their programme on firearms and their programme on domestic violence. The domestic violence programme was dealt with in 19 cryptic and uninformative bullet points distributed under three headings: 'Domestic violence', 'Implementation of the Domestic Violence Act' and 'Protocols and guidelines'. In effect only two actions were being proposed to support the Act's implementation: the drafting of regulations and National Instructions; and training, to be undertaken between September and December 1999, with its impact reviewed between January and June 2000 (PMG, 15 September 1999).

Delayed policy and legal developments

To some extent, the DoJ&CD did meet its commitment to developing an integrated policy framework around domestic violence. But this was a protracted, rather than crisp, focused process.

The DoJ&CD, the NPA and the SAPS were required to draft regulations, guidelines and national instructions guiding their personnel's application of the Act and to table these in Parliament six months after the commencement of the Act. This deadline came and went without any of these documents having been produced. The establishment of inter-departmental teams including the Departments of Justice, Safety and Security, Education, Welfare, Health and the National Directorate for Public Prosecutions (NDPP) was also delayed, with the progress by each of these departments towards completing their preparations for implementation of the Act not proceeding at a parallel pace. Training of court personnel and members of the police around both domestic violence, as well as the Act's provisions could only begin once this framework was in place. A system of referrals to medical services, as well as counselling and shelter services was also required (Usdin et al, 2000).

Research in the early years of the Act's implementation identified the need for a framework guiding presiding officers' interpretation of the legislation (Parenzee et al, 2001). By 2003 *Guidelines for the Implementation of the Domestic Violence Act by Magistrates* had been compiled by the Magistrates'

Working Group on the Implementation of the Domestic Violence Act, in conjunction with the Gender Directorate of the DoJ&CD (Artz, 2003). But it took a further five years before a revised version of the guidelines were finally launched in 2008 (DoJ&CD, 2009).

In its 2007/08 Annual Report the DoJ&CD announced that it was reviewing the DVA (2008: 53). At least two different reviews seem to have been undertaken: one relating to the implementation of the DVA and the other taking stock of all initiatives and projects in the courts intended to address domestic violence (DoJ&CD 2010: 93). By 2009/2010 the DoJ&CD stated that the review of the implementation of the DVA had been finalised and submitted to the Justice, Crime Prevention and Security Development Committee (DoJ&CD 2010: 93). But by the close of 2011 neither the review nor any proposed amendments to the DVA had been made public. In the interim and independently of the DoJ&CD, the DVA was amended as part of broader efforts to strengthen oversight of the police.

In 2010 two bills came before the Police Portfolio Committee: the Civilian Secretariat for Police Service (CSP) Bill [B16-2010] and the Independent Police Investigative Directorate (IPID) Bill [B15-2010]. Amongst other things, these proposed a shift in overseeing police compliance with the DVA, moving this responsibility from the ICD (to be renamed the IPID), to the CSP.

The drafting of the IPID bill first put before the Police portfolio committee was unthinking and repealed section 18 of the DVA in its entirety. The consequences of this were to remove the obligation on the SAPS to comply with the national instructions issued in terms of the DVA. Further, the repeal of section 18(4) meant that failure to comply with the national instructions and the DVA no longer amounted to misconduct in terms of the South African Police Service Act of 1995. Finally, the loss of s18(5)(d) removed all obligations upon the police to publicly account for non-compliance with the DVA. The redrafting also removed a host of checks and balances upon the prosecutorial services, contained in section 18(1).

In July of that year when the call for public comment was issued, a petition protesting the removal of section 18 signed by 17 organisations, including the National Shelter Movement, was submitted to the Police portfolio committee. TLAC also appeared before the Police portfolio committee to express its concerns, while the South African Human Rights Commission raised similar issues in its submission (PMG, 9 August 2010). These interventions led to redrafting and a workshop between the CSP and women's organisation around how best to structure oversight. A concrete outcome was the creation of a civil society reference group slated to meet on a quarterly basis with the CSP to address issues of policing in relation to women and children.[38]

The two bills were enacted at the close of 2011, to come into effect on 1 April 2012. It is thus too soon to say what the effect of these changes may be.

Budgeting for the DVA

If there is one recurrent refrain in discussions of the DVA, it is that of insufficient resourcing, with these concerns being raised even before the legislation was promulgated.

[38] The author is a member of the reference group.

During the joint hearings around gender-based violence conducted by the Justice portfolio committee and the JMC on 20 March 1998, the chair of the Justice portfolio committee noted how insufficient resources were constraining the DoJ&CD's response to gender-based violence. The minutes note him encouraging NGOs to emphasise this aspect in future submissions: "Unless money was made available he feared that there would be no concretisation of gender issues in the Department of Justice" (PMG minutes, 20 March 1998). Weeks later during the JMC's meeting of 13 May 1998 the chair noted that the NCPS had recognised violence against women as a priority crime but while priority crimes generally had received special budgetary allocations, this had not been the case in terms of crimes against women. Community assistance centres and shelters for abused women in particular were not adequately funded (PMG minutes, 13 May 1998). And even during the debate in the National Assembly around the DVA MP Priscilla Jana had noted: "However, even the most progressive legislation such as this, with far-reaching implications, can have limited impact, or for that matter, no impact, if there is no comprehensive plan of action on the part of all the key departments which have a role to play in terms of this legislation and if there are insufficient funds for its implementation. Therefore, we must ask: Is there a budget? Apparently there is not, but perhaps now is the time to begin to focus on the costing of the implementation of this Bill, and, yes, perhaps for a specific allocation for domestic violence" (Hansard 2 November 1998: 7203-7204).[39]

NGOs had been asking this question too. GAP hosted a workshop in May 1999 which concluded that there was a need for further research examining the Act's budgetary implications (Goldman and Budlender, 1999). Precisely because the Act had not been costed beforehand, the subsequent study found that most of the initial budget came from sources outside of the SAPS' and DoJ&CD's main budgets. A total budget of R830 662 had been set aside in 1999 to cover the training of all 111 500 SAPS members nationally, with the funds provided by the Secretariat for Safety and Security, SAPS human resources management and the United Kingdom's Department for International Development. Technikon South Africa (TSA) provided an additional R100 000 over and above this total in the form of a lecturer who commented on drafts of the training manual and spent six weeks travelling with the police presenting aspects of the training (*ibid*: 20). Approximately R50 000 from the police's Victim Empowerment Programme (VEP) went to the police's communications department to produce 10 000 full colour posters and 300 000 two-colour brochures around the Act (*ibid:* 23).

Where the police allocated most of their budget on training, rather than publicity materials, the DoJ&CD inverted this split, spending more on publicity around the Act than training. Approximately R91 400 was allocated to the Department by the NCPS for the training of trainers around the DVA. This money was supplied by international donors and did not include expenses for further training at local level. Individual magistrates' courts were expected to cover their participants' subsistence and travel costs and where courts could not afford this, they were assisted by the Department with funds from the Netherlands government and USAID (*ibid:* 37-38). Other money set aside by the DoJ&CD included R200 000 from the communications budget for publicity material (including caps, T-shirts, brochures and posters) around the Act. A further R250 000 was allotted to the launch of the Act in

[39] In a similar vein but commenting on the Maintenance Act specifically, MP Suzanne Vos demanded in the same debate: "Show me the money that the Justice Department can use to really make a difference to the lives of millions of women and their children in this country" (Hansard 2 November 1998: 7224).

QwaQwa on 25 January 2000. This was to cover both a seminar for NGOs and community workers, as well as media kits to encourage coverage of the DVA (*ibid:* 42).

Serving the respondent with notice of both the interim protection order, as well as the date of appearance in court, is a key administrative component of the protection order process because no protection order can come into effect until it has been served and neither can court proceedings continue if the respondent has been not told to come to court. Because orders in civil proceedings are executed by the sheriff for a fee, the DVA had made provision for the courts to carry these costs, subject to a means test of the applicant's income. In 1999/2000 the DoJ&CD also allocated R2 million from the policy reserve budget for the service of documents nationally. This is likely to have been insufficient as Goldman and Budlender (1999) calculated that it would cost R1.3 million to serve documents in the Western Cape alone. Further indication of inadequate budgeting for sheriffs' fees came from one of the first ICD reports to parliament in 2001 which stated that a shortage of police vehicles and the refusal of the sheriffs to assist the police in serving protection orders had left these orders piling up in the community service centres of police stations visited in Gauteng, KwaZulu-Natal and the Eastern Cape (ICD, 2001). In the same year the absence of accepted criteria for means testing applicants' ability to pay sheriffs' fees was noted by researchers (Parenzee et al, 2001) and raised again in 2004 in a briefing by the NPA to the Justice Portfolio Committee (Majokweni, 2004).

The Act had been in operation for a year when DoJ&CD representatives told the Justice portfolio committee that the implementation of new legislation such as the DVA had placed 'severe pressure' on their offices and that the 2001/02 budget for personnel 'appears to be less than that required for the number of approved posts; fewer persons can therefore be employed' (Briefing to the Portfolio Committee on Justice Budget, 2001, p. 16 of printout). One consequence of this understaffing, according to a DoJ&CD official reporting on the DVA's implementation, was that the courts had become heavily reliant on NGO volunteers for assistance (PMG, 22 August 2001). Magistrates also pointed to an increase in all components of legal work unsupported by any corresponding increase in staff numbers (Artz, 2003).

To be fair, the parliamentary process speeding up the DVA's enactment may have back footed government departments' budgeting for the Act. It was also introduced at more or less the same time as the Maintenance Act, which also placed new demands on the courts.[40] But even if they were caught unprepared by the rapidity of the initial process, this should not have prevented departments from subsequently attempting to cost the legislation's implementation. In fact, the DoJ&CD's 1999 Gender Policy Statement had proclaimed that it "embraced" gender budgeting as a tool for planning and monitoring the Department's spending to ensure that both women and men benefited from the Department's policies and programmes. To this end the Department committed itself to "Ensur[*ing*] that all our budget processes and the content of budgets reflect our commitment to redirecting resources towards addressing historical disparities with regard to access to justice" (1999: 60). This was to be accomplished through a gender analysis of its spending and the integration of this analysis into their future budget planning. These activities were however being delayed due to "a lack of reliable statistics on our customer base, expenditure per service and then *per capita*" (*ibid*). An additional impediment was the absence of tools and a framework to inform this analysis. There is

[40] By 2001 not a single maintenance investigator had been appointed and the DoJ&CD was calculating that it would take until 2039 to achieve full implementation of the Maintenance Act (PMG, 22 August 2001).

little evidence of this exercise ever having taken place.

In 2001 the JMC recommended that a situation analysis be undertaken to determine the costing of the entire infrastructure required to support the DVA (PMG, 22 August 2001). The same meeting records the then-Director-General of the DoJ&CD promising a 'dramatic jump' in the budgetary allocations towards the DVA in the next financial year (PMG, 22 August 2001). But such a leap is not reflected in a review of the Department's budget votes for the period 1999/00 – 2005/06 (Vetten, 2005). Indeed, in a 2004 briefing to the Justice portfolio committee the NPA representative was still observing that in many courts there was a "significant shortage" of clerks of the court and civil magistrates to administer the Act (Majokweni, 2004).[41] Only the year before in their September 2003 consolidated report on provincial study tours undertaken to monitor the DVA, the JMC recommended that departments budget for the implementation of laws and increase what budget was currently available to recruit and train more staff, as well as secure vehicles and other infrastructure (JMC, 2003).

What the Department was most likely to reference between 1999/00 – 2005/06 as their primary – if not sole – strategy for addressing domestic violence (apart from the odd training and publicity activities) was the Family Courts. Given that only five Family Courts centres existed nationally, expenditure on these courts was unlikely to benefit the overwhelming majority of women seeking the Act's protection (Vetten, 2005). The 2005/06 budget vote contained the only reference the DoJ&CD ever made to increasing their staff components, stating that 100 clerks had been appointed to deal with maintenance and domestic violence, leading to unspecified improvements in the maintenance system (although not domestic violence matters) (*ibid*). By 2008/09's Budget Vote, the DoJ&CD had come full circle, once again prioritising as it did at the outset, public communication about domestic violence (National Treasury 2008: 411). Public communication remained the emphasis in 2009/10 (National Treasury 2009: 456) and 2010/11 (National Treasury 2010: 460).

While the DoJ&CD was telling parliament in 2001 of the staffing woes inflicted upon it by the DVA, police commissioner Jackie Selebi was quoted as saying that the DVA was "made for a country like Sweden, not South Africa" and was neither practical nor implementable (Oelofse and Mkhwanazi, 2001; Michaels, 2001). Selebi did not specify precisely which aspects of the law were impractical and impossible but a comparison of the police's approach to budgeting for the DVA with that applied to the Firearms Control Act of 2000 shows the police to be eminently capable of making the implementation of law both practical and detailed when they so choose.

The policy developments section described in the police's budget vote for 2000 contains the first reference to the DVA, merely stating that it had come into effect in December 1999 and required the

[41] It is perhaps also worth noting that in 2004, the self-same chair of the Justice PC, who in 1999 had observed that insufficient resources were limiting the DoJ&CD's response to violence against women, became the Deputy Minister of Justice. His earlier insight notwithstanding, Advocate de Lange's presence in this position does not appear to have resulted in increased resourcing for the Act either.

police to offer a range of services to victims of domestic violence. The next paragraph stated that the firearms legislation was due in parliament before the end of 2000 and in preparation for its implementation, new allocations of R35 million, R51 million and R36 million were earmarked over the next three years, in addition to existing allocations (Vetten, 2005). There was no similar anticipation of the DVA in the 1999 budget vote. In 2003, the police budget vote stated that 'Spending on firearm control will receive particular attention in the medium term' (ENE 2003: 575) and in his 2004 budget vote address, the Minister of Safety and Security committed R63.2 million to the firearms control project (covering expenditure on 458 vehicles, 1 153 desktops, 728 scanners and 573 printers, amongst other things) (Nqakula, 2004). When the police budget votes did make reference to the DVA, it was chiefly in relation to training (Vetten, 2005). By 2008/09 even throwaway references to the DVA had disappeared from their Budget Vote. What appeared from 2009/10 onwards was the promotion of the Family Violence, Child Protection and Sexual Offences (FCS) units as the SAPS' approach to combating crimes against women (Vetten et al, 2010).

Over the years the costs of serving the protection order have largely fallen to the police, with less than ideal results. In a study examining the costs of implementing the DVA, police officers were found to delay serving orders as they found locating respondents time-consuming. The serving of notices was sometimes delayed in favour of more 'pressing' police matters unless the order was urgent (Vetten, Budlender and Schneider, 2005). A later study completed in 2009 in a rural locality in Mpumalanga even found the clerks placing some of the onus of serving the protection order on individual women (Vetten et al, 2009).

In 2010 MP D Robinson asked: "What amount has been budgeted for the implementation of the said act [*the DVA*] and what was the actual expenditure in the past three financial years up to the latest specified date for which information is available?" In reply the police stated that they did not have a separate budget for the implementation of the Act; and that

> "[t]he costs incurred as a result of the performance of the police functions imposed by the Domestic Violence Act, are covered from the operational budget of the South African Police Service and cannot be distinguished from the expenditure incurred during the performance of other operational functions."[42]

What this suggests is that the SAPS at national level has never costed the operationalisation of the DVA, simply expecting its workings to be absorbed into existing budgets. This largely leaves innovation at the discretion of the provinces, policing cluster areas and individual stations. And innovation there is. Some stations for example, have tried to open shelters, or in an effort to speed up service of court papers have allocated this task exclusively to designated officers.[43] Innovation cannot however become standard practice when there is no mechanism for translating the local into the national, both as practice and budget item.

Ultimately, because neither the SAPS nor DoJ&CD appears to have developed a comprehensive plan to operationalise the DVA, an adequate budget has not been compiled either. In the words of the WCPD portfolio committee, the "severely impeded" service delivery and "poor implementation" of the DVA was attributable to the absence of this costing framework (Parliament of the Republic of

[42]Question no 1305, available at http://www.pmg.org.za/node/18477
[43]This is the observation of the author, based on her work at TLAC.

South Africa 25 October 2010: 3061). After a decade it is very likely that the dysfunctions resulting from under-funding are entrenched.

Training

Both the courts and police adopted a training of trainers' strategy to introduce the provisions of the DVA to their employees.

Legal Services, a division of SAPS Management Service, was given the task of overseeing training of the police around the Act, as well as its implementation. The training was developed by Legal Services and presented in collaboration with Technikon South Africa (TSA). Between September to December 1999, 1 771 police trainers attended the four-hour workshops presented by Legal Services and TSA, being expected to then return to their provinces in order to train other members on the Act. What information these trainers subsequently transmitted to others is open to question. The research service of the SAPS and TSA administered an evaluation questionnaire to participants who completed the training, with 90% stating that the training had conveyed valuable information to them. However, trainers interviewed by Smit and Nel (2002) subsequently stated that the four-hour sessions were inadequate and did not provide sufficient time to discuss problems. This was acknowledged by Legal Services when they told a joint meeting of the Safety and Security portfolio committee and JMC that it would have been preferable to provide each member of the SAPS with at least three days of intensive training around domestic violence (PMG, 23 February 2000).

Between February and April 2000 a series of problem-solving sessions was conducted in seven provinces by Legal Services in collaboration with the national head of victim empowerment and crimes against women and children. Their purpose was to monitor implementation of the Act, provide guidance around solving any practical problems that may have arisen and clarify questions about the duties of the police in relation to the Act (Smit and Nel, 2002).[44]

Legal Services also put in place a variety of measures to inform the police about the Act and its implications. Articles about the Act were published both in the *Bulletin* (a publication included with police members' salary slips), as well as *Servamus*, the monthly policing journal. Messages about domestic violence were printed on two occasions on the envelopes of police officers' salary slips and a panel discussion on the implementation of the domestic violence act broadcast on Pol-TV on 12 May 2000. E-mail messages setting out both police officers' duties, along with copies of the forms and registers required by the Act, were sent to those members of the SAPS with access to e-mail and information about domestic violence posted on the SAPS website. This sought to emphasise the parallel between violent crimes and domestic violence, as well as remind the SAPS that the organization, as part of its priorities and objectives, had committed itself to preventing and combating crimes against women and children (Smit and Nel, 2002).

Tracking training initiatives by the SAPS from 2001 onwards is a murkier exercise. The 2001 Budget Vote mentioned an 'extensive police training programme,' while the 2002 Vote stated that some 20 000 members were trained around the DVA (Vetten, 2005). In the same year Minister Geraldine Fraser-Moleketi launched a partnership between the South African Management Development Institute and the SAPS. With funding from the European Union, Institute officials were to train 425

[44]Both these follow-up sessions, as well as the training of the previous year, show the police to have been adhering to the initial plan for implementing the DVA presented to parliament in 1999.

police officials "to acquire knowledge, competencies and skills...(*that*) will provide them with strategic contextual frameworks, tools and techniques for effectively addressing domestic violence. It will also enable SAPS officials to develop professional expertise with regard to domestic violence, in line with relevant legislation" (Fraser-Moleketi, 12 May 2002). The ICD referred to this training as well in its 2003 Budget Vote, noting it as an instance of the police acting on an ICD recommendation to train junior police officers around both domestic violence and the Act (Vetten, 2005).

By the 2003 SAPS Budget Vote, the number of those trained was said to exceed 25 000 (Vetten, 2005). Training reappeared in the 2004 SAPS Vote but this time it was said that a new domestic violence training curriculum was being developed for implementation in 2004/05. The same point was repeated the following year, with the training now set for 2005/06 (Vetten, 2005). More recent figures provided by the SAPS' Annual Reports suggest a drop in the number of officers trained. While the numbers provided might be somewhat higher, taking into account both the five-day module on domestic violence incorporated into the police's Basic Training Learning Programme (SAPS Strategic Management, 2009); and the fact that all police personnel, particularly those providing administrative services, do not require training on the DVA, the numbers suggest a paltry reach in relation to the number of police officials overall.[45] Thus in the 2008/09 financial year, out of a total number of 182 754 SAPS members, 3 626 officers attended domestic violence training, while 1 122 attended the VEP training (SAPS Strategic Management, 2009). These numbers declined further in 2009/10 when out of a possible 190 199 members, 3 181 officers attended domestic violence training and 1 089 VEP training (SAPS Strategic Management 2010b: 83).[46]

But whatever the numbers and the statements, it has become commonplace for parliament, the ICD and even the police themselves to observe that police officers lack training around the DVA, this concern having been raised in at least three parliamentary discussions (see PMG, 31 October 2007; 18 June 2008; and 27 August 2008), the Auditor-General's 2009 report to Parliament, as well as the WCPD portfolio committee's 2009 public hearings around the DVA (Parliament of the Republic of South Africa, 25 October 2010).

The DoJ&CD reveals less than the SAPS about its training initiatives. Between 27 September and 26 November 2000, Justice College, the training division of the DoJ&CD, conducted 44 seminars for magistrates, prosecutors and clerks of the court. In total 303 clerks of the court, 289 magistrates and 262 prosecutors attended this initial round of training. In December of that year a further 70 prosecutors were trained. These sessions were envisaged as train-the-trainer courses, with each participant expected to go on to train their colleagues. On this basis, utilising a very generous interpretation of what constitutes training, the Department suggested that, on average, each person attending the training passed on the information to another four people, resulting in a further 694 people trained around the Act (Smit and Nel 2002: 51).

[45] Lack of training is however a broader problem within the police generally (PMG, 13 September 2010).
[46] The SAPS may also be conducting more training around domestic violence than is officially recorded. Combrinck and Wakefield's research in the Western Cape (2009) recorded individual station commanders organising training and presentations for their personnel.

The 2003/04 budget vote stated that the Sexual Offences and Community Affairs (SOCA) Unit of the NPA began training prosecutors around domestic violence in 2002 (Vetten, 2005). In 2004 the NPA reported finalising a four-and-a-half day Integrated Domestic Violence Training Programme, a project initiated in 2000 in collaboration with Law Courts Education Society of British Columbia. The NPA was very proud of this particular training programme, describing it as globally-aligned and the first in the history of the country to bring all sectors together in one training programme. A memorandum of understanding was to be developed between various government departments and NGOs guiding the development and implementation of the training, with the SOCA Unit being responsible for setting up and funding a project office, as well as the costs of the trainers and training conferences (Majokweni, 2004).

