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**Framing gender-based violence in South Africa:  
The Domestic Violence Act**

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## Acronyms

ACDP – African Christian Democratic Party

ANC – African National Congress

ANCWL – African National Congress Women’s League

CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women

CGE – Commission on Gender Equality

Cosatu – Congress of South African Trade Unions

CSOs – Civil Society Organisations

DVA – Domestic Violence Act

FSAW – Federation of South African Women

GAP – Gender Advocacy Programme

GBV – Gender-Based Violence

IFP – Inkatha Freedom Party

JMC – Joint Monitoring Committee on the Quality of Life and Status of Women

MP – Member of Parliament

MRM – Moral Regeneration Movement

NGOs – Non-Governmental Organisations

NP – National Party

SADC – Southern African Development Community

SALC – South African Law Commission

UN – United Nations

UNDP – United Nations Development Programme

VAW – Violence Against Women

WNC – Women’s National Coalition

## **Abstract**

This paper draws on socio-legal theory, intersectionality and feminist conceptions of civil society to analyse the relationship between gender and violence in South Africa. The research challenges the main narratives on law and violence in South Africa, arguing that the emphasis on legal and bureaucratic processes as the primary approach to domestic violence fails to address the core elements of the problem, namely identity and power. A more nuanced understanding of gender, law and violence is needed.

The Domestic Violence Act of South Africa is used as an example to explore two key issues: the relationship between gender-based violence and law (both international and domestic); and the framing of violence and gender in the context of democratisation and nation-building. The aim of this paper is to offer an alternative understanding of the role of legislation in relation to GBV, and to provide an alternative framework for assessing the implementation of legislation beyond a technical and bureaucratic approach, with the intention of encouraging the women's movement to adopt new strategies and approaches that go beyond an emphasis on formal equality.

## **Relevance to Development Studies**

An important aspect of development studies is promoting the well-being of human beings and society, through shifting thinking and behaviour. As such, development studies is essentially about change – changing power structures and patterns of behaviour, through offering alternative constructions of knowledge. This research paper offers an alternative way of understanding and evaluating legislation, and promotes a shift in addressing GBV using adequate conceptualisations of identity, power and intersectionality.

## **Keywords**

Democratisation, gender-based violence, domestic violence, intersectionality, inclusionary and transformatory feminism, international law, South Africa, apartheid

# Chapter 1

## Introduction

The context of the early 90s opened up new spaces for civil society engagement with the state as it was a time of increased political and civil freedom, and was therefore an opportunity to influence and shape public policy on a variety of issues. Women's rights activists seized this opportunity by reaching across historical differences and ideological divides to form strategic alliances, while also using prior struggle-era relationships, which culminated in the forming of the Women's National Coalition (WNC) in 1992. The WNC was made up of political and non-political organisations as part of the strategy to ensure that gender equality was central to the democratic transition, by exerting political pressure in order to influence and shape the nature of state and social policy.

Women's access, voice and contestation in civil society during the early years of democratic transition coalesced under the leadership of the WNC, which "catapulted a wide array of women's interests to national attention during the transition negotiations" (Walsh 2009: 51),<sup>1</sup> and which became central to the passing of the Domestic Violence Act (DVA) in 1998. This political and strategic mobilisation intersected with the political influence of gender-aware individuals within the state, and with the increasing international emphasis on violence against women and gender equality. The result was that gender and women's equal participation in democratic processes became part of the mainstream political discussions during the democratic transition. The result was fast-tracked domestic violence (DV) legislation. Between the tabling of draft legislation to Parliament and the enactment of the DVA, less than four months passed – a particularly impressive record in South African jurisprudence.

Gender-based violence (GBV) became one of the primary areas of advocacy for the women's movement in the 90s. In terms of the scale of the problem, there is a diversity of figures, but generally most people agree that domestic violence is a fairly common phenomenon and that most cases go unreported. A brief survey of three of the most comprehensive research reports on DV in South Africa reveals that between 60 and 80 percent of women will experience some kind of domestic violence in their lifetime, while every six hours, a woman is killed by an intimate partner. In that respect, the DVA has been hailed by women's activists and researchers as a landmark piece of legislation in the fight against gender-based violence, particularly through its shifting of the government's "hands-off" approach to a more victim-friendly strategy by

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<sup>1</sup> From 1990 onwards, the apartheid regime and opposition movements, including the African National Congress (ANC) were in negotiations and discussions concerning a transition to democracy and an end to apartheid.

outlining specific responsibilities for the police and courts. Furthermore, the civil society participation in the drafting stages, as well as the responsiveness of government to this civic mobilisation, was an example of the enactment of social citizenship, to achieve meaningful democratic participation in legal reforms.

Unfortunately, the DVA implementation record has been exceptionally poor as revealed by various scholars and researchers who have highlighted particularly the insufficient resources made available and the lack of capacity of the justice system. For example, Lisa Vetten and Lillian Artz (both of whom have done considerable research into domestic violence and the DVA) have noted the relatively low levels of funding for the implementation of the act, such as police and magistrate training (Artz 2001, Vetten 2005, Vetten et al. 2005). Most of the explanations given with regard to the poor implementation of the DVA (and other gender-related legislation) have focused on poor police and court capacity, inadequate public financing of the act and a lack of political will. While these observations are useful and relevant, this is only part of the story, and they fail to explore how DV and legislation are framed in post-apartheid South Africa. Overall, far more attention has been paid to the act than to the process that produced the act, such as the democratic transition.