In 2008/09 the D0J&CD reported running 24 courses for family law clerks (DoJ&CD, 2009: 43) - although not specifying which aspects of family law the training had addressed. The Department also stated that a family law learnership manual was developed in 2007/08 and family advocates and counsellors trained in domestic violence in 2009/10 (National Treasury 2009: 456). The annual report for this period provides no details on this training, whether it took place and how many people were trained.

Other training of court personnel has been initiated through the Ndabezitha Project, a collaboration between the SOCA unit, the DoJ&CD and the National House of Traditional Leaders (described later in this chapter). Part of this programme included training traditional leaders and domestic violence clerks on the DVA, as well as the application of alternative dispute resolution and restorative justice processes to domestic violence matters. During 2008/09, 81 traditional leaders were trained in this programme (DoJ&CD, 2009: 90 – 91). No figures were provided for the numbers of clerks trained. The DoJ&CD reported training still being provided to clerks and traditional leaders in 2009/10 but provides no numbers in this regard (DoJ&CD, 2010: 93).

As with the police, parliament has also observed inadequacies in the DoJ&CD's training. The 2003 JMC report recommended on-going training for police, judges, magistrates and prosecutors around the DVA (PMG, 17 September 2003) while the WCPD portfolio committee considered it "imperative" that the DoJ&CD develop training norms and standards for court personnel on the DVA and ensure that training was on-going. These training programmes and their impact, it noted, needed to be regularly evaluated and adapted where necessary (Parliament of the Republic of South Africa, 25 October 2010: 3075-3076).

SAPS compliance with their legal duties

The DVA imposes two sets of duties upon the police: one being administrative and relating to the proper keeping of records,[47] and the other dealing with the provision of various policing services to victims of domestic violence. In addition, the National Commissioner of the SAPS is obliged to submit to parliament six-monthly reports outlining complaints against police officers, the disciplinary proceedings instituted against those officers, as well as the police's response to recommendations made by the ICD. None of these obligations is consistently adhered to by the police.

[47]These include the 508(a) forms and 508(b) registers; the DVA and National Instructions; a list of service providers; the DVA Register; and copies of protection orders, as well as files containing the warrants of arrest.

In 2006 TLAC served papers on both the ICD and SAPS informing them of TLAC's intention to seek a court order compelling their compliance with the law, specifically the requirement that they routinely submit their mandatory reports to parliament.[48] While the ICD had, by this time, compiled their outstanding reports, rendering action against them unnecessary, the SAPS' Legal Services requested a meeting to discuss the pending action. Because it had not been made clear whether Visible Policing or Legal Services was responsible for the reports, no reports had been compiled between 2000 and 2005. Now that this lapse had been brought to the police's attention, TLAC was asked to withdraw its action on the basis that the SAPS would prepare their reports forthwith. This was agreed to on the understanding that TLAC would reinstate its application should the reports not be completed.

Table 1 sets out the percentage of stations visited by the ICD between 2006 and 2009 which fully complied with the record-keeping obligations demanded by the DVA and National Instructions. As the table shows, the majority of stations did not meet the necessary standard – a state of affairs also noted by the Auditor-General in his 2009 report to parliament (Auditor-General South Africa, 2009).

Table 1: Percentage of stations visited between 2006 and 2009 which were fully compliant with their statutory obligations

No. stations visited	Period	% stations fully compliant with the DVA
245 stations visited for the year[49]	Jan – June 2006	2%
	Jul – Dec 2006	30%
395 stations visited for the year	Jan – June 2007	57%
	Jul – Dec 2007	28%
434 stations visited for the year	Jan – June 2008	14%
	Jul – Dec 2008	13%
522 stations visited for the year[50]	Jan – June 2009	11%
	July – Dec 2009	8%

The police's record of co-operation with the ICD regarding complaints levelled against them is mediocre. An analysis of ICD reports for 2001 to 2008 collated 1 121 complaints made against the police, with the most common being the failure to arrest the abuser (52.5% of all complaints). Other complaints included the failure to open criminal cases (14.5%); and the failure to assist survivors of domestic violence to find suitable shelter; obtain medical treatment; escort the victim to collect their personal property; and seize any dangerous weapons from the abuser (12.3%). The ICD recommended disciplinary action in 928 (or 82.8%) of the 1 121 complaints referred to them.

[48] The author's research in this regard precipitated the legal action.
[49] All data for the years 2006 to 2008 cited in Vetten et al, 2010.
[50] Calculations based on data presented by the ICD to the Women Youth Children and People with Disabilities PC (PMG, 17 November 2010).

However, the police instituted disciplinary proceedings in a scant 48 (5.1%) of these cases. In more than two-thirds of cases (68.2%), the police provided either very little or no response to the ICD regarding these disciplinary hearings (Vetten et al, 2010).

Yet there is an unintended consequence to the punitive measures for police non-compliance proposed by the DVA. This is the reluctance it creates amongst police officers to deal with domestic violence cases out of fear of the possible personal repercussions:

> I think they are very aware that if they mess up, you know, somebody is gonna take action or somebody is gonna make a complaint – or at least in this province I see that. So then rather not act. Rather just send them to a Magistrates' Court, rather advise them that it's just better to get a protection order than to lay a criminal charge then they don't deal with that at all. They put it in an occurrence book and move on. That sort of thing (NGO1, interview November 2012) (Also raised by police officers interviewed).

Assessing the implementation of the DVA

This overview of the police and courts' implementation of the DVA raises two slightly different but related questions: what constitutes 'good-enough' application of the law; and how is such an assessment to be made?

A purely administrative approach to these questions would emphasise the development of performance indicators in this regard, with regular assessment of departments' actions against these measures. This much was, in fact, committed to by the DoJ&CD in their 1999 Gender Policy Statement. Yet such measures do not appear to have materialised, ever. In 2008/09, for example, targets for the courts included improving the performance of district courts; reducing the case cycle times of criminal and civil matters involving children by 10% annually, or from 18 months to 16 months in 2008/09; finalizing 50% of cases handled by the Family Advocate within six months; securing justice service delivery points with perimeter fencing and re-demarcating periodical and branch courts (DoJ&CD 2009: 45-46). In 2009/10 they were to improve domestic violence services by 10%. This is too vague and imprecise a goal to be meaningful and begs more questions than it answers. For instance, what exactly is to improve by 10% - the number of protection orders made final? The percentage of women claiming to have received good service from the courts (assuming that the DoJ&CD already had baseline data against which to compare answers)? And how was this to be achieved – through the training of clerks and magistrates? Or the establishment of specialised domestic violence courts? Or other methods altogether?

The NPA simply does not set itself objectives in relation to domestic violence.

The SAPS do not have measures in place to assess their implementation of the DVA either, even though compliance with their legislated duties should be an obvious starting point for the identification of such indicators. (And on a reading of the data presented here, the police are not particularly obedient to the letter of the law in this regard.) But what the police have been measuring since 2004 is their ability to reduce contact crimes like domestic violence by between 4 – 7% annually. It is, however, difficult to discern from the SAPS' various documents any strategy specific to,

and thus capable of, preventing domestic violence.[51] Instead, this needs to be inferred from the two performance indicators the SAPS have set themselves in their Visible Policing programme (which contains the sub-programme crime prevention). These indicators are:

- **Establishing partnerships to prevent contact and property-related crimes:** Of the various partnerships the police have entered into,[52] only one might conceivably address violence against women – the Community Building Credible Ownership (CBCO) groups in the Eastern Cape, KwaZulu-Natal, Gauteng and the Western Cape (sometimes also referred to as Churches Against Crime). As described by the police, CBCO partnerships involve church groups in reducing crime through the distribution of pamphlets, the formation of neighbourhood watches, domestic violence discussions, crime awareness programmes, community meetings and prayer sessions (SAPS Strategic Management 2009: 88).

- **Undertaking visible actions to deter crime:** this refers to roadblocks, cordons, searches and patrols undertaken by police officials (SAPS Strategic Management 2009: 32).

Certainly, all these activities have their place and value within the greater policing scheme of things but, as with prayer groups and discussions, it is hard to know what possible and substantive effect roadblocks and the like can have in preventing domestic violence. The more important question is surely whether or not reducing the rate of domestic violence reported to the police is a desirable policy goal, given the extent to which domestic violence is currently under-reported. Indeed, it is a point of contention for both parliament and NGOs (Parliament of the Republic of South Africa, 25 October 2010; Machisa et al, 2010) that no official, national police statistics regarding the prevalence of domestic violence exist, largely because law enforcement includes acts of domestic violence within a range of criminal charges such as assault, pointing a firearm, intimidation or attempted murder (among other things).

The following data are however available. Between April 2008 and March 2009, a total of 12 093 women and 3 207 men reported an assault by an intimate partner to the police in Gauteng. This represents 0.3% of the adult female population of Gauteng and 0.09% of the adult male population. These numbers are in contrast to the number of women reporting to researchers an experience of violence at the hands of intimate male partners in the same period, with a Gauteng-based survey finding that one in five (18.13%) had experienced an incident of violence by an intimate partner (Machisa et al, 2010). Because police statistics are only a measure of reporting practices, they cannot be treated as a reliable indicator of the full extent of domestic violence being perpetrated in any one locality. Thus a decline in the number of cases being reported does not indicate a decline in the incidence of domestic violence overall. This target is therefore not only meaningless, but it also introduces perverse incentives into policing practices. In order to meet these targets police officers have been accused of dumping dockets, as well as refusing to accept criminal charges from victims (Vetten et al, 2010).

[51] In fact, that portion of the 2010 – 2014 Strategic Plan dealing with crime prevention contains two sub-priorities potentially in conflict with one another: reduction of crime levels and managing perceptions of crime. In relation to the former, the police wish to bring about a 4 – 7% annual reduction in serious crime over the medium term, while in relation to the latter the police wish to see an increase in the number of crimes – and contact crimes specifically – reported to them in the medium term. Attempted simultaneously, these goals are mutually exclusive of one another (SAPS Strategic Management 2010a: 13).

[52] These include Business Against Crime SA, the Primedia Crime Line and community policing forums.

A statistic is a political asset, with a number of state interviewees suggesting that it is the magnitude of violence against women which keeps it on the political agenda.[53] For parliamentarians in particular, a statistic confers a certain facticity and thus credibility to a problem; it is no longer anecdotal but objective and measurable and a large problem in need of their intervention. But unlike rape, domestic violence does not have a measure, and thus simply does not exert the same sense of political urgency. This was certainly a factor in the Justice portfolio committee's decisions around what to place on their agendas. As an extremely busy committee responsible for the reform of a number of pieces of legislation they had to be selective about their focus. Domestic violence, as an unknown quantity, did not appear to be a pressing, widespread problem and was therefore not considered a priority for the agenda (Parl3, interview December 2012).

Programmes and projects addressing domestic violence

While specialised services to rape survivors in the form of the Thuthuzela Care Centres are established government policy, the call for specialised services to women experiencing domestic violence has never gained real ground. Experiments in this regard have included the Family Courts, the NPA's 'quadruple service' model, court-based NGO interventions and the police's FCS Units.

In the absence of the legislation first mooted in the 1980s, five pilot family courts were established in 1996, with each centre typically including a divorce court, a maintenance court, Children's Court and family violence court. According to the DoJ&CD, the family court structure and extended family advocate services are "priority areas for the department." The establishment of family courts was motivated by three broad aims: the provision of integrated and specialised services to the family as the fundamental unit in society; facilitating access to justice for all in family disputes; and improving the quality and effectiveness of service delivery to citizens who have family law disputes.[54]

In the JMC's public hearings of November 1999 the DoJ&CD reported that it would establish another six family courts, in addition to satellite centres at magistrates' courts around the main centres. Again echoing the now-familiar theme, the head of the family courts described the initiative as badly under-funded (JMC, February 2000). In 2002 the Family Court Task Team developed a family court blueprint which recommended that 17 interim projects be established to strengthen the existing pilot projects.[55] In 2003 R17.4 million was set aside for these activities (Gillwald, 17 June 2003). It is difficult to ascertain both the number of family courts in existence today, as well as their status and functioning. As a consequence, they appear to be peripheral, rather than central, to the courts' response to domestic violence and their potential incompletely developed.

There is also some evidence to suggest that individual magistrates of their own accord, attempted a version of specialisation by dedicating a court and prosecutor to domestic violence matters.[56] It is unknown how widespread this approach was, and is, in practice.

The NPA was established in terms of section 179 of the Constitution of the RSA, 1996, with the power to institute criminal proceedings on behalf of the state and is structured according to the terms of the National Prosecuting Authority Act 32 of 1998. Responsibility for the management and

[53] Interviews November 2012 with parl3, parl4, parl5, parl6. Also pol4 and pol5.
[54] Available at http://www.info.gov.za/aboutgovt/justice/courts.htm
[55] Government Communication Information Service 'Administration of Justice' in the SA Yearbook 2003/04.
[56] In 2000 a Western Cape magistrate appeared before the JMC to describe such an initiative (PMG, 5 April 2000).

prosecution of domestic violence lies with two units in the NPA: the National Prosecutions Service and the SOCA unit, established in October 1999 by Presidential Proclamation. Although the SOCA Unit has chosen to prioritise sexual offences (see PMG, 3 August 2004) – which is unsurprising, given its title – it has nonetheless embarked on initiatives addressing domestic violence.

The need for specialised court personnel, as well as facilities for domestic violence was recommended by the NPA's SOCA Unit in 2004 (Majokweni, 2004). Their particular proposal was the "quadruple service model" to manage domestic violence. This would comprise specialised court personnel (such as clerks, prosecutors and magistrates); empowerment services for witnesses provided by victim assistance officers who would conduct public awareness programmes and undertake court preparation programmes with women, as well as assist them with safety planning; victim support services; and conflict resolution services. The latter largely targeted perpetrators of domestic violence and included therapeutic groups, life skills and training and capacity-building (Majokweni, 2004).

This approach never took off. Instead, the SOCA Unit's chief intervention into domestic violence became the Ndabezitha Project which aimed to develop a model of dealing with domestic violence that integrated retributive and restorative justice, or the criminal justice system with "the traditional justice philosophy", in the resolution of domestic violence matters. In practical terms, this involved the creation of a referral system between the police, traditional leaders, prosecutors and magistrates (NPA 2010b: 5). Part of this programme included training traditional leaders and domestic violence clerks on the DVA, as well as the application of alternative dispute resolution and restorative justice processes to domestic violence matters. In 2009/10 the Ndabezitha Project hosted izimbizo in the rural communities of six provinces, addressing 900 community members between January and March 2010. The objectives of this particular exercise were to raise awareness among rural men and boys about domestic violence and the DVA, as well as educate rural communities about sexual offences and human trafficking (NPA 2010a: 39).

The choice of traditional leaders as a key point of intervention in domestic violence matters is a curious one, given their record on women's rights. At the outset of the transition to democracy traditional leaders opposed the recognition of gender equality within the interim Constitution in 1993 and demanded the exclusion of customary law from the Bill of Rights (Albertyn, 1994). Their role in matters affecting rural women (and communities) is subject to on-going contestation by those self-same communities, as public hearings in 2010 around the repeal of the Black Authorities Act made clear (PMG, 20 July 2010 and 21 July 2010), the disagreements emerging again in 2011 with the introduction of the Traditional Courts Bill.

But perhaps the decision to not emphasise specialised courts was also motivated by changing attitudes in government to specialisation. In 2005 the Minister of Justice and Constitutional Development called for a moratorium on the establishment of all dedicated courts (including sexual offences courts) on the basis that dedicated courts placed too great a demand on resources and forced magistrates to specialize (DoJ&CD, n.d.). Disgraced former police Commissioner Jackie followed suit in 2006 when he effectively dismantled the specialised FCS units. "Police officials and police units cannot operate in cocoons of expertise, only sharing their skills when available and time permits," he opined and on this basis dispatched the Units from their centralised offices to individual police stations (Selebi, 22 May 2006). This move was part of a larger exercise in redeploying most

specialised units (such as Public Order Policing) to stations. Ostensibly presented as an exercise in making policing services more available to communities, the restructuring was also intended to take resources (such as cars, budgets and personnel) from the specialised units and relocate them to individual police stations.

A national review of the restructuring of the FCS Units found that it had been to the detriment of victims of sexual offences. While some areas which previously had no access to FCS services had begun receiving such services, this had been at the expense of other areas, which lost such services, and in the context of a decline in the quality of services (Frank et al, 2009). Ultimately the "ill-advised and uninformed individuals" who ensured that the restructuring became "a matter of public and political debate" (Selebi, 22 May 2006) won the day when the new Minister of Police Nathi Mthetwa officially reintroduced the Units in June 2010.

A July 2010 communiqué setting out the FCS units' mandate states that the units will only investigate attempted murder and assault with intent to cause grievous bodily harm perpetrated within an intra-familial context. Breaches of protection orders will also only be investigated when they form part of assault GBH or attempted murder cases already being handled by a particular unit. The remit of the FCS units is therefore narrow in relation to domestic violence. However, because the vast majority of domestic violence complaints are not translated into criminal charges, an adequate policing response to the problem must also encompass the receiving of complaints - and not only their investigation. The obligations described earlier in the report are chiefly the responsibility of the members of the SAPS' uniform branch working in the client service centre.

Oversight of the implementation of the Domestic Violence Act

At different points in time, different portfolio committees have shown themselves to be receptive to the representations of women's organisations.

The JMC and WCPD portfolio committee

Hearings into violence against women were conducted by the JMC in November 1999, only weeks before the DVA came into operation. Thereafter in the first few years following the DVA's introduction the JMC consistently reviewed its implementation. On 5 April 2000, magistrates and a senior court official from Cape Town magistrate's court, as well as prosecutors from Wynberg court and the SAPS' Western Cape Provincial Commissioner appeared before the Committee to discuss the Act's application (PMG, 5 April 2000). During April to June of 2000, delegations from the JMC visited Nelspruit, Port Elizabeth and Pietersburg meeting with magistrates, prosecutors and SAPS commissioners to investigate the difficulties they were experiencing in implementing the DVA and Maintenance Act. The following year, on 22 August 2001, the DoJ&CD appeared before the Committee to report on the Act's implementation (PMG, 22 August 2001). And the very last meeting chaired by Pregs Govender before she left the Committee in 2002, focused on the adoption of a series of reports by the JMC on violence against women (PMG, 29 May 2002). Despite these engagements, Parliament's Public Education Office found that Parliament as an institution, its discourses and practices, seemed esoteric to many women's organisations, with examples of MP-civil society collaboration rare (Watson and Rhoda, 2002).

This distance only grew in the period following Govender's departure. The new chair of the

Committee, Lulu Xingwana, continued monitoring implementation of the law, the JMC issuing in 2003 a report compiling three years' worth of visits to different provinces collecting information about the implementation of the DVA and Maintenance Act (PMG, 17 September 2003). MP Storey Morutoa became the chair of the JMC after Xingwana was appointed to Cabinet and by 2004 the JMC was described as "practically dysfunctional" and "to have lost momentum" (Gouws, 2006). The Committee had not become entirely moribund, conducting monitoring visits in 2005 to Gauteng, the Eastern Cape and KwaZulu-Natal to investigate implementation of the DVA and Maintenance Act of 1998 (JMC, n.d) and also holding what was described as a hearing on gender equality and violence against women on 24 and 25 August 2006 (although only one organisation – TLAC – was invited to participate in this event [PMG, 23 August 2006; PMG, 24 August 2006]). But nothing substantive came of this and in May 2009, the JMC was accused of having accomplished very little, of having no strategic vision regarding what it had wanted to achieve and of having contributed little to the transformation of women's lives (Van der Westhuizen, 2009).

The national elections of 2009 resulted in a reconfigured parliamentary structure: the WCPD portfolio committee based in the National Assembly, as well as a Select Committee based in the National Council of Provinces. Not only was this a brand new committee structure, but so too were many of its MPs brand new to Parliament – an estimated 60% according to one respondent[57] (Parl2, interview November 2012). This raised the possibility that a new portfolio committee might be looking for ideas around what it could do and might thus more open to suggestions from civil society than a more established committee. Alert to this possibility TLAC and GAP concluded their presentation to the portfolio committee with a call to the Committee to hold public hearings around the DVA to coincide with a decade of its operationalisation (PMG, 9 September 2009). The committee responded almost immediately, conducting public hearings on 28 and 29 October 2009 and tabling its report in the National Assembly on 25 October 2010. The report also shows both organisations and the committee to have attempted to widen the policy framework addressing domestic violence. There are specific recommendations to reforming the Act around housing as does health and education, including the call

All in all, the portfolio and select committees had held 10 different meetings around domestic violence (including the public hearings) by the close of 2010. They continued following up on their report too, being briefed by the ICD (PMG, 16 November 2010) and the DSD (PMG, 31 August 2011). The portfolio committee also conducted site visits to supplement the testimony heard during the hearings, while committee researchers worked with women's organisations on an on-going basis around the drafting of questions to departments, as well as review of departmental responses to those questions (Parl1, interview November 2012).

The Police Portfolio Committee

Perhaps because parliamentary oversight of the police's implementation of the DVA has not been as consistent as it should be, the police initially submitted very few of their obligatory six-monthly reports. However, with the research which had informed TLAC's decision to seek a court order against the SAPS (Vetten, 2005; Vetten, Budlender and Schneider, 2005) circulating in the public

[57] This had much to do with the internal battles within the ANC which saw Thabo Mbeki ousted in 2008 and the formation of Congress of the People (COPE).

domain (this dealt with budgeting for the Act, as well as compliance with the DVA's prescripts), a researcher assigned to the Police portfolio committee took the matter up with the chair so that the portfolio committee too was alerted to their duties (Parl2, interview November 2012). From this period onwards minutes for the Committee show them to have begun engaging more consistently with the SAPS and ICD around the DVA. While no reports were submitted between 2000 and 2006, the SAPS presented two reports to the Police portfolio committee in 2007 (PMG, 12 September 2007; PMG, 31 October 2007) and, in 2008, one six-monthly report (PMG, 27 August 2008).

But what was submitted on each occasion was impoverished, running to under two A4 pages in length and largely taken up with repeating the provisions setting out the police's duties as contained in the DVA. These documents fell well below the standard of reports submitted by the ICD. No reports on the implementation of the DVA were presented by the SAPS during 2009 or 2010. This suggests that either the SAPS did submit their reports and the Police portfolio committee chose not to discuss their contents or, that the SAPS did not compile their reports and the Police portfolio committee did not notice. Nonetheless, there have been at least two other parliamentary discussions around aspects of the police's implementation of the DVA. In a 2009 meeting reviewing the previous five years of work by the then-Safety and Security portfolio committee, problems with the SAPS' implementation of DVA were noted by the new Committee (PMG, 7 July 2009), while in 2010 the ICD also briefed the WCPD portfolio committee on their six-monthly reports for 2009 (PMG, 17 November 2010).

The committee constituted by the 2009 elections, chaired by Sindiswa Chikunga and later, Annelize van Wyk following Ms Chikunga's appointment to the position of Deputy-Minister of Transport, soon showed itself to be an independently-minded collective. Memorably, Ms Chikunga rejected the SAPS Annual Performance Plan for 2011/12 and instructed former police Commissioner Bheki Cele to provide the committee with a more satisfactory version (PMG, 21 March 2011). Importantly, the portfolio committee took an interest in domestic violence and was diligent in following up on the six-monthly reports demanded of the ICD and SAPS by the Act. In September 2011 the Gender, Health and Justice Research Unit (GHJRU), TLAC and the Limpopo Legal Advice Centre (LLAC) were provided with slots on the agenda to address the committee on the policing of domestic violence. TLAC and GHJRU presented their research findings in this area while LLAC presented a service provider perspective. The SAPS was invited to respond to the presentations and were severely criticised by the portfolio committee in the process (PMG, 22 August 2011).

The effects on senior police management of such a public drubbing were electrifying and served to place domestic violence on the management agenda in a way that had not been achieved previously. A detailed circular went out to all stations in the country instructing them on their responsibilities, as well as those of the provincial office and the SAPS Inspectorate. SAPS lines of authority are such that the head of the division responsible for implementation of the Act cannot instruct stations to behave differently where they do not comply with the DVA because command and control belongs with the provincial commissioners. But with national management now placing pressure on the provincial offices, changes had been observed, in the Western Cape in particular. The extent of provincial compliance with the DVA also became an item against which provincial commissioners' performance was assessed and provincial training targets were set. By November 2011 a workshop had been arranged to examine how to streamline processes and by 2012 the SAPS were exploring the

development of a national strategy around the DVA where none had previously existed (Pol5 and Pol3, Interviews December 2012).

This particular intervention by organisations was effective. Indeed, one of the police officials interviewed (and a veteran of appearances before the Committee), commented on the influence of civil society organisations on parliament, perceiving this to be the arena where they were able to exercise the most political leverage (Pol2, interview December 2012). But receptiveness to women's organisations is not the only ingredient essential to effective parliamentary oversight. The interviews also point to the importance of MPs feeling a sense of investment in a particular piece of legislation.

The DVA is very much a child of the JMC, even if it was finalised by the Justice portfolio committee and it is the one piece of legislation they have consistently paid attention to even when they were at their most dysfunctional. And while the Police portfolio committee have found a role for themselves within the DVA, the Justice portfolio committee has not. A number of factors contribute to this. First, there is the absence of a statistic demonstrating the dramatic, widespread nature of domestic violence. Second, because the Police portfolio committee and WCPD portfolio committee are observed to be busying themselves with the Act, it is considered unnecessary for a third committee to also attend to the Act, especially in a context where the Justice portfolio committee is time poor. There is also the perception that it is a piece of women's legislation and therefore properly falls within the aegis of the WCPD portfolio committee (Parl3, Interview November 2012). And finally, the Justice portfolio committee is simply not invested in the Act. This may be due to the fact that a number of MPs are relatively new to the portfolio committee and therefore unfamiliar with an Act promulgated before their time. For the interviews made it clear that where MPs have been involved in the reform of a particular law, they are concerned to see their efforts translate into something worthwhile; MPs wish to make a difference.

Yet the interviews also suggest the legislature to be an ambiguous space – sometimes open, sometimes closed. The nature of the issue affects how receptive MPs will (or can) be to NGO representation and where a party line has been decided beforehand, contestation is limited. Where committees are divided along party lines far less work may be accomplished than those committees which are more corporate and cohesive in outlook, with the personality of the Chair particularly important in this regard. Some NGOs are viewed with suspicion and may find it very difficult to get a hearing in parliament. However, the focus of the portfolio committee also influences who they will hear.

Both the Justice and Police portfolio committees deal with a good deal of legislation and policy and are thus somewhat technocratic in nature. This ensures that 'expert' discourse accompanied by concrete recommendations is valued. The WCPD portfolio committee has a different emphasis however, one framed by the women they consider their priority: poor, rural African women. This shapes their response to who appears before the committee, as well as the weight attached to the representations put before them. Indeed, research may sometimes be dismissed as inauthentic in comparison to first-person experience:

> The question of representation I think, you know, positioning, the thing you talked about is very important. So if you are gonna bring an issue around gender, who is saying it? Who is your constituency? That's a big thing. You can't come in your own right. Who is your constituency and is it a mass based disadvantaged community? Because if it is, then you

> have more of a right to speak and be heard. So those positionings are very important if you want to be heard. And in some instances, rightly so…You know I think it links back to the focus on vulnerability. So if you come and you are from a poor community somewhere…there's great respect for that, and rightly so. We want to hear it. How has service delivery failed you? How can we fix it? Just your first-hand experience (Parl1, interview November 2012).

But as Parl1 went on to muse, these were largely the voices of individual women, rather than those of women from a mobilised constituency. While these individualised first-person narratives provided an immediacy and directness of experience that statistics and research did not, they were often decoupled from a larger analytical narrative. This made it difficult for MPs and researchers to identify the common thread to these individual stories and to answer the question: what is the strategic change required? This perhaps goes to the heart of the strategic dilemma confronting the domestic violence sector: while research institutions and NGOs are typically capable of providing analyses of women's conditions, they are often not representative in terms of race, class, education and geographical location of those women most acutely affected by the conditions they describe and analyse. But where individual women represent the face and voice of violence and disadvantage, they do not necessarily do so in a manner which lends itself to interventions tackling the underlying determinants of their difficulties. One consequence of this dilemma is the delegitimisation of critique (because advanced by the 'unrepresentative'). Another is to create interventions that perpetually address women's practical interests and needs and thus leave gendered inequalities intact.

But even those working within parliamentary structures can feel powerless. Indeed, it may even be speculated that the impersonal and bureaucratic nature of parliamentary systems encourages a focus on individuals, who are a good deal easier to 'fix' in some respects than government departments' practices and processes. At best, MPs can make recommendations to government departments; they cannot compel bureaucrats to implement these. Some experience the state as a behemoth: they too come up against the challenges of the state, not least its bureaucratic nature: "It is resistant to transformation, and its huge processes, rules and dogma…It's designed to follow up processes and procedure. So it does that kind of thing. It's a machine of systems, procedures**,** rules, operational issues" (Parl1, interview November 2012). Yet interstices clearly exist – moments of political opportunity, the convergence of initiatives and the connecting of people. The openings may sometimes be small but they exist nonetheless.

Concluding discussion

What emerges from this review is the heterogeneity of the state in its response to domestic violence. At different points in political time, the JMC and then the WCPD portfolio committee have been more or less engaged with oversight of the DVA, allowing for at least some political contestation around government departments' inertia. Where the Justice portfolio committee has exercised practically no oversight of the DVA since its enactment, the Police portfolio committee paid increasing attention over the years to the police's obligations in terms of the Act. Differences in response are also evident across government departments, with the DoJ&CD response being the most lacklustre (making it tempting to wonder if there is any relationship between their indifferent implementation practices and the absence of parliamentary oversight). For whatever the criticisms levelled at the SAPS and NPA, they have nonetheless made at least some sort of minimal effort to

respond to domestic violence. The oversight of the SAPS by the ICD also renders the police's response somewhat more open to public scrutiny, than the responses of the DoJ&CD and NPA.

This chapter has also highlighted the role of training, budgets, oversight and the creation of a supportive policy and programme framework in giving substantive effect to an act. In the telling, it has illustrated how the symbolic importance attached politically to the DVA has translated into a low level of commitment in practice. But the failings outlined here represent standard criticisms of the Act's implementation, with the recommendations and complaints of both parliament and women's organisations rendered equally well-worn through years of rehearsal:

> There is just so much data that you can collect on domestic violence and there is only so much you can say about it, lack of access, lack of information, you know all of those sort of systemic structural personal barriers that are around the Act. I just do not know where to from here. So much has not been done….I realised how much work the sector had actually done and how little has changed and that hit me profoundly. You know, that the things that women spoke to me about in sort of 97/ 98 before the Act was in place, were still the same problems that we are experiencing you know 10 years after the implementation of the Act... and I thought about all of the funding that we have secured over the years to make this thing work and I thought about where we were after all the years of funding and I felt deeply disappointed and it felt deeply wasteful on the one hand (NGO1, Interview November 2012)

In fact, elements, if not all, of this commentary on the operationalisation of the DVA can be fitted within a broader narrative of state incapacity that has been applied to a range of other government policies and projects (van Holdt, 2010; Southall, 2007). At times government will also tell this story and speak of the need to 'speed up service delivery' and address the skills shortage in its ranks. But this is largely an administrative description of the DVA's implementation that downplays its more discursive and political dimensions, the subject of the next chapter.

Chapter 5: Domestic Violence as Crime and Victimisation

The DVA was drafted at a time saturated with the language of rights, whether emanating from South Africa's Constitution, or international instruments dedicated to the promotion of women's rights. However, this rights discourse, including the focus on gender equality, was far from being the only discourse framing interventions into domestic violence. For while the new government was attempting to re-engineer the inherited state and its practices, violence continued to explode across the country, absorbing domestic violence into the maelstrom of anxiety, fear and anger generated in its wake. A flurry of policies and programmes ensued, blending the martial with the paternalistic and uniting social services and policing in significant ways, particularly in relation to violence against women. The result was to make domestic violence partially the responsibility of the DSD and partially the responsibility of the SAPS and DoJ&CD. Domestic violence has thus come to straddle the realm of welfare and the realm of law and is also located at the nexus of rights and needs.

This chapter examines how domestic violence came to be conceptualised as a problem of crime and victimisation as it was simultaneously being conceived of in rights terms. It also examines the return of the family as a significant site of political and social regulation and the concomitant deterioration of gender equality as a political idea.

Domestic violence and policing practices

The SAPS had already begun experimenting with their policy around domestic violence by 1995. But where the catalyst for reforming the law's response to domestic violence had emerged in response to a relatively straightforward question of fair legal procedure (later located within the transition to democracy) the SAPS' reforms to the policing of domestic violence derived from a somewhat different set of starting points. These were the particular imperative to transform the police from a militarised instrument of state oppression to one trusted by communities; and to involve communities in combating South Africa's spiralling crime rates (Department of Safety and Security, 1998).

The first publicly-stated indications of change came on 16 November 1995 when George Fivaz, the then-National Commissioner of the SAPS, issued a message to coincide with the inaugural conference of the National Network on Violence Against Women (NNVAW). He said:

> The SAPS is also committed to addressing the problem of domestic violence. However, it appears that there is still an unspoken rule that police should not interfere in domestic violence cases as this is a family affair. This perception is totally incorrect because the police must intervene in any situation where crime is being or has been committed. Evenso (*sic*), a culture of not reporting or charging has also grown around the question of domestic violence.
>
> I would like to encourage the women of this country to cooperate with the police in this regard, by reporting any form of crime which they experience against them (*sic*), be it at home, work or in the streets. Even more importantly, once reported, victims must press charges. It is only in this way that the vicious circle caused by apathy and non-reporting and -charging can be broken.

> Women are also encouraged to report, to higher authorities, any police official who refuses to attend to such complaints, makes fun of the victim or humiliates the latter in any way, so that necessary disciplinary action can be taken against the responsible member (Fivaz, 1995).

George Fivaz explains these shifts in terms of the imperative to transform the police into an "instrument of the Constitution" and to transform practice from one that emphasised 'policing' to one emphasising 'protection of rights.' Part of the inculcation of a human rights culture in the police meant exploring how the police could limit aggression to the "soft targets of society: the family, women and children," as well as encourage greater recognition of the rights of gay and lesbian members of the SAPS. This statement around domestic violence was thus issued at about the same time as another statement around the rights of gay and lesbian officers (interview January 2013).

Following Fivaz' statement on domestic violence the police began distributing posters, pamphlets and instruction manuals around the PFVA to all stations in the country. Training on dealing with reports of domestic violence also began being instituted by police colleges (Geldenhuys, 1998). In Gauteng, the provincial Network on Violence against Women was awarded a tender in 1996 by the Gauteng Department of Safety and Security to present a three-day training programme on rape and domestic violence to police officers stationed in the province.[58]

1996 also saw the birth of a number of other important initiatives. The scope of the Child Protection Units first established in 1986 was widened to incorporate domestic violence and sexual offences against adults, with two FCS units coming into existence that year, both based in Gauteng. It was the police's stated intention to ensure that all cases of domestic violence eventually be managed by the FCS Units (NCPS, undated). Experimentation with station-based trauma facilities addressing rape and domestic violence specifically also began in 1996. The first such facility was opened in Sunnyside, Pretoria but closed within a year, its only two detectives overwhelmed by repeated 24-hour shifts. At the same time another facility dealing with rape, domestic violence and missing children was opened at Pretoria West station. Following its opening, the number of such cases being reported doubled (*ibid*).

The National Crime Prevention Strategy 1996 – 2000

The ANC had not developed any comprehensive policy on crime prior to August 1990 (Vogelman and Eagle, 1991). Indeed, while the ANC in exile had thought deeply about a range of issues needing to be addressed during the transition, policing and crime had not figured on this agenda.[59] Janine Rauch, Sydney Mufamadi's adviser at the time, recalls how the process of developing policing policy unfolded as a result:

> So they got thrown together to deal with this kind of stuff *[the human rights lawyers of the ANC*] and then they phoned around. So they phoned us, they phoned the Centre at UCT… So we had this thing, the police policy group in the early 90s, which advised the ANC on the police policy during CODESA, which was a long time. So that helped us to become a team, as it were, and meet with police. And that's how we all got involved in government then was from that. Our focus had been on the institutional reform, not on the crime problem. Because the conversation between '91 and '93, '94 was about writing the Constitution which

[58] The author was one of the trainers involved in implementing the programme.
[59] Interview Janine Rauch December 2012.

> is really a description and the [*1995 SAPS*] Act. A description of the institutions, not a policy document. So our focus was very much on how do we make these institutions look (Interview, December 2012)?

The new government was thus not particularly well-equipped in responding to the country's astonishing levels of violence even if its extraordinarily violent nature was recognised from the outset (Ministry in the Office of the President, 1994). By 1995 combating crime had assumed the status of a war:

> The situation cannot be tolerated in which our country continues to be engulfed by the crime wave which includes murder, crimes against women and children, drug trafficking, armed robbery, fraud and theft.
>
> We must take the war to the criminals and no longer allow the situation in which we are mere sitting ducks of those in our society who, for whatever reason, are bent to engage in criminal and anti-social activities.
>
> Instructions have therefore already gone out to the Minister of Safety and Security, the National Commissioner of the Police Service and the security organs as a whole to take all necessary measures to bring down the levels of crime (Mandela, 1995).

Two strategies emerged from President Mandela's call to parliament: a set of short-term policing measures contained in the SAPS' Community Safety Plan and the longer-term NCPS (Rauch, 2002). The NCPS was developed under particularly challenging conditions. Its original manager Etienne Marais had been suspended after having been charged with child sexual abuse and Janine Rauch was then placed in charge of its development, in addition to her existing duties. She describes the process informing its development:

> Very sort of, very random collection of ideas. It was what the individuals involved had picked up in various of their own studies or experiences or exchanges. Everyone just brought to the table what they could. It was very much a rushed response to the instruction to do something about crime. And all we knew was we can't leave it to the police....So when I came to the NCPS it was like phone a friend, where are the civil society people they know, Graeme [*Simpson*], whoever. It was the Centre for the Study of Violence [*and Reconciliation*] obviously well-located people to do it. So that's why the policy was so weak and so patchy - not weak, rather, thin and patchy. There just wasn't any capacity (interview, December 2012).

The NCPS was finalised in 1996, with Business Against Crime assisting in the final stages of the drafting process. Janine Rauch recalls that the first draft of the NCPS presented to key Ministers and officials caused discomfort; a citizenry impatient with the plethora of government policies issued in the early years of democracy wanted a tough approach to criminals. To illustrate how government was actively addressing crime a chapter was then added outlining the steps different departments were already taking in this regard. Those relevant to violence against women addressed sexual violence in the main but where initiatives related to domestic violence were noted, these included the PFVA and generalised education campaigns. Rather surprisingly, it was also hoped that the enactment of the CGE Bill would play a positive role in addressing some of the root causes of violence against women (Inter-departmental Strategy Team 1996: 37-40).

The NCPS framed violence against women in a range of ways. Chapter 4, which dealt with factors

contributing to crime in South Africa, was unambiguous in declaring that the absence of victim support services to men specifically was contributing to crime. Their thesis ran as follows: "Victimisation itself lies at the heart of much retributive crime, and the absence of means of victim aid and empowerment play an important role in the cyclical nature of violence and crime in South Africa. Whilst victim aid is often regarded as a remedial rather than a preventive measure in dealing with crime, this view is dangerously misleading. Victims of past or current criminal activity if untreated, frequently become perpetrators of either retributive violence or of violence displaced within the social or domestic arena" (Inter-departmental Strategy Team 1996: 20). Causation of violence against women was thus attributed to men's untreated trauma, along with inadequate criminal justice system services, gender inequality and the popular attitudes it gave rise to.

Violence against women was also framed as standing in the way of human development, with the physical and psychological injuries it caused creating a burden of dependency on households and the state (Inter-departmental Strategy Team 1996: 37). But it was the consequences of violence against women that largely captured the attention of the NCPS drafters. These gendered forms of violence, they argued, limited women's exercise of their citizenship by inhibiting their equal participation in public life. In stating how women's dress, recreation and association, mobility and access to resources, became governed by fear of crime and the precautionary measures this gave rise to the drafters came very close to the radical feminist argument that rape is a form of social control of women (e.g. Brownmiller, 1975). The language of DEVAW also echoed in their proposition that women's disempowerment within the political and economic spheres was further aggravated by women's fear of violence, a fear which further limited every aspect of their lives and limited their contribution to society (Inter-departmental Strategy Team 1996: 22). Violence towards women, as well as that committed against children, was to be prioritised both because it was widespread and profoundly affected the rights and future well-being of women and children (Inter-departmental Strategy Team, 1996).

Given how the NCPS had singled out men's victimisation in the aetiology of violence, it was striking how women then came to be foregrounded within victim support services, with almost all strategies for addressing violence against women located under the section on victim empowerment and support contained within pillar one,[60] criminal justice system processes. Key role players identified by the NCPS for the victim empowerment and support programme were the departments of Health, Safety and Security, Justice, Public Works and Housing, as well as NGOs and local health authorities. The SAPS' own particular Victim Support Programme was funded by the RDP as one of five interlinking programmes intended to support the transformation of the SAPS, as well as contribute to effective policing in South Africa (SALC 1997a: 78).

One of the new structures created to introduce civilian oversight of the SAPS was the Secretariat for Safety and Security established through the South African Police Service Act of 1995. Following the cabinet directive to treat crimes against women as a priority, the Secretariat proposed, in June 1997, a six month pilot programme under the auspices of the NCPS to develop policy and strategy guiding the policing and prosecution of domestic violence (Geldenhuys, 1998). The authors of this proposal noted that while the PFVA placed domestic violence firmly in the public domain, no policy guided

[60] The remaining three pillars included reducing crime through environmental design; public values and education; and trans-national crime.

public officials' handling of these matters. This policy lacuna meant that little priority was attached to domestic violence and an informal policy of non-interference in 'domestic affairs' adopted by the SAPS, leading to the inconsistent treatment of complaints (NCPS, undated). Given that the police were typically the first point of contact for most victims, the Secretariat noted that it was important to ensure that victims were treated in a manner that did not result in further abuse. Further, the absence of police statistics around domestic violence made it difficult to track the occurrence of crimes of domestic violence which, it was stated, was crucial for police managers to monitor (Holtzmann and Mncadi, August 1997).

The Secretariat's policy development project prompted the police to establish a national task team mandated to draft a National Code of Practice. While this process was being held in abeyance until the Domestic Violence Bill was finalised, the Eastern Cape had, in the interim issued Provincial Order 4/1998 Family Violence.[61] It was envisaged that this Code would eventually inform the national Code (Geldenhuys, 1998).

The NCPS managers' interest in domestic violence emerged from a very different way of thinking about the family to that dominant in the 1980s. In 1990 the influential book *People and Violence in South Africa* (McKendrick and Hoffman, 1990) was released. The editors expressed the hope that the book would contribute to South Africa's transformation and an understanding of violence particularly. The family, as a macrocosm of society, they suggested, could be regarded as the 'cradle of violence'; it was here that violent norms and behaviours were first inculcated – to be repeated inter-generationally and to ripple outwards into society in multiple forms (*ibid:* 164). Catherine Campbell (1996) developed the idea further. Men, she wrote, first learned to see violence as an important tool for controlling women, as well as a socially sanctioned form of conflict resolution, in the home. This they observed in how fathers treated mothers and children, as well as the violence meted out by older brothers towards sisters on the pretext of guarding or protecting them. While men had historically compensated for their diminishment in the public sphere by drawing on tradition to justify their power in the private sphere of the home, changing social conditions and norms were undermining these old certainties. Violence thus became a means through which men attempted to reassert their masculinity in the face of numerous undermining factors (Campbell 1996: 212 - 213).