This paper is built on the view that legislation and its implementation are a reflection of broader socio-political and ideological debates and trends in a society, including familial and community dynamics, as well as the nature of civil society organisations (CSOs) and the political elite. To provide a more nuanced understanding of law, violence and gender, beyond the technical and bureaucratic conditions of the South African justice system, attention must be given to the democratisation process in South Africa as an opportunity to address issues that were previously ignored, how the increasing focus on violence against women at the international level permeates this process and how counter-discourses on race and nationalism seek to limit the boundaries of how GBV is framed.

## **1.1 Research Rationale and Objective**

In the South African context, the debate on domestic violence tends to focus on the technocratic and managerial side of DV legislation and programmes, including the performance of CSOs as service providers. Little attention has been given to the trajectory of the DVA itself, including how the political and social context (both domestically and internationally) have shaped the DVA as it is. Understanding this trajectory is essential for addressing the practical, political and social obstacles to the implementation of the act, as well as highlighting the barriers to addressing DV more broadly.



The objective of this research is to provide an informed study of the political and social context within which the DVA process (and subsequent implementation) unfolded, paying particular attention to the role of international law, and the framing of violence, race and gender.

## **1.2 Main Question**

How was DV and legislation framed in the process of democratisation in South Africa and how is this reflected in the DVA process?

## **1.3 Sub-questions**

1. How has DV been framed by the women's movement and the political elite since the end of apartheid?
2. How have implementation narratives framed the relationship between violence and legislation?
3. What role did international law have in the DVA process?
4. How has the narrative of nationalism shaped how GBV is framed in South Africa?
5. What effect has the democratic transition and consolidation had on how the women's movement addresses domestic violence?

## **1.4 Relevance and Justification**

In a young democracy such as South Africa, it is important for feminists, the women's movement and legal experts to consider how civil society does, can and should function during times of political instability. These times offer opportunities for challenging structures, rethinking citizenship and pushing for transformation. The political and social dynamics of the particular time period in which the DVA was passed (shortly after the end of apartheid) included the space for civil society to define a new relationship with the state, and this legislation is a product of that structural exceptionality. The result of this access was that women's rights activists were able to shape the democratic transition in favour of women because of the relative openness that was a defining characteristic of the early to mid-90s.

It is not enough, however, to state that this space existed. Rather, it is necessary to explore the quality and efficacy of the concomitant outcomes, especially for feminists and the women's movement, which is in need of a re-evaluation of its role in framing violence and shaping responses to it. While much has been made of the DVA by academia and civil society, little has

been written about the DVA process in connection to the particular social and political environment of the 1990s in South Africa and globally. In addition, most of the literature on the implementation of the DVA addresses technical aspects of law or the bureaucratic failures of the justice system, with little conceptualisation of how the DVA and its implementation is informed by broader political and social aspects, such as discourses on nation-building or the limited autonomy of the women's movement due to its close links with the state.

In order to reconstruct its own relationship to the state and the global feminist movement, as well as reinvigorate its purpose and advocacy strategies, it is essential that the women's movement (including activists, scholars, lawyers and politicians) understands the intersections of nation-building, race, gender and power.

## **1.5 Research Methodology**

Premised on the view that legislation and its implementation reflect the broader socio-political and ideological debates and value trends in a society, this research paper uses a combination of methods in socio-legal theory, feminist theories (intersectionality, gender in discourses), and standard methods of interviews and reviews of documents to explore the relationship between gender, violence, law and the women's movement in South Africa, and analyse DVA process.

Originally, my intention was to meet with four or five CSOs (located in Cape Town), with a history of active involvement in the DVA process, with the intention of gaining an understanding of how these organisations and their activity around the DVA framed violence, gender and law. In communicating with the CSOs I was interested in, I realised that no organisation I contacted had any staff members who had been working for them in the mid to late-90s, much less anyone who had actively worked on the DVA.

Instead, I focused on interviewing three activists and scholars working broadly on gender-related issues including legislation, violence, economic justice and reproductive rights. I interviewed them on issues related to the construction of gender and violence in South Africa, the implementation of legislation, blockages in the justice system, and the dynamics of the women's movement.

In terms of collecting data on the DVA process specifically, I was able to interview two gender researchers in Parliament, one currently working there, and another who left a number of years ago. My questions all focused on their perceptions of how gender-related issues are handled in Parliament, such as the extent to which they are considered important or worthy of

political attention. These researchers also provided significant documentation on the DVA in Parliament, including the various investigations into its implementation, since it came into effect.

Finally, most of the documentation on the women's movement during and after the liberation struggle, the DVA process and the debates in Parliament was archived at the National Library of South Africa, and various other university-based libraries in Cape Town.