While violence within the family had largely been understood as a consequence of the baneful actions of the apartheid state (a thesis outlined in more detail in Chapter Six), these two articles chart the movement away from and inversion of these earlier arguments. To some extent adoption of the notion that violence emanated from the family was necessary; the new ANC government could hardly endorse the idea that they, as the state, were the source of violence. Mbali Mncadi, who was familiar with these ideas, made family violence her priority when she joined the NCPS centre and promoted the need for a national survey to quantify the scope and magnitude of violence in the country (subsequently undertaken under the auspices of Statistics South Africa).[62]

But while one section of the SAPS was attempting a profound transformation to the policing of

[61] In its introduction the Order noted that 'family violence complaints or family crisis control" was one of the most sensitive tasks to be dealt with by police officials, not only because it was emotionally draining, but because it necessitated sound interpersonal and communications skills which the police did not often possess. For this reason a code of conduct had been developed which police officers "must" adhere to.
[62] Interview December 2012.

domestic violence, another was pursuing a policy in direct opposition to these changes. Once again, the 'serious' nature of domestic violence was being contested along with women's willingness to cooperate with the police.

In one of the criminal justice system's first flirtations with the business sector and the assumed insights they brought into creating efficient systems, the police appointed Meyer Kahn (previously the Director of South African Breweries) to the position of Chief Executive Officer of the SAPS. On 22 April 1998 the SAPS appeared before Parliament's safety and security portfolio committee to outline the "pockets of excellence" strategy Kahn had devised to overhaul their operational efficiency. The plan was being tested at 10 Johannesburg police stations and comprised a number of different strategies, one of which directly affected domestic violence complaints. These "low-level" matters which, while consuming large amounts of police officers' time, yielded few results (in the form of prosecutions), were now being screened and women given seven days to consider their charges before the police expended any effort on them. This approach had led to about 60% of cases being dropped before statements were taken (Hartley, 1998).

Concerned by these comments, made at a time when new law was being crafted and the policing of domestic violence reconfigured, the Centre for the Study of Violence and Reconciliation (CSVR) and the Centre for Applied Legal Studies approached Meyer Kahn's office for a meeting. This was granted and the organisations provided with a memorandum detailing the SAPS' various interventions around domestic violence.[63] This was neither the first time that a senior representative of the SAPS publicly projected domestic violence as wasteful of police resources and nor was it to be the last.

The war on crime

The DVA came into operation at the tail-end of 1999, a year which coincided with South Africa's second round of elections and Thabo Mbeki's ascendancy to the Presidency. The Mbeki administration brought a very different style and set of priorities to government, which included a decisive shift in the politics of crime:

> The criminals have obviously declared war against the South African public...We are ready, more than ever before, not just to send a message to the criminals out there about our intentions, but more importantly to make them feel that 'die tyd vir speletjies is nou verby'. We are now poised to rise with power and vigour proportional to the enormity and vastness of the aims to be achieved (Tshwete, 1999).

While the new Cabinet was to "ruthlessly" and "mercilessly" deal with criminals, a more caring and concerned attitude was to be shown towards victims:

> As our country embarks on the second democratic term, we have to reflect on the shortcomings of the previous term and resolve to improve significantly on performance. While over the last five years the Department was able to lay a solid legislative and indeed infra-structural foundation for a strong and responsive justice system, many problems continue to plague our justice system and at times evoking public sentiments that the new democratic order is more sympathetic to human rights concerns of criminals and less

[63] The author was present at this meeting.

> sensitive to the plight of victims of crime and the general sense of insecurity that continues to besiege our country (Maduna, 1999).

One consequence of this tough new approach was the designation of firearm-related crimes as the matter for priority concern (PMG, 15 September 1999). The NCPS centre was shut down and domestic violence reinvented as 'social crime prevention' to be dealt with by the SAPS' Visible Policing division (Pol5, interview December 2012). The NCPS was also replaced in 2000 with the National Crime Combating Strategy (NCCS). Unlike the NCPS, which was largely drafted by civilians and distributed for comment, the NCCS was developed by the SAPS and has never been released as a public document. Also, where the NCPS was an inter-departmental policy the NCCS was confined to the security cluster alone[64] (Du Plessis and Louw, 2005). The NCCS adopted two approaches to crime: identification of those geographic areas recording the highest levels of crime, which were then typically saturated with high density search-and-seizure operations; and a focus on organised crime through the creation of task teams of experienced detectives (*ibid:* 431).

A further consequence of this policy shift was to make the police largely responsible for preventing crime. In 2004 Cabinet committed the police to reducing serious and violent crimes such as rape and domestic violence by 7 – 10% per annum. These crime reduction targets remained in place under the Zuma administration elected in 2009 but were reduced to 4 – 7% following a Cabinet decision taken in January 2010 (SAPS Strategic Management 2010a: 5). The Zuma administration also maintained the emphasis on crime, identified by the Presidency's Medium Term Strategic Framework for 2009 – 2014 as one of government's 10 strategic priorities. The "intensification of efforts to combat crimes against women and children and the promotion of the empowerment of victims of crime" (Minister in the Presidency Planning 2009: 31) was listed as a sub-priority within this larger goal.

General Bheki Cele, the new Commissioner of Police appointed by Zuma, adopted no less a hard line in policing rhetoric than his predecessors. In an interview in 2009 he infamously remarked that section 49 of the Criminal Procedure Act of 1977 needed to be altered to allow the police "to shoot to kill criminals" without having to worry about the consequences (Goldstone, 2009) (although later he disputed the media's interpretation of these comments [SAPS, 2011]). Making literal the notion that the country was engaged in a war on crime, the police and military began collaborating on operations and military ranks were reintroduced into the police in 2011, ostensibly to restore discipline.

A discourse that constructs policing as war will shape subjectivity and practice in ways that elevate the aggressive and heroic and contribute to the kind of disjuncture outlined below:

> Remember we are in the business where we expect police members to take bullets for me so I need a police member who is a Rambo. You know, he's the one who will face the bank robber and not shy away from killing. And when he's dead [*the bank robber*] I'm happy, because then the police took care of my problem. So we expect that same person to be soft and to be understanding and to calm you down and to give you a hug and to wipe away your tears and it's very difficult because you actually expect the extremes of that person. You want him to be a Rambo and you want him to be the sensitive John, and that's very difficult (Pol2, interview December 2012).

[64] This included the SAPS, DoJ&CD, NPA and the Department of Correctional Services

Police interventions into individual matters of domestic violence are often only temporary and inconclusive at best (Altbeker, 2005; Steinberg, 2008); there is no decisive end to battle which settles matters for good:

> The problem that they don't understand is that, domestic violence, you are not going to cure when you come to the house. You are not going to be the saviour bringing the solution…They would prefer to catch the criminal. And to make the criminal suffer…in court, go to jail, what have you…that's the solution…Domestic violence doesn't have that solution (Pol1, December 2012).

> They want to come in and do their job and leave things better. But when they deal with this they don't. It's sort of messy. It's messy (Pol5, December 2012).

Faced with a complex problem whose dimensions encompass the affective, the economic and the legal, police officers may simply opt to displace the problem elsewhere:

> But I think we also have to understand for police members it's important not to lose face. And when you are confronted by a complainant and you don't really know how to deal with the problem then it's easier to say it's a civil matter, because then it means I'm not going to get involved, you're not going to push me in a corner and expect me to solve this problem because I don't have the psychological and interpersonal and whatever skills I need to solve this problem, so I say it's a civil matter because then it becomes someone else's business. So I think that's to a large extent almost like a survival technique for the police not to lose face. It's easier to say it's a civil matter because then you don't expect me to be involved (Pol2, interview December 2012).

It is perhaps in keeping with the framing of policing as war, that the litmus test for an arrest in a domestic violence complaint is the spilling of blood (Altbeker, 2005).

Domestic violence, its 'pettiness' and complexity, is thus not snugly fitted within a policing discourse that treats crime as a battle between 'the criminals' and us. One solution to this misfit has been to cast domestic violence as something else: social crime prevention.

The *White Paper on Safety and Security* described social crime prevention as aimed at reducing the social, economic and environmental factors conducive to crime (1998: 18) and envisaged all spheres of government as being involved in its attainment. However, beyond reducing alcohol consumption, the White Paper provided few concrete examples to the police of what their role in social crime prevention entailed. This posed challenges to the police when the NCPS Centre was closed and 'social crime prevention' made the responsibility of Visible Policing (rather than many government departments). Two sets of interpretive difficulties arose: was the emphasis on social crimes (and if so, how were these different from other categories of crime?), or on addressing the social factors contributing to crime? If the latter, then these actions did not fall within the scope of policing duties. In practice "people can interpret it the way they want to and do basically anything" (Pol5, interview December 2012) – hence prayer groups as an antidote to domestic violence.

The rhetoric of war can still accommodate domestic violence when it positions police officers as the heroic defenders of society's weaker members, women and children. Yet this framing fails too when women refuse their role as good and grateful victims.

There is a persistent discourse in the SAPS around women 'who abuse the Act' – those urban legends who call the police on Friday to have their husbands arrested for the week-end so that they may safely entertain their boy-friends during their husbands' enforced absence. On Monday the matters will be withdrawn. Undecided women, women hopeful of a change in their partner's behaviour – or women frightened of the consequence of pursuing charges – are also seen as wasting time and resources (Parenzee et al, 2001; Altbeker, 2005; Artz and Smythe, 2005; Steinberg, 2008). In 2004 this led to a proposal that women who withdrew charges against their abusive partners be themselves charged with defeating the ends of justice (Newman, 2004). Thus an inadvertent consequence of emphases on women's victimisation can be a focus on women's deficiencies as victims – and the consequent refusal of assistance to them:

> I don't think this is a lack of knowledge. It's a lack of will because their attitude is why should we go through this entire process when she's gonna make up with him anyways? When she is gonna withdraw the charges and stuff? (NGO1 Interview November 2012).

The DVA has altered aspects of policing practice in relation to domestic violence for the better (Parenzee et al, 2001; Artz and Smythe, 2005; Altbeker, 2005; Steinberg, 2008). The interviews also attested to officers who expended a good deal of thought, time and energy into improving the policing of domestic violence. It must also be acknowledged that the SAPS is the only government department legally obliged to address domestic violence, being enjoined to provide victims with medical treatment, counselling services and shelter and consequences flow from their not doing so (even if this is only in theory). There are no reciprocal obligations on the Department of Health to respond to domestic violence specifically, or develop a similarly specialised response, any more than the DSD is legally obligated to provide shelter or other services – especially after hours. Domestic violence has emphatically been made a problem of policing as it is simultaneously positioned within a discursive milieu that consistently undermines domestic violence as real crime. This guarantees stand-offs in mutual helplessness and frustration between women and police officers.

Department of Social Development policy

Victim empowerment, vulnerability and the focus on families

Where the RDP had singled out for attention crimes against women and children, the 1996 NCPS made such crimes a priority. It also identified women and children as the chief beneficiaries of victim empowerment, a programme to be driven by the DSD. The transformation of women's citizenship status had begun.

By 1997 the DoJ&CD's *Vision 2000* was identifying women, along with children, people with disabilities, elderly people and rural communities as people who were "different", had "special needs" and required "special treatment" (Minister of Justice 1997: 26). The 1998 DVA reiterated that "victims of domestic violence are among the most vulnerable members of society," a designation given further weight when the Directorate within the DoJ&CD tasked with addressing violence against women was subsequently named 'Vulnerable Groups.' 'Socially vulnerable groups' also became the name of the cluster of researchers within parliament responsible for promoting women's equality generally across committees (Parl1, interview November 2012). Even when the VEP had expanded to include all victims of crime, their "particular vulnerability and specialised needs" still

required “exceptional attention” to be paid to women, victims of domestic violence, victims of sexual assault and rape, abused children, abused older persons, abused people with disabilities and victims of human trafficking (DSD 2008: 13).

The intellectual justification for making vulnerability synonymous with women is unclear. If the word is used solely in its descriptive sense as referring to a susceptibility to harm or injury, then it is men as a group who are particularly vulnerable to physical violence – and homicide in particular, current data showing men to be murdered at least seven times more often than women (Seedat et al, 2009). That men are not then designated a vulnerable group in need of protection only underscores the gendered logic informing discourses around vulnerability. Replete with a host of paternalistic and protectionist assumptions about gender and victimisation, as well as the nature and status of women’s citizenship, this conceptualisation defines women in terms of their difference and neediness. Their rights are no longer framed as claims upon the state but as negative entitlements to state intervention (Gouws, 2005). Within DSD policy, these interventions are increasingly being justified on the basis of family preservation.

The social work profession’s record in dismantling gender inequitable norms in families in South Africa is undistinguished; disciplinary and normalising approaches to women subject to domestic violence have reigned for the most part over the years (Segal and Labe, 1990; Ramasar, 1996; Hochfeld, 2007; Hochfeld, 2008). When the 1990s blew in astride the language of rights, notions of gender equality prevailed for a time, allowing for the introduction of the DVA. Yet familialism was not so easily brushed aside. Traditional ideas around the family remained largely intact amongst the social work profession and little which was transformative came to take their place. As a result, while gender equality was well-established in formal, legal terms, cultural and social norms had not changed as rapidly. Thus while social workers might employ a superficial discourse on equality, their personal realities in the absence of professional coherence around the family, tended towards conservative and conventional notions of the family (Hochfeld 2008: 101). Further complicating social workers’ responses was the undeniable damage wrought by apartheid on black family life. In a context where the struggle historically had been to establish and maintain a family unit which included fathers, husbands and sons (Kemp et al, 1995), notions of family preservation can only have assumed greater valence. It is perhaps the attempt to rework this history within the confines of the normalising judgements of the social work profession that contributes to the conceptual and analytical gulf between the 1996 NCPS and its descendant, the 2011 Integrated Social Crime Prevention Strategy produced by DSD,.

Unlike the NCPS the term gender equality does not appear in the strategy and nor is there any substantive consideration of how gender might influence crime and violence. The discussion on domestic violence is limited to a set of statistics, the acknowledgement that women are also perpetrators of violence and figures for the prevalence of HIV in South Africa. Domestic violence is located within the broader context of South Africa's high levels of violence generally and its “culture of violence.” Communities characterised by widespread poverty and unemployment are highlighted as being particularly prone to domestic violence because alcohol and drugs “interact with other internal dispositions and pathologies, such as feelings of low self-worth, the incidence of which is heightened as a result of other factors such as weaknesses in the family, the legacy of racism, and the context of inequality” (DSD 2011: 26-27).

Central to the 2011 Strategy is 'breaking the cycle of crime and violence', with dysfunctional families crowning this cycle. In keeping with this emphasis, one of the six strategic objectives of the Strategy is 'improved social fabric and cohesion within families.' But for the most part the Strategy conceives of crime prevention as an exercise in institutionalisation, with the remaining five objectives focused on different aspects of this (facilitating partnerships, increasing capacity, ensuring investment in prevention, ensuring equitable and integrated site-based service delivery and promoting sustained institutional mechanism) (DSD 2011: 39).

Even as the Strategy promotes as one of its seven values 'family as a cradle of nurture' (meaning the empowerment of families to provide a strong foundation for safe communities) (DSD 2011: 40), it is haunted by the notion of family as a cradle of violence. The policy thus idealises the family and treats it as a kind of rot that spreads outwards, with dysfunctional family behaviour and the disintegration of family life leading to moral decay affecting the fibre of society (DSD 2011: 23). Family strengthening is thus to be linked to moral regeneration programmes and traditional and religious structures engaged in supporting families (*ibid*). In language redolent of charitable benevolence, “the poorest of the poor, marginalised, ill, uneducated and disadvantaged groups” are identified as the chief target of this Strategy (DSD 2011: 14).

A number of policy papers around the family have been issued by DSD over the years, with the early normative framework outlined in the 1997 White Paper for Social Welfare (DSD, 1997). This was followed in 2001 by a draft National Policy Framework for Families, subsequently finalised in 2006. A Green Paper on Families was then approved by Cabinet in 2011 and released for comment in October of that year. By October the following year (2012) the Draft White Paper had been issued. The 2006 draft National Family Policy was described as “doing little to challenge the idea of the family as a traditional, conservative, nuclear, middle-class structure with a clear, gendered division of labour” (Hochfeld 2007: 90). The 2011 Green Paper can be similarly characterised. In addition it signalled an important policy shift from one where benefits were distributed to individuals and households, to one where the family will become the recipient of the benefit. This would require the Department of Women, Children and People with Disabilities for example to “locate all these groups within the family setting and not treat them as disaggregated populations. Once these individuals are being approached as family members, service delivery will target families and not just women, children and people with disabilities” (DSD 2011: 54).

The objectives of the White Paper are three-fold: enabling families to contribute to South Africa’s development; maximise economic, labour and other opportunities; and contribute to community, social cohesion and national solidarity (DSD 2012: 8). It is a policy that carries significant political authority, being equally steered by DSD and the Office of the Presidency. A national inter-departmental structure is envisaged to ensure that “all policies, legislation and initiatives of Government are explicitly tilted in favour of families in the country” (DSD 2012: 46). Family service forums are to be established by all three tiers of government whose main function is “to provide strategic direction and disseminate information” (DSD 2012: 54).

Explicitly familialist, the draft White Paper is a curious blend of moralism, traditionalism and innocuous constitutionalism. The role of traditional leaders, as the custodians of traditional values, is emphasised, as is that of faith-based and religious organisations, who are designated the custodians of morality (DSD 2012: 54). At the same time the White Paper commits itself to a rights based

approach (DSD 2012: 36). Not unexpectedly, the White Paper's various parts are frequently in tension with one another.

While one of the guiding principles of the White Paper is 'family diversity', so too is 'promoting and strengthening marriages,' raising questions around quite how much diversity is accepted. The limits of diversity are also underscored by the promotion of family preservation, or keeping families together, as strategic priority three of the White Paper. Action 3 of strategic priority 1, the promotion of healthy family life, is to foster stable marital unions "on the basis [of] the established body of research showing that families founded upon stable marital unions provide significant economic and psychosocial benefits for men, women and children" (DSD 2012: 39). Under strategic priority 2, family strengthening, the first action listed is "Commission and fund robust and nationally representative studies to illuminate the key factors underlying, and provide workable recommendations to effectively address, factors such as low marriage prevalence, increased cohabitation and absentee fathers" (DSD 2012: 41). Although the document may espouse support for diversity, a preferred family form is clearly implicit.

The White Paper proposes three strategic priorities: promotion of healthy family life; family strengthening; and family preservation (DSD 2012: 37). 'Promote gender equality' is listed as action 6 (after the promotion of positive values and moral regeneration) under strategic priority 1, the promotion of healthy family life. This, it is suggested, may be achieved by promoting the sharing of domestic, caregiving and other family duties amongst all family members; promoting durable and egalitarian relations between couples; strengthening awareness and education around domestic violence and its prevention; and developing and implementing educational, therapeutic and rehabilitative interventions for perpetrators of domestic violence (DSD 2012: 40). The silence around victims and the support they may require to live independently of their abusers is notable; it is simply not up for discussion in a document committed to family preservation.

While family preservation was emphasised in the 2003 shelter policy ("all services should prioritise the goal to have victims of domestic violence remain within the family and/or community context wherever possible [DSD 2003, Annexure B: 3]) and again in the 2010 Guidelines for Domestic Violence, both documents had included the caveat that family preservation was not to come at the expense of the victim (DSD 2010: 28). No such caveat is included within the draft White Paper. In practical terms, a commitment to family preservation has meant that women are encouraged to remain with and return to their partners (DSD2, interview January 2013), an approach shelters were also expected to encourage (NGO5, interview November 2012).

The Green Paper's conservative strands remain, although better disguised within the White Paper. The Department of Women, Children and People with Disabilities is still enjoined "to locate all these groups within the family setting and not treat them as disaggregated populations." Inherent in this proposal is the subordination, once again, of women to the family.

The effects of this policy were being felt by domestic violence organisations:

> And we've had [*the Department of*] Social Development call up women's groups and say 'Change your name from Tsomo Women Support Centre to Tsomo Family Centre, or Family Resource Centre' (NGO8, Interview December 2012).

Shelters

In 2002 there were 42 shelters for abused women in South Africa with half (21) being subsidised by DSD (DSD, 2003). The following year in 2003 DSD issued its *Policy framework and strategy for shelters for victims of domestic violence in South Africa.* While a VEP workshop held in 2000 had been the impetus for the strategy, the DVA had prompted its development, the lack of shelters having been identified as an obstacle to the Act's implementation. The foreword to the document was however, careful to note that the strategy did not imply that men were not victims of abuse. To civil society organisations was allocated the task of job creation, along with unspecified training and development of shelter residents. Job creation was also the responsibility of the Department of Labour and local government, while both job creation and poverty alleviation fell within the ambit of Public Works.

The Department has been consistent in its inconsistent approach to one-stop centres and shelters. In 1997, in partnership with the United Nations Office on Drugs and Crime and the NNVAW, pilot one-stop centres were opened in the Eastern Cape and Mpumalanga. In 2001 the Saartjie Baartman Center was opened in the Western Cape as the pilot of yet another one-stop centre. The model was never duplicated but in 2004 Ikhaya lethemba was opened in Gauteng as another pilot one stop centre by the provincial Department of Community Safety. In 2010 the DSD was experimenting with another one-stop model – Khuseleka.

Although sometimes publicly presented as intended to assist abused women and children, it is clear that the Khuseleka model is intended to assist any victim of crime.[65] They are intended to house 50 or more people in family units (in keeping with the DSD Family Policy). Khuseleka one stop centres are also described as 'very expensive', thus limiting their proliferation (DSD2, Interview January 2013).

By 2012 another model was being attempted: the Green Door. The Green Door concept originated in Gauteng when a politician announced during a community event that the province would henceforth be instituting the green door concept – a house identifiable by a green door to which abused women could flee at any hour of the day or night for safety with their children. The idea had not been canvassed beforehand with staff in the department who were taken by surprise by the announcement, which had neither been planned nor budgeted for. They also had reservations about the wisdom of locating visible, identifiable places of safety within private homes not provided with security and were also concerned about the impact on untrained individuals of making their homes available at all and every hour to crises that involved angry and violent men. But with the public announcement made, staff had to make the plan feasible (Pol6, interview January 2013). (As this interviewee put it, 60% of her work was politician management and 40% her actual job description.)

To limit the potential dangers, staff reconceptualised Green Door sites as short term safe spaces at which women could remain for three to six hours. They were to be located in private community spaces[66] such as homes or churches; or within easily accessible public structures located within communities such as homes for children, the aged and people with disabilities, as well as schools and

[65] DSD Power point presentation dated 8 June 2012 supplied to the author by Joan Groenewald.

[66] Private spaces would not be reimbursed for their use, while public structures already providing residential care could submit claim forms through to Department of Health and Social Development for reimbursement of costs.

provincial clinics operational on a 24 hour basis.[67]

By the end of the first decade of the 21st century DSD had engaged in a radical reinterpretation of rights, equality and non-discrimination. Work with women specifically was seen as a form of discrimination such that the Department was now framing their work "as being for everyone; they didn't discriminate." Gender equality meant they had to treat men and women equally by providing to men exactly the same services they provided to women (DSD1, interview January 2013). Indeed the term 'gender-based violence' was preferred to violence against women (seen as exclusionary) because 'gender' allowed for recognition of the fact that men were also victims of domestic violence. This interpretation had far-reaching implications for domestic violence shelters.

By 2010/11 DSD was reporting that it had established two shelters, both in Gauteng, for men who were victims of gender-based violence.[68] They were also negotiating with existing women's domestic violence shelters to accommodate men (PMG, 31 August 2011). According to members of the National Shelter Movement DSD, independently of shelters, had rewritten the 2003 Strategy to stipulate that women's shelters would now take in men, as well as all victims of crime. According to NGO3 (interview November 2012):

> To my horror two provinces actually have agreed to it only because they were afraid of DSD and they have said that. They've said they're afraid of DSD because they were told that if they don't do, the shelter has been told that Social Development will withhold their funding if they do not do exactly what they tell them to do.

At the time of writing the National Shelter Movement was still negotiating with DSD around the policy. For the DSD's part ensuring that domestic violence shelters deal with all comers is intended to "avoid the issue of discrimination in terms of their human rights" (DSD2, interview January 2013).

A similar unwillingness to discriminate between who was victim and who abuser was also infusing social work practice:

> Our principles of social work of being non-judgemental, because we did not want to put the blame on anyone, neither the man nor the woman, but we wanted them to do some introspection in terms of what really caused this kind of violence within the house. Is it from the woman or is it from the man? Because at times we tend to blame the man when it is also the woman who also has her own issues or baggage from wherever she comes from, from home, which she had never managed to resolve before she got married. So we have to balance the two issues, it can't just be in one party. This is how we looked at it; to ensure that she does not just blame the husband, but that she also looks at herself, do some introspection, what has sometimes prompted this man to behave the way he behaves (DSD2, interview January 2013).

Work with men

Challenging men's practices may well represent a strategic intervention into the advancement of women's interests. However it is the discursive framing of such strategies which determines whether or not such programmes are transformatory or conservative.

[67] Concept note dated June 2010 supplied to the author by Joan Groenewald, DSD, January 2013

[68] I made a number of calls attempting to verify the existence of these shelters. These could not be identified.

By 2002 five different sorts of men's groupings in South Africa could be distinguished, some of which addressed violence against women and some of which had organised to defend male privilege, perceived to be under attack by feminist gains post-94 (Morrell, 2005). By 2004 the DSD had been persuaded that it too needed to promote this work.

The DSD traces the origins of its 'strategy for the engagement of men and boys in prevention (sic) of gender-based violence' to the 48th session of the UN's CSW. So inspired was the Department by the CSW that it initiated in 2005 a series of provincial men in action campaigns intended to engage men and boys in "gender equality discourse with a special focus on the prevention of gender-based violence" (DSD 2009: 7). The national summit held in December 2005 on the engagement of men and boys in gender equality then led to the development of a draft strategy in 2006, finalised in 2008.

There is much that is extraordinary about this strategy which appears to have been developed by the South African Men's Action Group – North West (SAMAG-NW), "a pressure group for men, united in the fighting for genuine men's rights and aspirations" (*sic*) (DSD 2009: 26) and established in January 2003 by a group of men and women who "have realised that men in this country have needs which need to be addressed, which have not been given the attention they need and deserve by men and the general population" (*ibid*). In design, the project sought to bring together in dialogue boys and men between the ages of 12 to 40, who were then expected to "cascade" whatever they had learned from each other to their peers.

In practice, the project involved 16 young men between the ages 16 and 20 chosen from three different schools and 13 father figures between the ages of 22 and 53 (since 11 men in this group were aged between 22 and 34, this suggests the young men were looking for older brothers, rather than fathers). After attending a three day camp and three workshops with these father figures, the young men went on to each conduct an activity at the three different schools they attended.

DSD's evaluation of this project suggested that most of these young men had significant personal difficulties and required help themselves (raising questions around the extent to which they could act as peer educators to others), were unable to "cascade" information outside of their school environment and were afraid to intervene in those incidents of gender-based violence that they had observed. Father figures also "cascaded information very scantily." The external evaluation of the project does not meet the criteria for adequate research design either, lacking both a baseline, as well as clear, measurable criteria for assessing the project's impact and effectiveness. The debatable and concerning effects of this project notwithstanding, it was poised for "roll out" by 2009.

This move towards "the full participation of men as equal partners in fighting gender violence" has affected women's organisations. NGO5 (interview November 2012) reported being told that "women's work hasn't worked because levels of violence are up." On this basis the provincial VEP was emphasising projects working with men. NGO7, in a different province, had also been asked by DSD to expand their services to include projects with men. They too had been asked – but by donors – to consider shifting their focus to men on the basis that work with women had not contributed to decreasing levels of violence (interview January 2013).

Like the DSD project, much other NGO work with men takes the form of community dialogues.[69] In the extract below, the DSD representative outlined the kind of men's work they like supporting financially:

> …. – it's a male organisation, they only focus on men and fathers; they call it Men and Fatherhood Project. So, they're just trying to encourage men to change their behaviour by talking to one another. In other words don't sit in your little corner and not talk to other men, because otherwise you end up being bottled up because of your frustrations and when you go back home the only person that you can act out on in your own house is your own wife or partner…They say they are simply talking to men, engaging men in churches, men in schools, teachers, wherever they can… and institutions where they can manage to have those dialogues. Because sometimes there's this phrase, they call it Bana Bua, it's called Men Talk, so they say men talk to one another, let's talk to one another. You see the high level of violence of violent crime against women, what is the problem, let's look at ourselves. Is there anything that makes us not stop this violence against women? (DSD2, interview January 2013).

This is a discourse that locates violence in men's social isolation, in their not understanding their feelings and swallowing their anger. By reframing gendered social inequality as a problem of individual emotional incapacity, the locus of change is relocated from the social and structural to the individual; social change is thus predicted on individual change.

The drafters of the DVA could not foresee the consequences of their decision to leave the provision of social services to the programmes and policies of the DSD. With the benefit of hindsight it is clear that the legislation of a broad range of supportive services to abused women would have been to women's benefit. Instead, this supportive framework has been made vulnerable to policy vacillation, opaque policy-making processes and even the whims and preferences of individual politicians – a problem noted in the bureaucracy more broadly. This chapter concludes by examining how the politicisation of the bureaucracy, as well as the politics of sector bureaucracies, further compound the undermining effects of familialist and policing discourses on attempts to address domestic violence.

The politics of the bureaucracy

As previous chapters have noted, domestic violence has been the official responsibility of both Legal Services and Social Crime Prevention (which apparently led to neither submitting their mandatory reports to parliament). The issue subsequently attracted the interest of the Women's Network, one of two gender structures in the police (Men for Change being the other structure). According to Pol5 (interview December 2012), the Women's Network was established to empower women in the police in a range of ways. These included women officers mentoring other women, the setting of employment equity targets for women in the police – particularly in areas where women had not traditionally been employed – and senior women officers taking an active interest in the provision of policing services to women. This, however had metamorphosed into members of the Women's Network, taking on the tasks of other divisions within the police:

[69] See for example the work of Sonke Gender Justice (Angelica Pino, personal communication, January 2013)

> What it became was these Women's Network groups starting to do the work themselves. So they would be at a station, have a Women's Network group, who would go on to do the work of the people whose job it is for instance to go and deal with domestic violence. And without, they didn't necessarily have the training, it wasn't their mandate… So my people were the crime prevention people at the station, Visible Policing people who had to deal with domestic violence as part of their job, they would do certain things, and the Women's Network would come and do other things. And if we give them funding for projects – if we'd take funding [from] the women's network project and the crime prevention people, we'd have to really negotiate and fight to be able to influence their agenda. So we're basically saying the Women's Network is taking over… They don't see the need for any expertise to go talk about gender based violence or children's issues…These guys go in without even knowing what our guidelines say…These guys don't know these things, and they don't work with these things, so you can't expect them to know, but still they go out and they talk to people out there…It's constant for the last seven years. There's been this tug-of-war between who is in charge of these things and the police whose job it is actually can't do their jobs because there is this other group of people who sort of climb on the bandwagon and can't tell them what to do and want to divert funds to their own agendas. And it's been really challenging (Pol5, Interview December 2012).

This particular struggle was also marked by contested notions over what constitutes policing:

> They do things way beyond our mandate as police. And then they claim 'Your [*police division*] are only doing this, but we've bought school uniforms and organised Christmas parties' – and we're like if we do all those things, who is gonna do the police's work? So I think really trying to get people to focus on doing the police's work. Don't try and do someone else's work…Unfortunately a lot of other people are impressed by that. And so a lot of pressure has been on these kind of things where you can claim the credit for it and then a lot of it has been about policewomen setting up programmes and shelters and school programmes and church programmes and peer groups. All of it is good and well. Soup kitchens – everything is fine. But it's not our job (Pol5, Interview December 2012).

Pol5 also attributed this interest in good works to a decision by the Women's Network to make individual prestige awards to particular projects. This had fostered competitiveness and weakened the incentive for Network members to work with other divisions in the police – and presumably contributed to the sense of one-upmanship alluded to in the previous quote (which clearly rankled).

Adding yet another layer to the complex workings of the bureaucracy has been the ANC's policy of cadre deployment. Initially intended to ensure that the civil service of the inherited state did not undermine the new democratic government, cadre deployment is now characterised as an instrument of patronage, upward mobility and material accumulation which effectively reduces the state to no more than a vehicle for self-enrichment for some factions within the ANC (Booysen, 2011). The National Planning Commission's stern and unsparing diagnostic of the bureaucracy offers a range of glum insights into the effects of this strategy (and others) on the workings of government:

> The uneven performance of the public service results from the interplay between a complex set of factors, including tensions in the political-administrative interface, instability of the administrative leadership, skills deficits, the erosion of accountability and authority, poor

> organisational design, inappropriate staffing and low staff morale. The weaknesses in capacity and performance are most serious in historically disadvantaged areas where state intervention is most needed to improve people's quality of life. There have been many individual initiatives to address these problems, but there is a tendency to jump from one quick fix or policy fad to the next, rather than pursuing a long-term sustained focus on tackling the major obstacles to improving the performance of the public service. These frequent changes have created instability in organisational structures and policy approaches that further strain limited capacity, exacerbating the problem of uneven performance (National Planning Commission 2011: 364).

The interviews provided a range of examples into how these dynamics affected attempts to address domestic violence specifically.[70] Political interference in the appointment and management of staff led to civil servants being told to employ particular people even though they lacked the skills or experience to work in the field, as well as appointing obviously unqualified women in order to meet gender equity targets. Personality clashes between politicians had led to national projects being shut down and staff redeployed elsewhere, or projects being abandoned in favour of the new incumbent's preferences. Forceful personalities also attempted to bully managers to shift their budgets for violence against women work (and no doubt other projects too) to other activities – even when this was not sanctioned in terms of Treasury's financial controls. The individual desire to outshine others (captured in the expression "it's my turn to shine") had also made the bureaucracy competitive in ways that were both predatory and destructive of an ethos of collaboration. This was particularly pronounced in one department where all interviewees commented on the sense that their colleagues waited for them to fail and looked for opportunities to disparage and discredit their work – to the extent where attempts had been made to shut down or cripple their particular division.[71] Visible too was competiveness between divisions, as well as turf wars.

Within the context of such a difficult environment, where individuals felt themselves under attack, it is perhaps unsurprising that civil servants are defensive; civil society criticism may inadvertently play into opponents' hands. As one interviewee put it, the bureaucracy's inadequacies produce two very contradictory responses within departments: the suspicious and defensive "we don't trust it because we did not do it ourselves" and the self-doubting "we don't trust it because we did it ourselves."

[70] To protect anonymity I have not attributed the examples to particular individuals, their programmes, or their departments.

[71] It was not only interviewees who spoke of this; on other occasions different people within this same department have said very similar things.

Chapter 6: Partnership, Retreat and Erosion:

State-Women's Organisation Engagements Post-1994

The decade of South Africa's political transition, book-ended between February 1990 and South Africa's second set of elections in 1999, represents a golden age in the history of women's mobilisation and one which enabled a series of gains exceptional even by international comparison (Waylen, 2007). Within this profound reordering of state-civil society relations new axes of engagement were created between the state and women's organisations, one constituted by relations of activism and a second drawing women's organisations into relations of government as they were increasingly absorbed into the formal voluntary welfare sector to provide victim empowerment services and mediate the relationships between various state institutions and individual women. Domestic violence and its associated remedies also positioned women in new ways to the state: as vulnerable victims; service providers and activists.

Democratisation led to the influx of women into parliament and the bureaucracy which reshaped and relocated the struggle for gender equality in such a way that the state, rather than women's organisations, became the locus of activism and change (Hassim, 2006), with the well-developed politics of alliance which closely tied women's organising both to the liberation struggle, as well as the ANC accounting at least in part for the state-centric focus of women's movements in South Africa. This state-centric focus of women's movements has been the subject of some debate (see Hassim 2005a and 2005b; Salo, 2005; Albertyn, 2011), with at least one author charging that the emphasis on the state has come at the expense of changing gender-inequitable social and cultural norms (Albertyn, 2011)

Where the previous chapters have set out the changing discursive constructions of domestic violence and begun dismantling the state into its component parts, this chapter outlines the structures and strategies adopted over time by domestic violence organisations, locating this within the wider political culture and climate and the configurations of power. This chapter explores the realignment and reconfiguration of women's organisation produced by these processes of social and political transformation, examining in particular the nature and effects of state-civil society engagement.

To locate this analysis, I begin with a brief history of the emergence of the feminist domestic violence movement which also acts as a necessary corrective to the claims critiqued in Chapter Two.

The beginning: feminism and domestic violence 1976-1989

International feminism was catalytic of South African feminist organising around violence against women. In 1975, Anne Mayne, a survivor of both domestic violence and a gang rape, attended the UN International Year of the Women Conference in Mexico City and subsequently visited the US – experiences which were pivotal to her subsequent involvement in rape crisis services (Russell, 1989). Her attendance the following year at the first International Tribunal on Crimes Against Women in Brussels further revolutionised her thinking and, on her return to South Africa, she placed a notice in the Women's Centre at Rondebosch calling a meeting of women interested in establishing a rape

crisis organisation. Anne Mayne, Lorraine Jones and Simone Witkin came to form the early core of Rape Crisis Cape Town (RCCT),[72] which was formally established the following year in 1977 (Russell, 1989; Maconachie and van Zyl, 1994). Two years later Gaby Marcus and Deborah Boerne, both trained RCCT counsellors moved to Johannesburg where they started POWA in 1979.[73] Of the two organisations, POWA had the stronger emphasis on domestic violence (Russell, 1989) and established the first shelter specifically for abused women in 1984, with the second such shelter opened in the Western Cape in 1986 by RCCT (Anderson, 1988).

Both POWA and RCCT were affiliated to the anti-apartheid movement and, as a matter of principle, did not seek funds from the state due to the restrictive nature of the services allowed for (such as counsellors being permitted to only provide services to people of the same racial group).[74] Their funding came instead from the private sector and included Anglo American[75] and Community Chest.[76] But even if financially independent of the state, feminist rape and domestic violence services of the time were still shaped in other ways by apartheid practices. Because shelters had been established in white areas, the Group Areas Act served to limit their accessibility to black women. The service model adopted by rape crisis centres also mitigated its adoption by black women. Observed Mayne at the time: “We've tried for years to encourage black women to set up Rape Crisis services in their own communities. We share our information and discuss the process and hope they will adapt what we do to their situation. Because many of them don't have phones or cars, they need to work out a different system from ours. But because they work very long hours and are forced to live very far from their work, they don't have time for volunteer work, so almost nothing has happened so far” (Russell 1989: 234).

The way white violence against women organisations structured their arrangements also revealed a certain class-blindness. In an interview conducted by Diana Russell in the late 1980s, Ann Mayne recalled that while black professional women attended many of RCCT's training programmes, the combination of long working days and commutes, combined with the practice of holding meetings in the evening, meant that few were able to attend subsequent organisational meetings and thus played a minimal role in influencing policy. Attempts were made to sometimes meet in Mitchell's Plain but the combination of distance (for white women), the dangers of townships (negotiated by black women daily), and the absence of meeting facilities in township areas, requiring people to congregate in modest township homes instead, meant this practice fell away. As a result meetings largely took place at a child guidance clinic in a white area (Russell, 1989).

RCCT did not initially define as explicitly feminist, some of its early members concerned that their association with feminist politics would diminish the organisation's credibility (Russell, 1989). However, with the influx of feminist women from the University of Cape Town, the organisation was openly defining itself as feminist by 1981 (Moolman, 2009). According to Anne Mayne, this led to the departure of a number of non-feminist women, concerned at being seen as “a bunch of loonies” (Russell 1989: 235). Those who remained wanted to claim the identity and the politics of feminism,

[72] Personal communication Anne Mayne 13 March 2013.
[73] Personal communication Anne Mayne 13 March 2013.
[74] Personal communication Anne Mayne (13 March 2013) and Gaby Marcus, 4 April 2013.
[75] Personal communication Gaby Marcus, 4 April 2013.
[76] Personal communication Anne Mayne 13 March 2013.

its analysis of violence against women in particular. In 1985 RCCT publicly announced their affiliation to the anti-apartheid movement and took the decision at a national conference to no longer engage with state media as the instrument of state propaganda. Liberal feminists, who wanted RCCT to remain a service organisation appealing to all (including policemen's wives), then left the organisation as well (Russell, 1989).

Radical feminism was the core theoretical position of violence against women organisations in South Africa (Hassim, 2006) (as was largely the case internationally). In terms of a radical feminist analysis, violence was central to maintaining women's oppression, with women's subordination within the family the template for their subordination in the political, economic and social realms (Hansson, 1991). In countering such violence women were required to organise separately and autonomously to prevent their struggles being co-opted by patriarchal organisations (van Zyl, 1991). Organisations favoured flat, non-hierarchical structures chiefly composed of volunteers who, in the main, provided telephonic assistance to women. This feminist perspective on violence, coupled with the adoption of feminist principles that resisted the professionalisation of services to abused women, ensured that mainstream professional bodies were antagonistic towards these organisations and viewed their efforts with some scepticism (Segel and Labe, 1990). Still, feminism had permeated the voluntary welfare sector, both in the form of individual social workers within organisations such as FAMSA[77], as well as in the programming of organisations such as the National Institute for Crime Prevention and the Rehabilitation of Offenders (NICRO) (which co-founded, with RCCT, Co-ordinated Action for Battered Women.) Anne Mayne, in fact, recalls NICRO lending its support to RCCT's work and confirming the applicability to South Africa of US data on rape, granting the organisation a certain weight and credibility (Russell, 1989). Other women's organisations such as the National Council of Women also provided a public platform for the organisation at the time (*ibid*).

Engaging the anti-apartheid movement

In addition to the suspicion they faced from the formal welfare sector, feminist organisations addressing violence against women faced a different sort of political struggle within the anti-apartheid movement – one for the recognition that women's oppression existed in its own right, rather than being the by-product of race and class oppression.[78] Radical feminism, in its insistence that all women everywhere are subject to men's oppression and that such oppression is both fundamental and primary, was inadequate to grappling with the multiple forms of discrimination that shaped women's lives in a country like South Africa (Mama, 1997). Contending that violence against women was a central mechanism to maintaining women's oppression was inapposite in a context where the apartheid state meted out a variety of violences on the basis of race to both women and men. By contrast, the ANC argued that the source of men's violence towards women was to be located in the apartheid state whose violent practices radiated outward to the family. Black men's working and living conditions, against which they were impotent, left few outlets for their frustrations – except against the bodies of black women, located at the bottom of South Africa's social hierarchy (Russell 1989: 131). While this became a common enough thesis, less attention was paid to the consequences for black women of being victimised in a racist society. In the context of

[77] Dana Labe, for instance, was based at FAMSA.

[78] See Hassim (2006) for a comprehensive history and analysis of these debates and their relationship to women's organising in South Africa.

white racism, demonstrating racial solidarity often required black women to remain silent about their experiences of violence at the hands of black men (Lewis, 1999).

Feminist organisations were not blind to these complexities and attempted to merge a radical feminist analysis of men's violence towards women with analyses of race and class oppression (see van Zyl, 1991). The 1987 national Rape Crisis Conference for instance, centred on the need to link sexual violence to broader oppression within South Africa (Durban Rape Crisis, 1987).