## **1.6 Scope and Limitations**

I am selective in terms of the extent to which I discuss the women's movement during and after apartheid, and the nature of GBV in post-apartheid South Africa. I confine my analysis to one feature of the apartheid-era women's movement, namely the tension between feminist and nationalism. Similarly, while I address the influence of international law in the 90s, I say little about the role of donors in terms of shaping the agendas of CSOs working on gender-related topics. These are two areas that are relevant but that cannot be explored due to the constraints of time and space.

The main emphasis of this paper is not to prove that the DVA is being poorly implemented or to explore why. Rather, the intention is to argue that a more nuanced assessment of the DVA process is needed, by analysing the particular social and political aspects of the South African democratic transition.

## **1.7 Structure of the paper**

This paper comprises four chapters. Following the introduction, Chapter 2 elaborates on how the key theoretical and analytical concepts that are used will be applied. This chapter illustrates how the key concepts, such as intersectionality and citizenship, are useful to my analysis of the democratic transition and the translation of international law at the national level.

Chapter 3 explores the key discourses present in South Africa in terms of GBV, gender and nation-building. This includes an analysis of the nature of GBV in South Africa and how the framing of this violence is shaped and constrained by the discourse on nation-building and anxieties about race and racism.

Chapter 4 presents a historical account of the DVA process, including an analysis of the intersections of domestic and international influences, including law and civil society advocacy. The main argument is that the DVA process, the emphasis on legislation and the influence of international law have resulted in an approach to DV, and GBV generally, which is out of touch

with the social context (such as the intersections of identity and power) and the political context (such as the authority of the nationalist discourse).

The final chapter draws together the main conclusions, focusing on the demobilisation of the feminist agenda and the impact that this has had on the failure of the women's movement to go beyond legislation and bureaucracy as the framework for analysing the state and civil society's approach to DV.

## Chapter 2

# Democratisation, violence and international law: a framework for analysis

This chapter provides an analytical framework for the analysis of the framing of violence and legislation in the process of democratisation, including how international law operates at the local level. The main intention is to show the narrow understanding of the relationship between violence and gender, and how the feminist critique of theories of democratisation and citizenship can help open up new areas for understanding how gender-based violence is framed in political discourses and the law. The concept of intersectionality will be introduced to demonstrate how the representation of gender-based violence in mainstream discourses can and have obliterated the experience of violence by people who occupy social positions characterised by the intersection of multiple structures of power. A unifying theme of these concepts is that they provide a basis on which to question the assumptions and beliefs underlying social reality and the construction of knowledge.

### 2.1 Democratisation, feminism and citizenship

Democratisation is the process of moving from authoritarian regimes to multi-party governance systems which generally include universal voting rights, constitutional and legal protections, and some level of civil and political liberties. While the exact nature and democratic “depth” of these mechanisms may differ, the mainstream approach to democratisation emphasises the need for credible and legitimate political leadership, and functioning legislative and judicial branches, all of which are responsive and accountable to the agency of individual citizens and associational politics (Waylen 1994: 329-332).

Theoretical understandings of democratisation have tended to be based on modernisation theory, or linear conceptions of political and societal change, which emphasise democratic structures, legal reform and universal voting rights (Waylen 1994: 331-332). Under this framework – which dominated global academic debates from the 1960s onwards – democracy becomes synonymous with human rights, social justice, individual liberties and the rule of law. In relation to gender justice, the dominance of this paradigm places a significant emphasis on the centrality of law to ensuring gender equity, with little emphasis on substantive equity through a reformulated and intersectional understanding of power and identity that moves beyond limited notions of citizenship. As such, democracy is “simply an institutional arrangement” and “wider

definitions of democracy couched in terms of the real distribution of power in society are considered illegitimate” (Waylen 1994: 332).

Part of this model of democracy is the liberal notion of citizenship, which is premised on the idea of a public sphere which is separate and distinct from the private. Involvement in the state or public politics has generally been the activity upon which theorists have placed the emphasis when defining, discussing or debating citizenship and the emphasis had tended to be on what Prokhovnik calls the “citizenship-equals-politics model” (Prokhovnik 1998: 85) which parallels Hassim’s definition of inclusionary feminism: people become citizens if they actively participate in formal political activity. Meanwhile, the state is expected to avoid involvement in the private sphere, as this is a place where the individual can experience the personal and intimate without interference from the state.

Feminism offers an alternative to this liberal concept of citizenship. The reformulation of citizenship is part of the feminist agenda globally. A central strand in the global feminist movement has long been the idea that the personal is political, an idea which is the focus of Kate Millet’s 1970 work, *Sexual Politics* in which she argued that “sex is a status category with political implications” (Millet 1970: 24).<sup>2</sup> As such, feminists have challenged the notion of a universal sexless, de-gendered citizen at the heart of modern liberal conceptions of citizenship suggesting that it renders women subject to the (invisible) power relations in the home and family and undermines their autonomy. The public/private dichotomy upholds gender inequities, partly because the private sphere becomes exempt from liberal principles, such as equality, resulting in the perpetuation of private patriarchies outside of the realm of state intervention. A necessary part of the construction of domestic violence (DV) by civil society, therefore, is the recognition of the dominance of abstract conceptions of citizenship which mask how power operates in intimate relationships.