These tensions around political priorities and analyses notwithstanding, violence against women gradually became part of the language of women's political organisations from 1987 onwards. RCCT affiliated to the Federation of South African Women (FEDSAW) when it was relaunched in 1987 in the Western Cape and in 1990 FEDSAW took up violence against women as a campaign, organising a 'Take Back the Night' march protesting such violence (van Zyl, 1991; see also Fester (2005) for other examples). Domestic violence was also taken up to some extent within the ANC as well, with Mavivi Manzizi reporting in 1989 that under pressure from the Women's Section, the ANC's External Coordinating Committee had issued circulars around domestic violence to its structures (Russell 1989: 131). *Speak* magazine, whose constituency largely comprised organised working-class women, was also focusing on domestic violence and rape – to the consternation of some within the Natal Organisation of Women who felt that this focus distracted from weightier political matters, such as the state of emergency (Hassim 2006: 58). According to Mikki van Zyl the difference between these 'non-feminist' progressive political women's organisations and feminist organisations, was that the former did not analyse violence against women as a systematic part of women's oppression and favoured strategies of legal reform – ironically enough, the same approach as that adopted by liberal feminist organisations in the country like the Women's Legal Status Committee (1991: 75).[79]

By the decade's close, in addition to POWA and RCCT, a further five feminist rape crisis organisations were in existence in Pietermaritzburg, Durban, Grahamstown, and the 'coloured' areas of Heideveld and Belhar in the Western Cape (van Zyl, 1991), with annual meetings of the various centres taking place throughout the 1980s. A further four rape crisis agencies had also been established by 1991 in Port Elizabeth, George, Pretoria and Bloemfontein – but were characterised by RCCT member Mikki van Zyl as working within an individualist, welfare paradigm, rather than a feminist framework (van Zyl, 1991). Faith-based organisations (which had long provided shelter for homeless men and women) also began taking an interest in providing shelter to abused women, opening four shelters between 1989 and 1993 (Park, Peters and de Sa, 2000). The first shelter to be situated in a black township (the 'coloured' area of Eldorado Park) was also established in 1989 by black women forming part of Women Against Women Abuse (WAWA)(Park, Peters and De Sa, 2000).

At the tail end of the 1980s, Co-ordinated Action for Battered Women (CABW), the first regional network established to address domestic violence, was established in the Western Cape. It was initiated by RCCT and NICRO Cape Town and comprised some 28 organisations (Anderson, 1989). Its formation in 1989 belies Meintjes' assertion that the first regional and national networks addressing violence against women were only formed in 1994 (2003: 148), CABW, in fact, being the fore-runner of the Western Cape Network on Violence Against Women and the first evidence of organisations

[79] The WLSC, established in 1975, reported in 1990 having recently contacted the Minister of Justice regarding family violence and the police's resistance to intervening in such matters. After much negotiation between the Commissioner of the Police, a meeting had been convened (Phipson, 1990).

approaching the state to “make life easier” for battered women.[80] In 1989 CABW's efforts appear to have been directed chiefly towards local state structures, with CABW making recommendations to the South African Police and court personnel around responding more effectively to women seeking their protection (Anderson 1989: 65). A pilot project was also established at Cape Town's magistrate court to refer women wishing to withdraw assault charges against their male partners to Department of Health and Welfare social workers at the court. CABW also proposed training for the Department of Manpower (as it was then named) to assist its officials help abused women to find employment. Perhaps in hope of the political changes to come, 'democracy begins at home' was the slogan adopted by CABW (Anderson, 1989).

The transition to democracy 1990-1999

In February 1990 the National Party government unbanned the ANC and other liberation movements. While the configurations of political power were never to be the same again, neither were discussions about gendered social relations. For within the space opened by this break-up in old configurations of power, gender took on a new salience. Organising women took on a new urgency within the context of the political opportunities being made apparent. But at the start of the decade the number of organisations specifically addressing violence against women was very small and no broad-based feminist movement existed. In place of such a movement were women's organisations, of which three types could be discerned: politically conservative and government-supporting (such as the Afrikaanse Taal and Kultuur Vereeniging; white and middle class; and anti-apartheid women's organisations largely linked to political formations such as the ANC and United Democratic Front (Vogelman and Eagle, 1991). Given that a new post-apartheid government was likely to be confronted with a multitude of challenges and would need constant reminders that violence significantly reduced the quality of South African women's lives, both feminist awareness was needed within the range of women's groups generally, along with an increased number of organisations specifically addressing violence against women which could act as both resource and pressure groups (Vogelman and Eagle 1991: 220-221).

Creating a broad, national and non-racial organisation of women had first been attempted in the 1980s with the relaunch of FEDSAW. These efforts had stalled however. In September 1991 representatives from a broad range of organisations met at the invitation of the ANC Women's League to explore the possibilities of creating a national structure uniting women across racial and ideological divides. The fruit of the discussions was the WNC, founded in April 1992 (Hassim, 2006) and it was in the WNC's *Women's Charter for Effective Equality,* finalised in February 1994, that a rights discourse explicitly attached itself to violence against women, noted as being both pervasive and endemic in women's lives. Women, the Charter stated, were entitled to security and integrity of the person and the right to be free from all forms of violence. Four modest measures were proposed to instantiate these rights: legal protection; provision by the state of facilities where women could report abuse to trained personnel; accessible and affordable shelters and counselling services; and

[80] While Sheila Meintjes suggests that a second set of strategic alliances between feminist organisations and the apartheid state re-emerged in the late 1980s in the form of the Western Cape Attorney General's Task Group on Rape, which led to improved treatment by the courts of rape and domestic violence matters (2003: 147), CABW's efforts are not to be confused with this claim. It is clear from both Meintjes' single, original source (Hansson, 1993), as well as a second article (Hansson, 1994) that this relationship was only initiated in 1992 and was instituted with the sole purpose of improving the position of rape survivors (Hansson 1993; Hansson, 1994; DoJ, 1999).

education and training for policing, justice and other personnel dealing with violence against women (WNC, 1994). These were not however, the only policy propositions being advanced at the time. Theorising domestic violence in ways that articulated its class and race dimensions also created the scope to widen how domestic violence was framed in policy terms.

Echoing the ANC thesis to some extent, Segel and Labe (1990) and Vogelman and Eagle (1991) characterised South Africa as an extremely violent society on a range of dimensions. Structural violence ensured that black women and men often lived in conditions of dire poverty and dispossession, while institutional violence saw state-sanctioned assaults, detention and imprisonment routinely visited upon large sections of the population. Under these conditions, reactive and inter-personal violence flourished, creating a generally violent society. Domestic violence could thus partly be explained as emanating from the frustrations and entrapments produced by structural and institutional violence (Segel and Labe, 1990). A further dimension to this violence was added by South Africa's political economy which, in excluding and subordinating black and working class men, sharpened their individual sense of disempowerment. Apartheid, in its fracturing of both work and family life, thus created a crisis in black masculinities by diminishing the traditional identities of 'head of household', 'breadwinner', 'worker' and 'provider' and aggravated violent responses. Black, working class women in particular, were thus subject to dual forms of oppression: direct oppression on the basis of their gender and, more indirectly through being made to bear the brunt of men's angry responses to race and class oppression (Vogelman and Eagle, 1991). Women's entrapment within abusive familial circumstances was entrenched by their structural economic dependence on men and gender ideologies around the family and relationships (Vogelman and Eagle, 1991; Segal and Labe, 1990).

This sort of socio-political analysis produced a conceptualisation of domestic violence very different to one premised on privacy and family preservation. It promoted examination of the nature of a social welfare response, leading to recommendations around the need for social security benefits (Vogelman and Eagle, 1991; Hansson, 1991), as well as housing and a national health system to reduce the responsibilities women assumed for care work (Hansson, 1991). Other recommendations aimed at transforming social conditions included the re-establishment of authoritative community structures, such as civics and street committees (Vogleman and Eagle, 1991). A second set of ideas staked out domestic violence as a problem requiring psycho-educational interventions such as education programmes to provide men with non-violent conflict resolution skills, as well as rehabilitate offenders (Hansson, 1991; Vogelman and Eagle, 1991); and support for victims. A third cluster located domestic violence within the realm of law, crime and policing. The creation of Women's Police Units was mooted (Hansson, 1991), along with improved law enforcement and anti-crime programmes (Vogelman and Eagle, 1991). But it was the need for law reform and legal protections that was perhaps most commonly emphasised (Vogelman and Eagle, 1991; Patel, 1993; Hansson, 1991). Indeed, only a few months before the promulgation of the PFVA in December 1993, feminist legal academics had organised a conference entitled 'Women under the Criminal Justice System,' it being vital, the organisers wrote, “that issues affecting women are not marginalised or ignored when the country's justice system is being reconstructed” (Jagwanth, Grant and Schwikkard, 1994, Preface).

Finally, anticipating developments that were really to come to the fore in the 2000s, the 5 in 6 Project was established in Cape Town in 1993 – probably the first South African organisation

established by men to address violence against women (along with children and the community) (Parenzee, 1998). Charles Maisel, its founder, based the name on US research finding that five out of six men were not violent towards their female partners (Morrell, 2005) (inadvertently also illustrating the absence at the time of South African data on the extent of men's violence towards their female partners).

Democratisation and the first post-apartheid state

On 27 April 1994 South Africans went to the polls. With the ANC having captured a significant majority of the vote, Nelson Mandela was sworn in as the President of the country in May 1994. Violence against women was on the political agenda from the outset, the RDP having as one of its aims combating endemic community violence, paying "special attention" to violence against women and children (Ministry in the Office of the President 1994: 8). Activist Mmatshilo Motsei, who had founded ADAPT in Alexandra, was seconded to the office of Jay Naidoo, Minister without Portfolio, to develop a policy document for the RDP on women's empowerment (Women's Health Project, 1995).

The RDP was imbued with the language of participation and consultation: "Democracy is not confined to periodic elections, but is an active process enabling everyone to contribute to reconstruction and development" (1994: 9), leading to the proposed establishment of a range of structures and processes to encourage this active citizenry. While this widening of policy consultation processes reflected the need to legitimise new policy approaches by including groups excluded under apartheid, Beall, Gelb and Hassim (2005) argue that it also reflected the state's limited policy-making capacity during the transition which led to reliance on a host of non-state actors, consultants in particular.

Policy proposals around domestic violence continued being developed, with "Promoting Personal Safety for Women" one of the first such examples put forward in the democratic era (Maconachie and van Zyl, 1994). It was also distinctive for its time, eschewing policy proposals from professionals, politicians, academics and the like in favour of proposals from women who had approached domestic violence services for help. The choice to promote women's safety, rather than assess their fear of crime, was deliberate; the former defined women as agentic, the latter as vulnerable and in need of protection (*ibid*: 1). Six sets of recommendations were put forward: two dealing with the criminal justice system; a further two with services (one being the need for specialised services); a fifth with community campaigns; and the last with women's empowerment.

It was also during this period that domestic violence began being framed as a challenge for the health sector. Mmatshilo's Motsei's study (1993) of health workers' incurious reactions to injured women brought in for treatment at Alexandra Health Clinic was catalytic in this regard, with her analysis of patient records raising questions about the nature of the health sector's response to domestic violence. Later, in December of 1994, approximately 400 people attended the national

Women's Health Conference organised by the Women's Health Project,[81] the discussions on violence against women attracting the largest audiences at the Conference (Women's Health Project, 1994).

The policy document which emanated from the conference framed violence against women as a violation of human rights, stating that the widespread violence women experienced inhibited their full participation in private and public life and limited women's ability to achieve social, economic, personal and legal equality (WHP 1994: 69). The policy was directed towards the elimination of violence and proposed an approach that combined criminalisation with prevention, services to assist women and broad education drives. Prevention comprised a series of different public education programmes for different audiences, research and reconstruction and development. Support services proposed a range of emergency and crisis services, as well as shelters. Safety and security focused on legislative reform – including a section on amendments to the PFVA – and the administration of justice. The importance of co-ordination and networking concluded the policy document. An addendum dealt specifically with programmes for male perpetrators, according these a low priority (WHP 1994: 70 - 76).

Even as the domestic violence sector was thinking in wide-ranging and diverse ways about the problem, its attention was beginning to be trained around the PFVA. In May 1996 a conference around domestic violence was held in KwaZulu-Natal. Concern with the inadequacies of the PFVA was a central focus of the conference, which also included a panel from Milwaukee in the US. This conference construed the problem of domestic violence as comprising inadequacies in professionals' joint responses to domestic violence, including ideological conflicts, professional jealousy, lack of training and work pressures, amongst other factors. Domestic violence courts and co-ordinated community, police, legal aid and court responses were promoted (Padayachee and Manjoo, 1996).

Broader political processes of democratisation were not only prompting policy innovation within the sector; they were also forcing uncomfortable questions and confrontations within the domestic violence sector, both within, as well as between, organisations that could loosely be defined as feminist. The largely voluntary nature of organisations like POWA and RCCT, as well as their non-hierarchical structures were replaced with paid, full-time staff organised within management structures headed by a Director.[82] (In this sense they can be described as having professionalised.) At the same time, they were also being absorbed into the formal voluntary welfare sector funded by the state – a sector which was also taking greater interest in the problem of domestic violence as a result of the VEP. With the number of organisations addressing domestic violence on the increase, very different analyses of domestic violence were also being brought together and feminism itself contested. In some instances these conflicts were between different feminisms (Moolman, 2009), while in other instances there was opposition to feminism itself (Msizi and Zanda, 1995).

[81] Rooted in South Africa's tradition of participatory and democratic decision-making practices, the organisers established a national Conference Committee to oversee the preparatory process and instituted some five regional meetings in each province to discuss the conference goals, along with issues at regional level. Mindful of the 1991 Women and Gender in Southern Africa conference which had foundered on the divides between black and white women and activists and academics, they sought to ensure black women's presence and participation, as well as the inclusion of a wide range of women outside academia. The conference itself comprised a series of workshops, policy discussions, as well as Speak Outs and derived the social determinants of health broadly.

[82] This does not mean that either organisation ceased including volunteers within their structures; volunteers were simply no longer the core upon which organisations depended for their functioning.

By 1991 women's groups addressing violence against women were increasing in black communities (Msizi and Zanda, 1995). As larger numbers of black women began joining feminist domestic violence organisations in the early 1990s, some of the race and class-based assumptions described earlier in relation to RCCT were unsettled and questioned (Moolman, 2009). Therapeutic interventions and their cultural appropriateness also came in for scrutiny and change (Mzizi and Zanda, 1995; Walaza, 1997). These divisions emerged not only intra-organisationally but inter-organisationally too and were frequently signalled by the terms 'established NGO' (usually referring to white-controlled organisations) and 'grassroots, or community-based organisations' (usually referring to black, township-based organisations).

While these terms can be used in a relatively descriptive manner, they can also function as a potent discourse around exclusion, with a conference in 1995 mapping these divisions particularly clearly (Msizi and Zanda, 1995). Grassroots organisations based their services on needs derived from the communities in which they were situated, while established organisations, who were not from these communities, frequently had to conduct research in such communities first using methods grassroots organisations considered racist. In some instances the inclusion of men within organisations and programmes addressing violence was justified as signalling direct opposition to Western feminist practice. Men, their place within women's organisations (Moolman, 2008; Msizi and Zanda, 1995), as well as the place for programmes addressing men's violence, soon became a point of discussion – even conflict – post-1994.

The National Network on Violence Against Women

CABW's formation and later, the Cape Attorney General's task group on rape[83] established in 1992, reflected the regionalism in the violence against women sector (Hansson, 1994) (or perhaps it merely reflected a certain insularity amongst Western Cape organisations). The state of networking across the country was such that a member of RCCT in 1993 observed that feminists in the Western Cape had learnt more from the Canadian experience of addressing violence against women than that of organisations from other parts of the country (*ibid:* 411).[84]

But by 1993 discussions around the formation of a national network on violence against women had begun in Gauteng, first by POWA and ADAPT and later by Nisaa, Women Against Women Abuse and the Women's Institute for Leadership, Development and Democracy.[85] There was some initial thinking about locating the Network within the WNC but with the WNC's future looking increasingly uncertain an independent structure was mooted instead[86] during the September 1994 Convention on Family Violence held at UNISA. Two representatives were elected from each province to discuss

[83] The approach to NGOs in 1992, by Frank Kahn, the Attorney General of the Western Cape, to join a Task Group on rape was viewed with suspicion and ambivalence. Organisations wondered if the sudden responsiveness to their complaints was an attempt by the apartheid state to legitimise its thoroughly discredited legal system and perhaps win votes for the National Party (this was a pre-election phase). Rape was an apparently non-political issue that concerned everyone, regardless of race or political affiliation. At the same time, the new government, they reasoned, was likely to be male-dominated and faced by myriad serious demands; an established initiative enjoying public support would be difficult to dismantle (Hansson, 1994).

[84] RCCT was far and away the most established of the centres, being able to count 25 and more women at a meeting, POWA and Durban Rape Crisis able to average seven women and the other centres even fewer (Russell, 1989). This strength is also reflected in the fact that while some history of RCCT still survives in the public domain that of other organisations appears to have largely vanished.

[85] Interview Lynn Cawood, January 2013.

[86] *ibid*

either the establishment of a national body within their respective regions, or to set up regional structures where none existed. An interim national committee, the Desk on Domestic Violence, was elected at the WHP Conference in December 1994 and tasked with planning a proposed national conference in 1995 (WHP 1994: 29; Ramagoshi, 1997).

The 1995 conference, held in Cape Town, resulted in the constitution of a permanent structure – the National Network on Violence Against Women – with a threefold mission: working towards effective protection, intervention, support and justice for women who had experienced violence; developing approaches to preventing violence against women, largely through networks with other stakeholders; and promoting the notion that women enjoyed human rights and were deserving of respect (Ramagoshi 1997: 40). It is an indication perhaps both of the importance of the issue, as well as the relationship between government and civil society, that the 1995 Conference was addressed by then-Deputy President Thabo Mbeki.

While the Network sought to emphasise and build on women's similarities, it was also very alive to the racial and political divisions separating women and representatives of the Dutch anti-apartheid movement came to South Africa to work with organisations in the NNVAW.[87] Part of the rationale for a network was also derived from the need to address the racialised distribution of resources and skills, particularly as it manifested between provinces (Ramagoshi, 1997). The other emphasis of the NNVAW was state-civil society partnerships. Lynn Cawood, one of the NNVAW's early founders, recalls "I think the big thing at the time was that we wanted to work with Government [*because*] government had to be part of the solution."[88] Government representatives were thus included within the Network's central decision-making structure which ultimately comprised two civil society representatives from each of South Africa's provinces and representatives from five national government departments: Welfare (as it was then), Education, Health, Safety and Security and Justice. Because the NNVAW was inaugurated with no infrastructure of its own, its administrative functions were largely dealt with by the Department of Welfare, which managed the logistical arrangements for meetings, as well as compiling the minutes of meetings.

By 1997 calls to review the 'marriage' between government and civil society were being issued by the NNVAW. Frustrations coalesced around the nature of the putative partnership between government and women's organisations; and the limited resources provided to address violence against women, as well the prioritisation of the issue (Ramagoshi, 1997).

The impetus and resourcing for a collective national campaign came in 1997 when the NNVAW entered into a partnership with the Soul City Institute of Health and Development Communication to assist in the development of *Soul City 4*, a prime-time radio and television series which uses edutainment (the integration of education and social issues into popular entertainment formats) to bring about social change. *Soul City 4* was set in a community clinic in the fictitious township of Soul City and had domestic violence as its major theme (Usdin et al, 2000: 61). This particular series had three goals: encouraging shifts in social norms (specifically the view that domestic violence is a private matter); promoting collective action against domestic violence; and facilitating the creation of a legal environment more responsive to women in abusive relationships (Usdin et al 2005: 2435). In relation to the last aim, *Soul City 4* sought to speed the implementation of the DVA. Members of

[87] *ibid*.
[88] *ibid*

the NNVAW acted as advisors in the development of the prime time television and radio scripts, as well as the supporting print and training materials and media guide, in addition to driving much of the campaign to secure the DVA's implementation (Ramagoshi, 1997; Usdin et al, 2000). Shereen Usdin, the project manager for this particular series, has detailed the history of its processes (Usdin et al, 2000; Usdin et al, 2005).

The series was launched in July 1999 along with the national 'Stop Women Abuse' helpline which initially partnered with NNVAW, Soul City and the Departments of Justice and Social Development. (Its management was subsequently taken over by Lifeline Southern Africa.) The *Soul City 4* intervention ran between July and December of 1999, the period which should, in theory, have coincided with the first six months of the DVA's implementation. The longer implementation was delayed, the greater the risk to *Soul City 4* of promoting a remedy which did not, in fact, exist. Materials were thus adjusted to indicate that the Act would become operational in the near future and *Soul City 4* staff met with government departments to alert them to the impending media campaign. This placed additional pressure on the SAPS and DoJ&CD to implement that Act as a matter of priority (Usdin et al, 2005).

The radio and media coverage offered by *Soul City 4* during its broadcast period was also used to ensure the speedy and effective implementation of the DVA. To realise this goal, campaign partners called on government to implement the DVA by no later than 1 November 1999; set out and make known their implementation strategy for the Act; provide the necessary resources required for implementation; improve access to justice for marginalised women in rural areas and women with disabilities in particular (as promised in existing government plans); and develop and implement a system of monitoring and recording the effectiveness of the Act, as well as identifying and addressing its weaknesses and gaps (Usdin et al, 2000).

The primary targets for this campaign were government representatives, such as the Ministers of Justice and Safety and Security at both national and provincial level; the various departments and, in particular, the members of the interdepartmental DVA implementation task team. The general public was also considered a target audience. A combination of lobbying, social mobilisation and media advocacy was used to mobilise public support for the Act's implementation, pressurise national government to act, hold elected officials accountable and present campaign demands directly to provincial ministers. This process, it was assumed, would raise awareness of the new Act; involve communities in developing localised solutions to the problems of gender violence in general, as well as those of implementation; and demonstrate to government that the campaign enjoyed popular support, so helping to hold officials accountable to their constituencies. Use of the media was seen as key to increasing the profile given to gender-based violence in newsrooms, to gain greater public support and reach decision makers *(ibid:* 59).

Lobbying took various forms including presentations to provincial parliaments where activists put questions directly to provincial ministers; submissions to parliament on the content of the regulations; letters, faxes and phone calls to the Justice portfolio committee asking for information on the progress of the regulations; meetings, phone calls, faxes and e-mails to government officials at the implementation task team. A resource pack, which included information on the DVA, was also developed for journalists and sent to newsrooms and editors across the country. Pamphlets and postcards were produced and distributed throughout the NNVAW's community structures.

Government representatives were frequently invited to community events organised by the NNVAW where campaign demands were presented and questions asked about the delay in the Act's implementation. These activities paid off and on 16 December 1999 the DVA became operational, some six months later than the legislation had stipulated (Usdin et al, 2000).