This “rethinking” of citizenship is not always a necessary part of women’s empowerment and activism, however, as there are multiple levels at which gender equality advocacy pushes the boundaries of the social relations of power and operate within dominant discourses. As such, it is necessary to distinguish between feminism and women’s movements, and between movements which are feminine and movements which are feminist – both mobilise around women, but feminist social movements challenge gender roles and gender identities as a basis for a hierarchy of power.

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<sup>2</sup> See also Petchesky (2003: 232) for an account of how citizenship has become a key aspect of feminist theory.

Women's movements can contain conservative elements that organise around women's interests but that fail to question power relations within the movement or in society. Feminism, on the other hand, has a direct political dimension, which is aware of both women's oppression and male power:

The task of feminism is to examine the particular ways in which power operates within and between the political, social and economic spheres of specific societies – in effect, this is a political project transformation... The ideological interventions of feminist activists enable the shift from feminine to feminist consciousness, where the aims of the movement shift to eliminating power relations based on gender (Hassim 2006: 5 and 7).

It is this distinction which forms the basis of Hassim's continuum of inclusionary and transformational feminist. The women's movement in South Africa can be described as a loose network of various academic, legal and civil society organisations (CSOs) which provide services to women, advocate on their behalf on issues such as violence or access to socio-economic rights, and/or conduct research on relevant issues. The extent to which dominant discourses on gender identity and citizenship are challenged is varied.

Hassim (2005a, 2005b) has suggested that different feminist strategies have operated within diverse and sometimes opposing paradigms of women's empowerment and social citizenship. Women's movements engage in inclusionary feminism when they focus on gaining access to the state through government and party structures, in an effort to expand women's representation within decision-making bodies. This is similar to liberal feminism or equality feminism. Transformational feminism, on the other hand, emphasises power and status asymmetries through a focus on identity and power in both the public and the private sphere.

Hassim states that inclusionary feminism and transformational feminism can and should part of a continuum. They can coexist, with different activities adopting different approaches simultaneously, or they can be part of a "linear historical form", in which a movement shifts from inclusionary demands to transformative demands over time. She also argues, however, that they can be in tension – inclusionary feminist tends to become increasingly elite-based due to the need for political strategic alliances that can exclude women who are less-educated, less-organised and who are not interested in participating in formal political procedures (2006: 6). Hassim also points out that in order to avoid cooption, it is important that inclusionary strategies require a strong and well-articulated feminist movement outside the state (2005b: 189).

## **2.2 Gender equality, violence and international feminist advocacy**

The various voices in transnational feminist advocacy networks on gender and violence are bound together by a shared discourse, including common values and principles, which are used to set agendas, develop a common vision, define problems and their policy solutions, and monitor and evaluate existing policy. The individuals and organisations in this network are what Sally Merry and Diane Stone call knowledge-brokers or interpreters, who mediate between different levels of knowledge, information and civil society mobilisation, by engaging in “the ideological operation of ‘decoding’, interpreting and reformulating socioeconomic reality in accordance with the sociocultural project of the global society” (Nahrath in Stone 2005: 92).

These advocacy and knowledge networks operate within and through international forums such as the Vienna Protocols of 1993 and the Beijing Platform of Action. A significant proportion of the measures which form part of the Beijing Declaration focus on the importance of institutional mechanisms that should be in place for addressing violence against women, such as the provision of shelters and medical services, with a particular emphasis on national legislation, the criminal justice system and national machineries (as a conduit to increased policy influence and monitoring) (Beijing Declaration 15 September 1995).

This platform of action was not without contention – the diversity of attendees resulted in ideological, religious and political disagreements. The presence of well-organised women’s activists from all over the world, such as religious groups (who had, on previous occasions, been less able to mount a defence of religious and political conservatism), government representatives and academics resulted in wide range of definitions of what constituted gender, sex, equality and power (Baden and Goetz 2000, Kabeer 2005). Despite these differences, a comprehensive and fairly consistent platform of action was agreed on, a testament to the negotiating skills of leaders within the global women’s movement and feminist activists.

It is worth considering, however, what one can expect from countries (or delegations from countries) who were unhappy with the liberal emphasis on reproductive rights and sexuality, and the general emphasis on gender (rather than sex) as the reference point for identity. For example, Baden and Goetz explore how delegations from the Global South rejected the idea of gender as a political and social construct that de-essentialised the biological basis for gendered and sexual identity. They argue that the increased presence of CSOs at the international level have revealed what had become a common practice, which is that individual feminists and organisations have used the global forums to “leap-frog” over the heads of their national government and even grassroots constituencies to push for a vision of women’s liberation that may be unpopular in their home countries (2000: 26-27).



As a signatory to the Beijing Declaration, South Africa is under considerable pressure to ensure compliance with its commitments, even when these may conflict with the vision(s) of the political elite and citizenry of what constitutes “appropriate” gendered identities and women’s empowerment. The influence of particular paradigms of women’s empowerment and gender quality, while desirable in many respects, are problematic in terms of transparency and representation: the uneven distribution of resources and the hierarchy of discourses raise questions about access and power.

Liberal democratic conceptions of the global arena tend to regard the apparent increasing consensus positively, with the assumption that political interconnectedness and joint decision-making means greater democracy. Even with a multiplicity of actors, however, the international sphere is an unequal environment, in which the idealised rationale that diversity results in “disrupting hierarchies and dispersing power”, is in reality, an increase in “privatised power”, and that the supposed manifestation of “bottom up, non-statist globalisation, networks and other formations may be viewed as ‘mutually implicated’ in the affairs of states and international organisations” (Stone 2005: 90).

### **2.3 Translation and the global gender equality regime**

Sally Merry and Nüket Kardam’s conceptualisation of the growing influence of international norms and principles, and the impact of the transnational identities of individual feminists and gender equality activists, is useful for considering how transnational human rights approaches to GBV, as well as discourses on human rights, gender and justice, bridge the gap between local and global contexts.

Merry argues that the process of localisation of the “social justice as human rights” discourse involves the “vernacularisation” of common understandings and approaches to GBV, and is driven by “translators” who use their dual understanding of local contexts and transnational discourses to “translate” between local and global contexts.<sup>3</sup> Transnational understandings of GBV and discourses around choice, autonomy, modernity and human rights are translated or reframed by knowledge brokers, for people and communities at the national and local level. In addition, the reverse is true – these translators reframe local instances of human rights violations in a way that individuals and institutions at the international level can understand within their own particular conceptions of human rights and social justice (Merry

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<sup>3</sup> The terms local, national, international and transnational are not without their pitfalls, partially through creating oppositionals that are not as clearly delineated in reality. They are also not merely geographical referents, and are often used to distinguish between conceptual and theoretical “blocs” rather than merely spatial ones.

2006b: 49). Merry calls this dual understanding of the local and international contexts “double consciousness”:

Intermediaries such as NGO and social movement activists... appropriate, translate, and remake transnational discourses into the vernacular. At the same time, they take local stories and frame them in national and international human rights language. Activists often participate in two cultural spheres at the same time, translating between them with a kind of double consciousness (Merry 2006a: 3).

Much like Merry, Kardam believes that human rights and gender equality have become the primary way in which advocacy directed at the protection and advancement of women has been framed. She argues that current patterns and structures of global relations of power mean that “states are embedded in dense networks of transnational and international relations that shape their perceptions and preferences” (Kardam 2004: 67).

Within her framework, Kardam uses Krasner’s definition of regimes: regimes are “implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations” (Krasner in Kardam 2004: 87). Gender-related treaties and their compliance mechanisms, as well as the underlying norms, principles, values and intersubjective meanings, are all part of the global gender regime which has an explicit focus on gender-equality at the core.

Both Merry and Kardam focuses on the importance of non-state actors in the shaping, codification and spread of the global gender equality regime. Kardam argues that individuals and organisations in the global women’s movement have exercised structural and intellectual leadership by negotiating the political space of the multilateral forums, such as the United Nations (UN), and engaging in institutional bargaining at the international level, in order to define global rules and shape policy, which then influences advocacy at the global, national and local levels (Kardam 2004: 93 and 94). These actors, what Kardam calls regime participants, “engage in the construction of such knowledge and attempt to link it to broader social goals” once it has been “accepted as a basis for public policy by groups or individuals possessing different political ideologies” (Kardam 2004: 94). The result is a global consensus of knowledge even where there are competing ideologies and alternative definitions of gender justice.

## **2.4 Intersectionality**

Intersectionality refers to the interaction between and intersections of multiple identities, what Kathy Davis calls “categories of difference” (2008: 68), which are produced and reproduced – directly and discursively – in individuals, institutions, and social relations of power, as well as in cultural ideologies and social practices. These intersections result in complex and multi-dimensional experiences of oppression, power, privilege and domination, and their attendant consequences, such as violence and discrimination. The term was first coined by Kimberlé Crenshaw in 1989 (Davis 2008: 68) who differentiated between structural and political intersectionality.

Structural intersectionality is when individuals “are situated within overlapping structures of subordination” so that the reality of multiple hierarchies results in complex and compounded effects, as these multiple systems of oppression interact with one another (Crenshaw 1993: 114). For example, a woman’s experience of violence is shaped and influenced by race, ethnicity and sexuality, which compound and change the reality of how gender-based violence impacts her.

Political intersectionality refers to the way that political and legal discourses and rhetoric “erase” particular individuals and communities by highlighting or “favouring” specific forms of subordination or discrimination at the expense of others, and also by constructing discourses within which violence and responses to this violence are framed, which legitimise one experience while delegitimising another (Crenshaw 1993: 115-116). For example, if the dominant voices on the issue of DV are those of white, middle-class women, they are likely to speak to white, middle-class interests, thus concealing the fact that the identity and social positioning of other women result in a different experience of domestic violence, and also silencing the voices of these women, thereby disguising the need for discourses, services and programmes which appropriately address this diversity.

## **2.5 Framing GBV and the DVA in South Africa**

Framing is a concept used extensively in discourse analysis. For the purposes of this research paper, I will use framing not as a device to analyse text, but rather as a broader analytic tool through which to understand the main discourse on violence and the DVA. Specifically, I focus on how the dynamics of violence are constructed and defined. Part of this framing includes understanding meaning and knowledge: who frames meaning, how is the DVA constructed in terms of its value and how is its apparent “failure” explained?