A range of other strategies had also been employed during this period. In 1997 the Women on Farms Project, in partnership with organisations belonging to the Western Cape Network on Violence Against Women, conducted a series of workshops in farming communities to raise awareness around domestic violence and its eradication. This included tying white ribbons around trees to signify awareness of domestic violence, encouraging women to write about their abuse in letters for publication, as well as give expression to these experiences through painting, craft work and a photographic exhibition. POWA's campaign to inform legislative change, also conducted in 1997, asked women about their experiences of domestic violence and what legal protections from abuse they desired. This information was subsequently incorporated into POWA's submission to parliament (Watson and Rhoda, 2002).

Creating state-civil society linkages: parliament

The NNVAW provided one avenue for state-civil society linkages during this period. A second set of state-civil society linkages was also attempted by women parliamentarians acutely aware of the potential for distance between civil society and women MPs, who still harboured some sense that women in parliament were accountable to the women who had elected them. The future of the women's movement, they argued, was dependent upon building viable structures and alliances, as well as creating mechanisms allowing ideas, information and expertise to flow freely between government and civil society and between women MPs and women in civil society. There was an express desire to ensure that women's rights remained on the political agenda, with regular communication between MPs and civil society organisations the means for ensuring this (Shifman, Madlala-Routledge and Smith, 1997). The JMC was perhaps most consistent in this regard, conducting hearings with women's organisations in 1994, 1996 and 1999, with Govender describing the relationships built through this process as "invaluable" (Govender 2007*:* 158).

In November 1996 the ANC Parliamentary Women's Caucus initiated the joint Campaign to End Violence Against Women and Children in collaboration with women and children's organisations in the Western Cape. Campaign partners met weekly and undertook a range of activities, some of which included collaborating with NGOs to draft a submission to the SALC on domestic violence, intervening in rape cases involving schoolgirls in the Western Cape and Northern province, drafting questions for MPs to raise during parliamentary meetings and supporting ANC MPs to take up violence against women in the ANC Parliamentary Caucus, as well as within their constituencies (Shifman, Madlala-Routledge and Smith, 1997). A strategic planning workshop focusing on taking the campaign forward, amongst other matters, was also on the cards. Some of the constraints facing this campaign were also being intimated: funding and resources were required to enable civil society organisations and MPs to meet and structure their relationships; and MPs were needing to find ways of balancing their workloads (*ibid*).

Even if some early signs of discontent were becoming visible, this was a period remembered in positive terms:

> We were in the honeymoon phase at that stage...As a shelter worker I thought I had died and gone to heaven after battling. Because I worked at shelters before '94 and I tell you, it was tough going. And then just before elections we all just about starved, because everything just froze. And then after '94 things just started going better and better. There was like real, the whole focus on human rights, on looking at the legislation, looking at women's rights, looking at gender based… I mean the domestic violence legislation then happened in '98 and then, wow, there was this funding for this victim empowerment project, to start implementing this wonderful stuff – one-stop centres, shelters, dada da da. It was, I promise you, I thought, oh my goodness, I'm going to work really hard for about five years and retire, because all the work will be done (NGO5, interview November 2012).

Erosion and reconfiguration: 2000 to 2011

> I think that in 1994 we thought we had arrived. And then we sat back and didn't quite know, and expected some miracle that everything would change to our benefit, and it didn't (NGO8, interview December 2012).

With the new decade came neither retirement nor miraculous change – only the end of political innocence. As the political terrain, local, national and global, continued to shift, its subtle, incremental realignments generated the sort of conditions that by 2012, precipitated the start of a perfect storm in the sector.

Where rights, as result of the transition, had been the dominant political idiom in matters of gender, the 1999 *National Policy Framework for Women's Empowerment and Gender Equality* inaugurated one of the first discursive shifts back towards needs. A basic needs approach, coupled with the prioritisation of meeting basic needs was now to be the government's chief approach to gender equality, justified on the basis that most women lived in peri-urban and rural areas (OSW, 2000). This shift began being documented by Shireen Hassim in 2003 and later by Amanda Gouws (2005) in her analysis of state responses to HIV and AIDS. While violence against women, or gender-based violence (as it was also being termed) remained on the public and political agenda, the emphasis was increasingly on rape (see Posel, 2005) – not least as a result of some ill-considered remarks by members of the Cabinet, including President Mbeki (Vetten, 2007; Moffett, 2009) – while domestic violence quietly retreated to the background.[89] The remarkable political opportunity structure created by the transition (Hassim, 2003) had closed.

The increasingly peculiar stance around HIV and AIDS adopted by President Mbeki and the Department of Health played a significant role in precipitating Pregs Govender's departure from the JMC in 2002, which not only marked the decline of the JMC, but also coincided with Parliament's increasing loss of credibility in the public's eyes. Issues such as the arms deal, 'Travelgate' and the dissolution of the Directorate of Special Operations (or the Scorpions), all contributed to Parliament increasingly being depicted as a rubber stamp of the Executive and/or the ruling party (Parliament of the Republic of South Africa, 2009). Over and above the questions of ethical conduct raised by these issues, Parliament also faced significant challenges in linking with the electorate, according to the Independent Panel appointed to assess parliament. The Panel, which carried out its mandate between 2006 and 2008, concluded that South Africa's party-list electoral system tended to promote

[89] This was also the perception of NGO2 (interview November 2012) and NGO8 (interview December 2012).

MPs' loyalties to their political parties, rather than their constituencies. This diminished MPs' accountability and responsiveness to the electorate and weakened public participation. The Panel highlighted too that the power of political parties to remove MPs discouraged the expression of individual views in favour of party political views (*ibid:* 8).

The dominance of the ANC was increasingly limiting the scope for political contestation, with differences over policy largely being debated within the party and its alliance partners, rather than across society broadly. While a shared, century's worth of struggle and nationalist thinking has ensured a well-developed and deeply embedded politics of alliance, the linkages between state and society outside of this politics, are less developed. This history has served to limit significant conflicts over policy positions within the alliance and ensured that race and nationalism remain the central axes of political mobilisation (Beall, Gelb and Hassim, 2005). As a result, it is from within sectors of civil society that contestation over policy positions has emerged, with one of the strongest examples being the battle over the provision of anti-retroviral drugs to AIDS patients.

A certain impatience with the independence of civil society was signalled in 2003 by the Policy Co-ordinating and Advisory Services (PCAS) in the Presidency, with civil society accused of operating "with logics that are often autonomous to those of the state" (PCAS 2003: 9). A very particular relationship between state and civil society was put forward and it was not one between equals. Government, as the expression of the nation's will, was to "lead", "manage", "co-ordinate" and "harness" social networks towards the achievements of government's long-term developmental objectives *(ibid*). Civil society was showing some recalcitrance in this regard; the Review noted contestation over the roles between elected bodies, NGOs and CBOs, as well as competing claims for legitimacy (PCAS 2003: 44).

The line between managerialism and the centralisation and concentration of political authority became increasingly contested – particularly within the ANC which recalled President Mbeki from office in 2008. The schism had developed earlier in 2005 with President Mbeki's dismissal of then Deputy-President Jacob Zuma on the grounds of his deeply compromising relationship with convicted fraudster Schabir Shaik. The questionable nature of Jacob Zuma's ethics was further highlighted when he went on trial in 2006 for the alleged rape of a former comrade's daughter. The trial exploded any lingering fantasies of a social consensus around the importance of gender equality in South Africa; what existed instead was both shallow and tenuous and all too easily trampled under the sexual conservatism and stereotyping demonstrated both by Zuma and the presiding officer, Judge Willem Hefer.

With his acquittal of rape in 2006 and the subsequent withdrawal of criminal charges of corruption in 2008, the way was cleared in 2009 for Zuma's ascendancy to the presidency. His assumption of office marked the wholesale departure of many MPs and bureaucrats from the state. This was not the only political shift of importance; the DA, which had very narrowly managed to win control of the city of Cape Town in 2006, won the Western Cape from the ANC in 2009.

I now set the shifting fortunes of the domestic violence sector against this broader background.

Policy proposals: civil society

The implementation of the DVA at the tail end of 1999 introduced something of a bifurcation in emphasis amongst domestic violence organisations. For the small cluster of research and advocacy

organisations[90] in existence the implementation of the DVA largely became their chief focus, while for the large majority of organisations, the provision of ameliorative services in the form of shelters and counselling remained the emphasis. This bifurcation influenced which particular government department organisations were oriented towards and ultimately how state discursive practices shaped organisations' practice. For service organisations this was DSD, while for research and advocacy organisations it was the DoJ&CD and the SAPS. Interest in violence against women was not confined to NGOs and government alone; domestic violence was also increasingly capturing the attention of researchers in academic institutions, particularly within the field of public health.

Researchers and women's organisations have thought about domestic violence in range of ways since the 1990s, in addition to proposing a wide palette of policy interventions. Indeed, South Africa's domestic violence regime could be constellated in a range of ways. Domestic violence is productive of the greatest number of lifetime post-traumatic stress disorder cases amongst South African women (Kaminer et al, 2008) while in its sexual form, domestic violence articulates with HIV, significantly increasing women's risk of infection (Dunkle et al, 2004; Jewkes et al, 2006; Pronyk et al, 2006). Its economic expression produces both displacement and homelessness (Angless and Maconachie, 1996; Ross, 1997; Parenzee and Smythe, 2003; Vetten and Hoosain, 2006; Schneider and Vetten, 2006; Ross, 2010), while also diminishing women's economic resources (Vetten and Hoosain, 2006; Pronyk et al, 2006) and associating itself with women's imprisonment (Haffejee et al., 2006), especially where women have killed their abusive partners. Domestic violence has been examined within the farming context (Waldman, 1996; Parenzee and Smythe, 2003) and its heteronormative assumptions questioned (Moothoo-Padayachie, 2004; Naidu and Mkhize, 2005).[91] Norms, values and other risk factors associated with abusive behaviour have also been identified (Jewkes, Levin and Penn-Kekana, 2002; Kim and Motsei, 2002; Shefer et al, 2008). The seeds of different sorts of political claims can be discerned in some of this research and the initiatives to which it was attached; each could potentially be constituted as a field of political intervention requiring administrative action. But that which appears empirically self-evident is not a policy *fait accompli.* For in the main, most of these claims have yet to attain the first moment in the politics of claims-making, the struggle to deny or legitimate the political status of a claim (Fraser, 1989). Some however, have transcended this barrier.

The role of the health sector in addressing domestic violence was first broached in 1993 (Motsei, 1993) and by 2000, the *Primary Health Care Package for South Africa* was recommending the counselling and referral of survivors of domestic violence (Department of Health, 2000). By 2003 a policy framework and screening protocol for health workers was being proposed by the GHJRU (Martin and Jacobs, 2003), the need for intervention being made ever more apparent by research

[90] These include the Women's Legal Centre, the GHJRU, the CSVR, TLAC, GAP

[91] The Durban-based Lesbian and Gay Community and Health Centre launched 'G Force', a project whose long term goals included increasing lesbians' public visibility and understanding violence between and against lesbians. Men's issues tended to dominate within the LGBTI community, while women's organisations focused chiefly on violence within heterosexual relationships. Efforts were also being made to engage the police around their responses to same-sex domestic violence and their perception, in particular, that it was a 'fair fight'. There were also instances when the police offered to assault the abusive female partner in turn, a not dissimilar response to women assaulted by their abusive male partners. More distinctively, LGBTI feared further abuse and ridicule at the hands of the police on account of their sexual practices. Lesbians felt reluctant to approach shelters for abused (heterosexual) women for similar reasons – while no shelter facilities existed for gay men. In addition both lesbians and gay men were subjected to violence by their family members.

showing that women with violent or controlling partners were at increased risk of HIV infection (Dunkle et al, 2004). However, awareness of the potential for health workers to become yet another source of victimisation for abused women (Kim and Motsei, 2002) led to both circumspection and caution in what was proposed. The pressurised nature of hospital casualty environments (which did not encourage empathic, time-consuming engagements with patients) and the absence of services to refer women to were also cited as reasons for caution in pressing for health sector interventions by NGO1, who had engaged with a number of facilities over the years around this question (interview November 2012).

In 2008 a national roundtable organised by TLAC, the Centre for Health Policy and the School of Public Health of the University of the Witwatersrand continued exploring the development of domestic violence policy appropriate to the health sector (TLAC, 2008). In 2010 the need for a health sector response was also taken up by the WCPD portfolio committee following their public hearings. Domestic violence attained recognition of sorts within the two National Strategic Plans (NSP) of 2007-2011 and 2012-2016 for dealing with HIV and AIDS. While the first Plan did not address the health dimensions of domestic violence (merely contenting itself with the recommendation that adequate resourcing be made available to effect the provisions of the DVA [South African National AIDS Council 2006: 120]), the second Plan recommended that health workers screen women for experiences of domestic violence (South African National AIDS Council, 2011). In the course of the decade, little more had been accomplished in the health sector than the recommendation of screening.

The Justice for Women Campaign, which was also taken up by the NNVAW, was a single issue campaign that sought to alter how abused women who killed their partners were dealt with by the criminal justice system. In 2000 five applications for presidential pardon for women who had killed their abusive partners were submitted to the DoJ&CD, along with a call to review the sentences of all women imprisoned for killing their abusive partners.[92] While the campaign ultimately made limited political headway in its call for a review of all such women's sentences, its legal strategies were very successful. In 2004 Anieta Ferreira, who had her abusive partner killed by two men, had her sentence reduced from life imprisonment to time served (which was six years) after the Supreme Court of Appeal took into account the years of abuse she had endured at her partner's hands.[93] A subsequent decision endorsed the importance of taking abuse into account when sentencing women who had killed their abusive partners.[94] All five of the original applicants for presidential pardon had been released on parole by 2009.

Making political headway in recognising the socio-economic dimension of domestic violence has been equally mixed. In 2004 the CSVR initiated an attempt to examine housing policy and its ability to address the housing needs of abused women. Four meetings were conducted between shelter organisations nationally and a series of papers produced to assist shelters in approaching provincial and national Departments of Housing. Discussions even reached the point where a workshop was conducted with the national Department of Housing's policy unit in 2008[95] to explore how domestic

[92] See Vetten and Bhana (2005) for a full description of the Campaign.
[93] *Ferreira, Chilambo and Koesyn v The State* 1 April 2004 SCA 245/03
[94] *S v Engelbrecht* Case No 64/2003 (WLD).
[95] The author was employed at the CSVR at the time and closely involved with these processes.

violence could be recognised in housing policy. But this workshop represented the furthest point of national discussion.

The Western Cape Shelter Focus Group was able to drive the process further (Petersen, 2009). With support from the Social Housing Foundation and local housing and advocacy organizations in the Western Cape such as the Development Action Group, Habitat for Humanity, the Women's Legal Centre and Community Law Centre, they pursued local and provincial government as well as the Housing MEC. In March 2007 the City of Cape Town invited the Shelter Focus Group to participate in their special needs housing policy framework workshop where they requested that 10% of social housing units be allocated to people with 'special needs,' which included women exiting shelters. This led to the Western Cape Transitional and Special Needs Housing Forum being established to work with the City on implementation of this policy (*ibid*). The group reiterated their call to attend to abused women's long-term housing needs at the 2009 parliamentary hearings (*ibid*). However, with Elizabeth Petersen's departure from the Western Cape Shelter Focus Group in 2009, the process slowed and was only really reconstituted in mid-2012.[96]

It is a truism that many abused women are economically dependent on their abusive partners and that this structural dependency serves to entrap them within abusive relationships. The protective value of economic participation for women was well demonstrated by the Intervention with Microfinance for AIDs and Gender Equity tested in Limpopo. This demonstrated a 55% reduction in domestic violence through a programme combining microfinance with gender and HIV training (Pronyk et al, 2006). Impressive as this result is, it has not been formulated into a political claim and nor has it led to the prioritisation of policies and programmes addressing the economics of domestic violence. Instead, as the DSD's shelter policy framework makes clear, it is largely up to shelters to devise programmes and strategies addressing poor women's economic circumstances. NGO7 (interview January 2013) was eloquent on the limitations of these which required shelters to devise income generating programmes, put together co-operatives, or enrol women in activities that perpetuated employment-related gender stereotyping (and the lower pay generally accorded 'women's work'), as well as expend an enormous amount of time in investigating and negotiating various departments' programmes, their criteria for enrolment, and their location and availability.

In each of these initiatives (bar the last) can be discerned the attempt to formulate an interest and a concomitant claim upon the state. But it is as if the discursive framing of domestic violence as a problem of law and problem of welfare cannot be transcended; the bureaucracy is not open to new agendas.

> There is so much that we have been asking for, for the past 15 years in terms of very basic structural, political, ideological responses to domestic violence and all we have that has any real substance from the State is this Act, ya and we are all sort of orbiting around this Act and coming at it from different angles trying to make it work (NGO1, Interview November 2012).

The gravitational force exerted by the DVA derives perhaps in its status as the only realised claim upon the state; it is something tangible that women hold in their hands, rather than something they must still articulate and contest. It is also founded in a right. Similarly, those aspects of the Justice for

[96] Personal communication, Joy Lange (St Anne's shelter, Western Cape) 2 September 2013.

Women Campaign rooted in a rights claim could also succeed, whereas those dependent upon political will did not. As for the socio-economic dimensions of domestic violence these too have arguably been confined and constrained precisely because of their discursive location within welfare and the domain of needs, rather than rights.

Because so little headway had been made, fatigue had set in amongst the organisations interviewed (if not the sector more broadly).

Networking

One factor contributing to the inability of organisations to work collectively has been the absence of a networking or co-ordinating structure, with the NNVAW's campaign conducted in partnership with Soul City representing the high point of activism in pursuit of a citizenship claim. While the Western Cape and KwaZulu-Natal provincial networks managed to sustain themselves, the NNVAW was moribund by 2004. Some of the provincial shelter networks which evolved within the NNVAW survived the Network's disintegration and remained close to particular provincial offices of the DSD (NGO7, Interview January 2013). However, in February 2008 the independent civil society National Shelter Movement was founded and launched in August of that year (NGO3, interview November 2012).

With the disintegration of the NNVAW came the loss of relationships between organisations, as well as knowledge of other organisations' existence and their activities, and the space for organisations to congregate, share information and jointly strategise. While this may have still been possible in some provinces, it reinforced the fragmentation of organisations from one another and also hindered the development of a collective political identity as women's organisations. What developed in the NNVAW's place were localised and specialist collaborations such as the Consortium on Violence Against Women in the Western Cape, which emphasised research around domestic violence in the province and the South African Gender-based Violence and Health Initiative (SAGBVHI), constituted in December 2000. Described as a national, specialist partnership of some 11 organisations[97] and individuals, its focus was on building the health sector's capacity to respond to gender-based violence through a combination of research, advocacy and training (Medical Research Council, 2013). During its lifespan between 2001 and 2003 SAGBVHI conducted two national conferences and co-hosted a workshop with the National Department of Health. When funding for the initiative came to an end, so too did SAGBVHI.

The domestic violence sector thus has no clear political identity. While the research cluster largely self-defines as feminist, the service cluster is too large and disparate to do so. If domestic violence organisations can be said to have any sort of collective identity it is that bequeathed to it by DSD – the victim empowerment sector, which has also provided the space at both provincial and national level for organisations to meet. In 2008, at one of the very few national meetings held during the last decade (to mark a decade of the DVA, ironically enough) the need for greater collaboration between

[97]These included the Medical Research Council, Soul City, CSVR, the University of Cape Town's Department of Forensic Medicine and Toxicology, the University of Cape Town's Department of Nursing and Midwifery, the Empilisweni-Woodlands AIDS Education and Training Centre, the Centre for Health Policy, the Health Systems Development Unit, AMREF South Africa, the Ciskei Nursing College and the Planned Parenthood Association of South Africa.

organisations was one of three recommendations put forward by conference participants (CSVR, n.d.).

But while the sector was hamstrung in their efforts to self-organise, they were being directed by government as part of the discourse and practice of 'stakeholder management.'

Relationship to the state

While a discourse of partnership stamps some government policy documents, more recent policy is managerial in tone: government leads, co-ordinates and manages, while 'stakeholders' and 'service providers' carry out the state's mandate.[98] It is a form of engagement profoundly anti-political in effect.

In May 2006 the Kopanong Declaration was adopted following the '365 Days of Action to End Gender Violence' conference convened by the NPA's SOCA Unit, UNICEF and Gender Links. The '365 Day National Action Plan to End Gender Violence' (NAP) was then launched in 2007 on 8 March. With neither the state and its institutions, nor the various formations of civil society, capable of addressing violence alone, the NAP frames domestic violence as a problem requiring all sectors of society to work together. It is thus a plan both corporatist and centralising in ambition, envisaging that all "South African government departments and civil society organisations will as stakeholders use the National Action Plan as the basis to develop their own strategic and operational plans to ensure unity of purpose and cohesion of efforts to achieve maximum impact the process of eradicating this scourge" (NAP 2007: 5).

The NAP, which reads like a lengthy 'to-do' list, provoked dissension because almost all of its various activities had been identified beforehand by the conference convenors. There was thus very little scope for contestation around the choice of activities, as well as their prioritisation and a number of organisations protested the issuing of both a Declaration and Plan that reflected minimal consultation. A statement was also issued by these women's groups on the conclusion of the Conference (although this is not reflected within official documentation of the NAP).[99] The NAP has never really taken off and very few organisations promote or adopt its programmes – not least because of its weak processes of consultation, as well as its perceived ownership by one particular organisation (NGO9, interview January 2013). And while some effort was made in 2011 to reconstitute processes of consultation around the Plan, these too dissipated (*ibid*). The NAP thus illustrates some of the complexities of co-operation between organisations and the bureaucracy.

The NAP was anti-political in that it represented a managed process that bypassed processes of interest formation and contestation. While processes of consensus-building may be more tedious and time-consuming, they are also more democratic and inclusive. However, collective processes offer individual organisations little of the 'branding', profile and impact liked by donors. They cannot always be completed within pre-determined time frames and nor can their outcomes be predicted. They are, in short, messy and rather uncontrollable: the very antithesis of models in which government instructs and civil society obliges. But as one respondent observed, partnering with

[98] The 2008 Victim Empowerment Policy Guidelines, for example, are largely dedicated to describing a mechanism of co-operation led by the DSD, while the White Paper describes yet another Forum managed by DSD.