Activists and researchers such as Rachel Jewkes, Hassim, Cathy Albertyn, Vetten, Artz, Debbie Budlender, Penny Paranee, Sheila Meintjies and Amanda Gouws have written

extensively on various aspects of GBV, with a particular emphasis on legislation, primarily focusing on the poor implementation of the DVA as well as its apparent negligible effect on incidences and perceptions of DV. The main authors are educated, middle-class women with primary links in academic, legal and research circles. Crenshaw's concept of political intersectionality is a useful framework for understanding how a particular representation of violence results in a particular idea of how that violence should be addressed. In South Africa, the dominance of lawyers, legal experts and academics has meant that research into approaches to DV have placed the law at the centre of most analyses.

The literature on the implementation of the law tends to focus on the capacity of the police and the courts, and the lack of funding and training provided to service providers such as the police, courts and medical personnel. Vetten, Paranze, Schneider and Artz (among others) have emphasised the pressure of the DVA on public finances and that the DVA has tended to be neglected when it comes to the under-resourced criminal justice system. The failure to prioritise the DVA has resulted in South African women "getting only as much gender equality as technocrats' fiscal discipline will allow" (Artz 2001, Jewkes et al. 1999, Vetten 2005: 280, Vetten et al. 2005).

In terms of the rationale that some government officials have put forward regarding the poor implementation of the DVA, similar reasons have been echoed. In 2001, the then-South African Police Commissioner Jackie Selebi was reported as saying that the DVA was well-meaning but could not be implemented as it:

...place[s] a lot of pressure on police officials. When the act is strictly enforced, a policeman has a range of obligations to fulfil in each reported case, which takes up hours of his time. Such a law will be more effective in a country such as Sweden (with its low crime rate) than in South Africa" (De Bruin 2001: 15.08.01).

The broader framing of the socio-political context of GBV, such as the militarisation of South African society under apartheid and the intersections of gender, race and class identity, has featured prominently in feminist literature in the past fifteen years, though this broader view has tended to be neglected in evaluations of the DVA which have addressed non-implementation in purely fiscal and technocratic terms.

In addition, constructions of gender and GBV within politics and the media have predictably fallen hostage to partisan politics, with debates in Parliament revealing that most parties are more concerned with scoring political points than addressing GBV. For example, at a September 1998 review of the "quality of life" of women, a number of political parties including

the African Christian Democratic Party (ACDP) and the National Party (NP), accused the ANC of failing South African women, with one Member of Parliament (MP) even suggesting that this was a deliberate (albeit informal) policy of the ruling party due to the purported sexist attitudes of its leaders and the rampant domestic violence its members engage in (*Women's Quality of Life* 3 September 1998).

Similarly, in August 1998 an initially uncontroversial draft resolution intended to honour women prominent in bringing about democracy in South Africa descended into a shouting match in Parliament when opposition parties accused the ANC (which had brought the motion) of deliberately excluding non-ANC women as an intentional insult (*Tribute to women* 5 August 1998). In addition, the discourses in the political arena make little reference to the intersections of multiple identities – for example, the rape and torture of black lesbians is a well-documented issue, and yet this is seldom mentioned in discussions of GBV by the political elite.

It is not the case, however, that individual members across parties do not have a nuanced understanding of gender, violence and power. For example, Pregs Govender, Gertrude Fester and Frene Ginwala (all MPs in the 90s) have all framed gender injustice as rooted in sociocultural and historical practices, and beliefs, and have shown a sophisticated awareness of the intersections of multiple identities. These kinds of constructions, however, which challenge the basis of a gendered hierarchy, tend to be unpopular in South Africa, presenting a limiting framework within which feminists and women's activists (both within the state and outside of it) are required to operate.<sup>4</sup>

## 2.6 Concluding thoughts

This chapter has used socio-legal and feminist theories to construct a framework for analysis. Feminist conceptualisations of citizenship and democratisation provide a method with which to evaluate the transformative potential of legislation and feminist advocacy. Furthermore, Kardam, Stone and Merry present a view of the global arena that calls into question the supposed inherent value of international law and global platforms of action, which are out of touch with the realities of the South African democratic transition and the particular narratives and frames operating in South Africa. Intersectionality offers the potential of improving the translation of international law by offering a nuanced understanding of the complexity of experience and identity.

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<sup>4</sup> Chapter 3 addresses this issue specifically.

## Chapter 3

# Violence, race and gender: discourses on nationalism and democratisation in South Africa

This chapter provides an analysis of the multiple intersections of democratisation, gender, citizenship and nationalism, as the basis for understanding the context in which the Domestic Violence Act (DVA) was passed and implemented. The first section provides an introductory account of how alternative conceptions of gendered citizenship were both present and absent in the early to mid-90s. The following two sections provide a more detailed analysis of how the competing discourses of nationalism and feminism shaped the dynamics of the women's movement and the patterns of mobilisation it engaged in. The final section addresses the position of the women's movement and feminism within the context of democratic consolidation, and how this has shaped the nature of the debate and discussion on gender and gender-based violence (GBV), by depoliticising feminist advocacy.

### 3.1 Democratisation, citizenship and violence

The South African transition to democracy offered different opportunities and constraints for social movements, and shaped the methods of advocacy chosen by the various sections of civil society. The transition was dominated by an emphasis on legal reform and constitutional democracy, and this filtered down into the women's movement at that time. The weight given to legal reform and human rights in the negotiations meant that the political climate as a whole focused on the "inevitable translation of rights into laws", partially because "lawyers dominated the movements" that were emerging and developing at that time (Cathi Albertyn, interview, 22 October 2009).

Within the women's movement, the emphasis was on ensuring that the gains promised by the negotiated transition would be realised, by particularly focusing on formal equality through securing constitutional protection and parliamentary representation. The reliance on legal frameworks as the primary vehicle for transformation and substantive equality is part of the context of understanding why legislation was seen as central to gender equity.

The dominant model of democracy, which emphasises the public/private divide, and the liberal conception of citizenship were prevalent in South Africa in the late 80s and 90s, even while many within the women's movement argued for an alternative understanding of violence, identity and citizenship, with particular attention on the importance of understanding "private" power and its relationship to domestic violence. Institutional and legal arrangements became the

primary basis on which the global community and many South Africans judged the transition to democracy, with civil society expected to support the process through engaging the state on pending legislation. While legislation on GBV is necessary, the disproportionate attention given to legislative reform overemphasises the ability of law to have an impact on power inequities and gender identity embedded in social practices.

The fluidity of the boundary between public and private is central to understanding the history of civil society in South Africa. Scholars such as Walsh (2009), Hassim (2003, 2006), and Britton and Fish (2009) have argued that the concept of the public/private distinction within South African civil society was preserved, particularly during apartheid and in the 90s. Specifically, women's civic activism was predominantly confined to so-called "community" or familial issues, while their involvement in more "public" issues, such as the struggle against apartheid, was often couched in "private" sphere terms. For example, the male leadership of trade unions – active and visible in the 1980s – refused to support or endorse programmes initiated by women (even if they allowed voice to be given to these issues, such as the sharing of domestic responsibilities or equitable treatment), on the pretext that women's programmes were targeted at "community issues", and therefore outside the purview of trade union business (Walsh 2009: 58).

The context of democratisation and the advocacy of the women's movement provided an opportunity to revisit this conception of citizenship, by expanding on the conceptualisation of the way power operates in the home and (re)produces gender identity and power relations, and ultimately domestic violence. Gouws (2005) argues that in the 1980s (and earlier), there was little room for feminists to draw links between public exclusion and private power. This lack of appreciation for the mutuality of spheres (national, community and familial) and the interdependence of civil society and the family was one way that domestic violence legislation was kept off the public agenda until 1993, when the first DV-related act was passed.

At the same time that feminists within the women's movement were pushing for a rethinking of gender and citizenship in the context of democratisation and beyond, the overemphasis on legislation as the primary method of addressing DV as well as the extensive advocacy on securing women's place in Parliament and in other decision-making bodies, did not lend itself to radical shifts from this liberal conception of the de-gendered citizen. Any theorisation of women as citizens must move beyond this focus on women in state and their relationship to the state. While legislation is a necessary part of institutionalising women's right to hold public office as well as offering legal recourse to victims of violence, the multiple layers

and intersections of power, identity and violence cannot be adequately addressed through legislation or through ensuring women's place in power.

Within the women's movement, there were some feminist activists and organisations (particularly from the trade unions) who argued that a more radical and transformative discourse on gender equity and citizenship was needed, and that less emphasis should be placed on legislative reform. This, however, would have arguably diminished the "legitimacy" of a movement which was operating within a national and global normative framework which emphasised the importance of establishing structures and institutions to ensure that human rights are respected, protected and fulfilled. Merry argues that in order to be considered a credible part of an anti-GBV movement, and recognised politically at the national and international levels, as well as secure funding, organisations are compelled to adopt the dominant approach to social justice and human rights, by focusing on institutional systems (Merry 2006a: 135).

Hassim has also asserted that the emphasis in the early 90s on mobilising women as voters was driven partially by donor agendas, as funders encouraged women's rights organisations and activists to focus more on women's inclusion in formal political activity such as voting and participation at the party level. Donors argued that increased political presence would result in positive policy influence (Hassim 2003: 84-85).

### **3.2 Race and gender in the liberation struggle**

The tension between nationalism and feminism was a prominent feature of apartheid-era feminist activity. There is a general agreement among feminist scholars that women's emancipation was not considered an *immediate* priority insofar as racial and economic justice was considered the primary goal of the national liberation movement. For example, in 1985 Frene Ginwala (a prominent ANC activist and Speaker of the House of Parliament from 1994 to 2004) told the Nairobi Women's Conference that "it would be suicide for women in the anti-apartheid movement to discuss gender inequalities. To do so might undermine the struggle for racial justice by creating division and rancour" (Ginwala in Seidman 1999: 287). Claims to women's rights were considered divisive and therefore undesirable, even during the apartheid negotiations in the early 90s (Hassim 1991, 2004, 2005b, Meer 2005, Ndinda and Adar 2005, Seidman 1999).