[99] The author was present at the conference and one of the signatories to the statement.

government departments offers ambiguous returns: it offers access to power and confers a certain prestige and weight – even as it mutes a more critical engagement with particular departments (NGO9, interview January 2013).

These ambiguous bargains with the bureaucracy prompted organisations to adopt different approaches to engaging the state. While some chose to engage (and actively sought such engagements), others did not, believing there to be no value in such engagement. A third group could be described as working around the state, or in parallel to the state, particularly those service organisations who did not regard any public services as competent. And finally, one organisation had developed a strong emphasis on CEDAW and supra-national structures precisely because of the leverage they appeared to exert over the state. While the voices of women's organisations could be ignored within the domestic arena, they gained in power when articulated through international structures like the CSW (NGO8, interview December 2012).[100]

Those who did engage the state often did so on the basis that they were representing women's interests:

> So, as *[organisation*] sometimes we have been criticised to say, 'yes you are an advocacy and service delivery but you work a lot with government.' We work a lot because we are taking the voices of the women at local level to those spaces, and for us it's important to take those voices (NGO7, Interview December 2012).

> I see us doing a lot of work and a lot of pushing to say, you know, no matter what happens we will fight for these women and we will help them…but I'm here to fight for women and their rights (NGO3, November 2012).

For some organisations this included holding the state to account for its undertakings to women (which extended to submitting shadow reports to the CEDAW Committee). But most positioned themselves as 'helpful' to the state, whether in undertaking research to identify challenges in implementation and making recommendations around improving the system; or in providing services that are the government's responsibility:

> I want government and civil society to work as one, because they need us, because we're doing the work, and we need them, because we need them to help us to finance the work we actually did (NGO3, Interview November 2012).

But this desire to be helpful to government, to work in partnership, was not always realised:

> Well, I don't experience as a… I understand partnerships as 50/50. I certainly don't see it as a 50/50 partnership I'll be honest and everyone knows, from my district to the province to national, I say it's an 80/20 partnership. It's, when they call a meeting I must jump and be there and I'm glad I'm not in a relationship like this because I would have been long divorced. It's quite an uphill battle to be honest, and to really sit and talk with each other and just say,

[100] This deference was also noted by a parliamentary respondent (Parl1, interview November 2012). Also echoing the value attached to international opinion was the senior bureaucrat who repeatedly emphasised over the course of the interview, South Africa's world class interventions and its international best practices (J4, interview January 2013).

> where it's not working, why is it not working and how can we make it work? (NGO3, November 2012).

What NGO3 is describing are relationships coloured by the hierarchical managerialism identified earlier. NGO5's experiences illustrate this even more graphically:

> You're the service provider, the word NGO doesn't really happen much anymore, you're service providers for the government…They have set what needs to be done, because they know it, [unclear] where you've been, but I mean this is how they tell you, this is, they know and they've got their plan and they've got their budgets, and then, yes, they can see that here and there they would need to buy the services of a service provider. For instance, for shelters because me this, again, to my face, that it's too expensive for a government to run a shelter, because they've got minimum wages, it's a 24 hour service; can you imagine what that would cost? But NGO workers, no, no, no, you must work with volunteers and it doesn't really matter what we pay, because you're not held to any minimum wage so you work on very tiny budgets to run a 24 hour service, but for government to do it would be costly. So, government can't run shelters, but they've only got very limited money to give to their service provider to do it (NGO5).

Other organisations described the relationship as one where departments "think that they're superior for all different reasons" (NGO4, November 2012), or one where "[*Provincial*] Government is just so arrogant, they are so full of themselves, they feel nothing around your challenges" (NGO5, November 2012). Because their shelter had recently faced closure, NGO5 was particularly cynical of political representatives at the time of the interview. Both senior provincial and national government representatives had publicly stated they would intervene to assist the shelter, while political party representatives had also visited the shelter (often with a media entourage in tow) and promised support. Nothing had come of these undertakings.

For NGO1 (interview November 2012), the relationship was an uncomfortable one that positioned the parties as insiders and outsiders. Characterised by tension, suspicion and a sense of being constantly on guard, she reiterated a theme common to a number of interviews: "I don't think the state wants to hear criticisms. I think they want to control information to the extent that all looks good."

The extent to which departments were genuinely interested in what organisations had to say was also contested:

> And they have this kind of pretend consultation process when in actual fact they already have decided on an outcome. And they don't really listen to women (NGO8, Interview December 2012).

> They tick the consultation box (NGO2, interview November 2012).

Where conflict was occurring between mid-level and senior staff in another department, the senior manager was in a position to stymie and delay their subordinate's projects – which served to limit access for organisations (NGO2, interview November 2012). On the other hand, NGO4 (interview November 2012) preferred working with mid-level bureaucrats. In her experience senior bureaucrats were more likely to fall victim to internal politics and be replaced than mid-level bureaucrats. New,

senior incumbents were not interested in continuing or promoting their predecessor's projects.

Changes to the party in power provoked a different set of disruptions – to the detriment in particular of those organisations in the Western Cape caught in the political cross-fire of the DA and the ANC. NGO4, for example, had produced a booklet on domestic violence which had included an introduction by the previous ANC MEC. It was never distributed for that reason and remained in unopened boxes in the new administration's offices.

NGO5 runs a shelter in a township area. In 2007 when a new bureaucrat was appointed to head the City of Cape Town's drug programme, she attempted to close down the shelter in order to reopen it as drug rehabilitation centre. Half of the shelter was thus converted into a drug centre, leading to large numbers of men in the phase of active drug addiction, entering and leaving the property. The safety and security of the shelter residents and their children became a matter of active concern and led to a battle between the shelter and the city council which only ended when the DA narrowly won control of Cape Town. Some four years later the organisation once again found themselves in a similar situation – but with the roles of the political protagonists reversed. While the ANC had still been in power in the Western Cape the organisation had been provided with a house in a peri-urban area of the province to run a shelter serving the large farmland community. As 2012 dawned, the DA (which had taken control of the province in 2009) informed NGO5 that because the project had been inaugurated under the ANC, they were now withdrawing funding for the project, as well as the use of the house. At the time of the interview, NGO5 still retained the use of the house but funding from the municipality had been withdrawn. The shelter was surviving on an emergency grant.

Organisations also commented on how personality-driven departments could be:

> So, with the department, my experience of them also is without a proper structure and without proper accountability. You have these individual people running amok, and taking their own agenda forwards and sideways (NGO5).

Effective working relationships were thus dependent on who one engaged with, in which division of a department, and at what particular point in time:

> Well I think she was one of the few people in [*department*] I have met that was just passionate about making a difference but I think she was also limited by the Department she was working in. And I think she is one of the few people who was really open to new ideas, to making change, making an impact, but I think because of her energy and enthusiasm I think the Department found her very difficult to contain and they wanted to keep her contained.
>
> (*Interviewer: You make it sound like passion and enthusiasm are a liability*)
>
> Oh ya. I do. I feel that. And I have seen it in other people who were co-opted into government and have a very particular vision about how things should be and after a couple of, a few years, just sort of ended up being part of this massive machinery, you know, which doesn't give much room in terms of those levels of creativity. I do not understand what it is. I mean I have never worked for government before but as you know working with government you just see people have so many rules and regulations and things that just limit people's abilities to run with things that could be, you know, life-changing. I, somehow, structurally it

> doesn't allow for that. The accountability systems, structures are so sticky hierarchical that you know some person in the middle um if they try to make change are not going to be able to do that unless somebody else on the top gets credit for it. I don't know what it is but I find that hierarchy is very stiff. I find it very, just very unaccommodating and I think she was one of those people who really had a vision for things. She was one of a few people who understood the importance of evidence and research and engaging civil society organisations…I think those structures do get terribly territorial and whose ambit and whose mandate things fall under (NGO1, Interview November 2012)

National departments were experienced as largely impenetrable and the DoJ&CD particularly so. In the face of this impermeability, some organisations were turning to the provincial Legislatures and provincial departments.

> We have had the little successes provincially and it's because there are certain people that care enough to make a difference in terms of the regions that they are managing, or the Courts that they are managing, or the jurisdictions that you know people care enough to make those changes. Those are the people that we seek out (NGO1, Interview November 2012).

Engagement was seen as being on government's terms and the sincerity of the stated desire to consult questioned in light of the very tight time frames provided in which to comment on policy and draft legislation, along with the short notice provided of consultative meetings. At a range of levels these practices were serving to exclude organisations from participating in consultative processes, as well as changing the nature of activism. NGO4 (interview November 2012) which worked with a range of small grassroots women's organisations, pointed out that the speed with which things were done, as well as the short notice given of processes, provided no time to explain these various proposals to smaller organisations or obtain their views about them. The increasing use of e-mail and the internet was also serving to speed up processes and further marginalise these groupings from government processes. This meant that the form of engagement had altered and where previously it was dominated by protest and marches, it had now moved indoors (so to speak) and become less visible as it took the form of more traditional forms of engagement – letter writing and submissions. Organisations which had been able to adapt and engage on these terms had developed both specialisation and expertise in this regard while those who had not, were less able to engage.

The impact of the funding crisis was forcing organisations into survivalist mode and, for the service organisations in particular, also inhibiting their participation:

> We have very few resources here to allocate time to advocacy work and that, so we are part of the shelter group…We're a direct service provider, we see up to 600 women a month, we house over 30 women and we've got a rural shelter. We are inundated by the direct services and that leaves very little energy for anything else, and that's the priority (NGO5).

Finally, a political environment perceived as hostile to feminist thinking was also constraining organisations' ability to articulate women's interests. While formal commitments to gender equality might exist, a number of organisations thought state practices rendered these superficial – a perception also shared by some of the bureaucrats and parliamentary staff interviewed. Indeed, there was a sense that openly defining as feminist guaranteed disregard and that it was more

strategic to describe one's work as being concerned with gender, with women and men, rather than women alone. One organisation's solution to this dilemma both of discourse and strategy was to advocate in a very issue-based manner and on positions that took the moral high ground – improved health services to rape survivors, or legal protections for abused women:

> I don't think anybody would want worse service for people who get domestic violence protection orders, people who go to the health care system for care post-rape, people who go to the prosecutors, you know, in sexual offences cases. I think there are specific issues that we work on that make it easy for us to advocate because I think there are very few people who will be vehemently against these things (NGO2, interview November 2012).

There is a sound pragmatism to this approach. However, it condemns its adherents to perpetually working for the realisation of women's practical interests even if it protects them from the more challenging, less certain initiatives in pursuit of women's strategic interests.

Conclusions

Women's organisations addressing domestic violence have advanced a number of wide-ranging policy proposals over the years seeking to address domestic violence, with the fortunes of these claims closely tied to the trajectory of the domestic violence sector from relative obscurity pre-1994, to centre stage during the Mandela era and back to the margins by the end of 2011. It shows organisations to be working at the interstices, finding the individuals, the committees and the sub-directorates who are responsive, and within a context where the political opportunities and space to address domestic violence have contracted.

Chapter 7: Conclusions

In 1989, unable to stomach the prosecution of a husband for the rape of his wife, parliament reduced marital rape to no more than a factor potentially aggravating the length of sentence. This position was utterly changed in the space of four years with the introduction in 1993 of the PFVA. Still further far-reaching reforms were accomplished in the five years that followed, leading to the enactment in 1998 of a domestic violence law considered to be a leading example of its kind internationally. But the political fortunes of domestic violence do not end on this triumphant high note; the story lurches forward, attempting to forge new directions – only to become a study in decline: in a state entrusted with realising and upholding women's rights; in a set of political ideals; and in the significance and effectiveness of women's organisations addressing domestic violence. We can account for this narrative arc by returning to the questions posed at the outset of this study.

The deliberate neglect of domestic violence by the apartheid state made it an issue ripe for feminist intervention, an impulse which found expression in the domestic violence legislation being drafted by the SALC. Although this process had originated in narrow questions of legal principle and fairness, it was transformed into one that sought to advance gender equality within the country. This was accomplished through the appointment to the Project Committee of a range of feminist lawyers and representatives of women's organisations addressing domestic violence, as well as a particular political context: the ratification of international covenants promoting women's advancement; the movement into the state of women who defined as feminist; the transformation of state sector bureaucracies; and a substantive rights discourse. The subsequent prioritisation of the Bill in parliament was directly attributable to the JMC, working closely with the Justice portfolio committee, again within a context where high-level political support could be sought for prioritisation.

At the same time, the SAPS was also reformulating its approaches to domestic violence as part of broader processes of democratic reform within the service. While the bulk of these changes were to practice and procedure, domestic violence also featured strongly within crime prevention initiatives sparked by the NCPS – which led to domestic violence being taken up by the DSD (the then-Department of Welfare and Population Development) in terms of the VEP. The DSD had however, already been focusing on domestic violence through its close partnership with the NNVAW. While the drafters of the NCPS did not include any representatives of women's organisations, feminist ideas permeated the document nonetheless which, like the DVA, was also attentive to gender equality.

Thus within the first five years of democracy sector bureaucracies and parliamentary committees had identified domestic violence as a legal problematic, a policing problematic and a social services problematic. Their remedies at this point in time included the creation of a court order and the provision of victim support services, buttressed by changes to particular sector bureaucracies' internal procedures and practices, as well as partnerships with women's organisations. In this respect, the state can be said to have realised the modest demands addressing violence against women contained in the WNC's Charter for Effective Equality.

It was also at this point where high level policy commitments to domestic violence began unravelling.

This study has suggested that the contours and dimensions of domestic violence range well beyond the boundaries of law and welfare – yet this is where it has remained cabined, cribbed and confined. The exception was a brief moment in 2000 when domestic violence was taken up in Department of Health policy for primary health care clinics – only to stall there too. Subsequent efforts to construct domestic violence as a problem of housing did not succeed with the Department of Housing, while departments such as Trade and Industry, as well as Labour, have not produced policy addressing the economics of domestic violence. Sector bureaucracies have shown themselves resistant to framing domestic violence as anything other than a problem of women's vulnerability and the special demands this places on the justice, policing and social services sectors.

These discourses around women's vulnerability and neediness have been central to leaching high level policy commitments of their transformatory content over time. Inadequacies in the conceptualisation of domestic violence, its causes and remedies, coupled with discursive shifts which degrade and deteriorate concepts to such an extent that they no longer bear their original meaning have all contributed to policy evaporation. We see this clearly in how the DSD applies notions of gender equality in policy and practice, as well as its proposal to erase 'woman' as a gender category by replacing it with 'mother' and 'wife'.

Vulnerability, as a key word in policy documents, is also fundamental to positioning women as the 'deserving' objects of state policy. Indeed, by 2011 women needed to compete to be the poorest of the poor, amongst the most disadvantaged and rural, the ill and uneducated, to qualify for state services. This latter framing reduces women to the objects of good works, with the state reserving the power to define the administrable content and boundaries of those good works. In relation to abused women these are now construed as family preservation and normalising therapeutic interventions that encourage women to understand domestic violence as something to which they contribute. Men, by contrast, are offered dialogues in which to explore their various emotional incapacities. When this discursive milieu is also embedded within a policy environment that prioritises family preservation over the safety of women and their children, and which does not enable women's economic independence, then 'family preservation' may be enforced rather than chosen. Arguably, this is how some of the social conditions giving rise to domestic violence continue to be reproduced in the democratic era.

Policing discourses and practices around crime further mire domestic violence in a web of contradictions reiterating the division between good, deserving victims and recalcitrant, undeserving nuisances. Where crime is made synonymous with war, injured and co-operative women reaffirm police officers as the heroic defenders of society's weaker members. But where women are undecided and merely complaining (rather than injured), then their concerns can be trivialised as petty and their behaviour wasteful of scarce police resources. Once positioned in this way, women can be treated as undeserving of help. As with the focus on vulnerability, this emphasis on women's perceived deficiencies and their uncooperativeness forecloses deeper questions around the match between state remedies and women's assumed needs. Ultimately, to be deserving of help, women must fit themselves to the state by accepting a degraded version of their citizenship, one in which they are constituted as supplicants of the state, rather than rights' bearing citizens.

Also relevant is the framing of domestic violence as a pathology betokening the absence of morality and the absence of tradition. This framing both contributes to the depoliticisation of domestic violence as it legitimates the regulation of women's lives by religious and traditional authorities.

These discursive shifts and their articulation of familialism, moralism and traditionalism account for one aspect of the decline. A second is the state, which is central to projects combating domestic violence on at least three grounds. One is its role in constituting the sort of gendered relations of power identified above; a second is its coercive powers and monopoly on the use of force, which are crucial to securing abused women's safety; and a third is its ability to provide public goods and services (such as housing and grants) on a scale that women's organisations can never match. As this study has shown there are moments when the state can indeed be the locus of strategies to end domestic violence – but this is qualified both by context, as well the extent to which the state's fragmented, disconnected workings and conflicting interests are understood from the outset. Where this is not so, it results in ineffectual and misplaced strategy. For example, in settling questions around how women's claims upon the state are to be interpreted, the Constitutional Court, along with the Supreme Court and High Courts have introduced important legal precedents in this regard. However, at the level of the magistrates' courts where the Act is applied daily, the results are uneven.

The legislature provides similarly divergent terrain. The Police PC was inattentive to the prescripts of the DVA until about 2006 and then became more mindful of the oversight required of them. Following the elections in 2009 and the appointment of a new chair, women's organisations were permitted entry into the portfolio committee's arena. While to all intents and purposes the JMC became closed to women's organisations after Pregs Govender's departure, organisations were once more able to work within the openings the WCPD portfolio committee provided after 2009. By contrast, once the DVA was finalised, the Justice PC demonstrated little interest in its practical workings thereafter. Political opportunities within the legislature are therefore varied by the leadership, composition and priorities of committees, as well as the political culture prevalent at the time. Certainly the period between 2002 and 2009 offered few openings to women's organisations.

The sector bureaucracies present a less permeable picture, particularly in relation to the practice of citizenship. Weak participation is guaranteed by practices which see policy formulated beforehand, late notice provided of consultations and modes and technologies of participation that function in exclusionary ways.

The view from within the bureaucracy sketched by this study is equally constrained. Police officers, for example, apply law that lacks a robust framework of supporting legislation and policy and frequently do so in the absence of adequate resourcing and training. Bureaucrats in the DSD are required to execute weak and contradictory policy that frequently changes, while some of their programmes are designed and implemented in the absence of any clear policy at all. Authority structures within the bureaucracy may be similarly undermining of efforts to address domestic violence. This is evident in the police making domestic violence the responsibility of a component which has no authority over actual officers implementing the DVA. It is visible too in making domestic violence the mandate of two different components – a challenge further compounded by the insertion into processes of those who choose to make domestic violence their focus even when no formal mandate exists for them to do so.

To this mix must also be added the divisive interests of the ruling party, the appointment of unsuitable people and the usual conflicts that ordinarily occur between people on a daily basis.

Navigating the state's ensemble of institutions, conflicting interests, rules, norms and practices, as well as identifying the various networks of power that circulate between state bodies and the structures within their orbit, is no simple task. This brings us to the third influence shaping this story: the domestic violence sector.

The study points to an array of relationships between women's organisations and the state, some of which are pursued simultaneously and are also the result of prior engagements with the state. There are organisations which consciously choose to absent themselves from state processes and proceedings; there are organisations who engage the state on the basis that they represent women's interests; there are organisations who engage as 'experts' with the aim of holding the state to account and thus improving state departments' functioning; and there are organisations which content themselves with the provision of services alone and chiefly look to the state as the means enabling them to do so. And there are organisations who engage the state because it advances individual organisational interests. There is also a particular sort of relationship generated by being in receipt of funds from the DSD. This relationship incorporates organisations into the regulatory apparatus of the state, but not in ways which position them as the Department's equal. Rather, they occupy the position of contractors acting at the state's behest, which is not dissimilar to the subordination of employee to employer. The difficulties this poses for robust political engagement are obvious.

While domestic violence as an issue still enjoys some political prominence, this does not mean that actual domestic violence activists enjoy significant political influence. At its height during the 1990s, their influence has waned since, with very, very few gains made in the last decade. Where anything has been won, it has largely been within the Police and WCPD portfolio committees. The strategy of presenting evidence and information around the implementation of the DVA has been effective in increasing the supervision of the sector bureaucracies concerned and resulted in some changes to practice. These engagements represent the third moment in Nancy Fraser's (1989) politics of claims-making: the struggle to secure or withhold the satisfaction of a claim.

Organisations have been unable to formulate or press claims outside of the DVA however. This has much to do with the all-consuming nature of service provision to abused women, staffing components too small to engage in anything other than the provision of services, a decline in the availability of funds and the absence of structures to facilitate networking and mobilisation. There are also very few organisations who consciously choose to advocate around domestic violence. When this is coupled with the complex challenges of engaging state institutions to little effect, and the increasing elevation in policy documents of traditional authorities and the faith-based sector, then demobilisation is assured.

The trite claim that all sectors of society need to work together in addressing domestic violence is also effective in accomplishing depoliticisation. This is because it brings together those who have a direct interest in addressing domestic violence and those for whom domestic violence is peripheral. The interests brought together on this basis can be very divergent, as well as in opposition to one another. Also absent is recognition of the networks of power that flow between the various stakeholders and state institutions, such that power may be concentrated in some groupings, but

diffused amongst others. When women's organisations also operate within a context where feminism is delegitimised and must be concealed if organisations want to be heard, then the likelihood of political contestation and the formulation of claims outside of what already exists is further diminished.

Instead, as David Meyer (1993) observed of US and European women's movements, the South African domestic violence sector couches its claims in concrete and practical ways divested of challenging feminist content and which emphasise pragmatic changes to existing programmes, increasing the likelihood of piecemeal tinkering, rather than wholesale re-evaluation and change. The locus of politics is also shifting to provincial spaces – indeed to wherever a sympathiser can be found.

Arresting the decline charted in these pages will require a very much stronger movement of women's organisations. The question is whether these difficult political conditions will provoke mobilisation or resignation.

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