Instead, the focus of women's activity was directed at advocacy which operated within mainstream gender roles. One of the primary strategies used by both women within the liberation movement (and encouraged by the male-dominant leadership) was the adoption of the



“motherist” ideology in order to justify women’s inclusion, particularly within the armed struggle. For example, women’s historic mobilisation against the pass laws was publically based on the argument that these laws prevented women from fulfilling their domestic roles by limiting their movement – the invocation of a maternal identity was central as women asserted that they were fighting apartheid “for their children” (Britton and Fish 2009: 6, Ndinda and Adar 2005, Schmidt March 1983).

The result was an emphasis on reinforcing the idea of women as mothers. This was a double-edged sword, however: on the one hand, it allowed women to “propel issues from the “private” sphere into the highly visible “public” sphere while also affording them some legitimacy and a respected identity in the eyes of their male counterparts”; on the other hand, it reinforced a gender hierarchy that essentialised maternal roles while maintaining women’s subordination and secondary status (Britton and Fish 2009: 6).

The African National Congress Women’s League (ANCWL) and the Federation of South African Women (FSAW) were particularly active and prominent in the 60s, and both organisations acknowledged the immediacy of the national liberation movement, while avoiding subordinating gender equality. After the banning of the ANC, and other prominent opposition movements, most political activism took shape under the banners of the trade unions, particularly the Congress of South African Trade Unions (Cosatu) in the 80s, as well as student organisations and community forums.<sup>5</sup> Despite the marginalisation of women within the trade unions under the all-male leadership,<sup>6</sup> women were still able to mobilise around issues of sexual harassment and maternity leave, while drawing on the ideological positions of feminism and nationalism (Britton and Fish 2009: 9-10).

In the broader liberation struggle in the 70s and 80s, women seldom held leadership positions outside of women’s caucuses, but the women in exile were still encouraged to pursue advanced educational degrees, and obtain military and political training. Within South Africa, while both many men and women within trade unions and other liberation movements genuinely supported non-sexism (beyond rhetorical commitments to gender equality), this was undermined by the intransigent belief that women’s rights would “divert and weaken” the struggle (Meer 2005: 36).

At the heart of much of the tension was the fact that women were operating within a male-defined conception of what was political. Issues related to GBV, particularly domestic violence,

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<sup>5</sup> While the FSAW was not banned, its members and leaders were frequently subject to banning, making it very difficult for the federation to organise broadly (Britton and Fish 2009: 9)

<sup>6</sup> Cosatu (one of the biggest and most politically influential trade unions in South African history) did not have a woman in national leadership until 1993 (Meer 2005: 39).

were considered beyond the realm of legitimate political activity and women were discouraged from raising the issue of GBV at meetings of liberation movements:

If women stood up to speak on political platforms, they wouldn't be shouting down with rape but down with the Botha regime... There just wasn't the space.... these issues were taboo (Hassim 2001: 15).<sup>7</sup>

The increasing radicalisation of women in the 70s and 80s, which included the growth of feminist consciousness, resulted in increased organisation and mobilisation among women, and the tensions between feminism and nationalism became more visible. For example, in the 70s, in some informal settlements where women were part of community leadership structures, tensions over women's involvement were growing, and in some communities, such as Crossroads in Cape Town, women were banned from participating in community meetings and women's committees were disbanded. In addition, within trade unions, GBV was an area of contention as many men failed to see the connections between women's oppression and their own behaviour. The approaches to gender equality they were willing to support was one of assisting women's development without addressing "their own oppressive masculinity" (Britton and Fish 2009: 12, Hassim 2001: 6, Meer 2005: 44).

It was not only in the liberation struggle that gender and race equality were seen as competing struggles. Similarly, there were race and class tensions within feminist and women's organisations, with many black women (and men) arguing that women's organisations were led and dominated by white middle-class women with a questionable commitment to racial and class equality. Fester argues that many women within the liberation movement were ambivalent towards feminism because of the "hegemony of western imperialist feminism... which some South African, especially middle-class women, both black and white, ascribed to" but which most members of the grassroots women's movement did not identify with (Fester in Hassim 2001: 18).

Hassim concurs, asserting that feminism remained marginal to the women's movement throughout the 70s, 80s and 90s, because many within the liberation movement and the state were justifiably concerned about the dominance of middle-class (mostly white) feminists. (Hassim 2005b: 189). Many of the influential feminists in South Africa at that time were predominantly using Western feminist frameworks, including aetiological models regarding GBV. In other words, the "theories of causation" used to explain GBV mostly emphasised the centrality of patriarchy. While these conceptualisations are useful and relevant in terms of

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<sup>7</sup> PW Botha was South Africa's Prime Minister from 1978 to 1984 and then state president from 1984 to 1989.

identifying the role of male privilege and problematic gender identities, in post-colonial settings the emphasis on patriarchy is limiting due to the varied and complex intersections of class, ethnicity, race and colonial forms of domination that work alongside gender and patriarchy, and which also need a voice in the political discourse.

### **3.3 Framing violence in post-apartheid SA: gender, race and nation-building**

The history of women's activism in South Africa is difficult to separate from the history of the national liberation movement. The aforementioned tensions within the anti-apartheid and women's movements have had an impact on the nature of post-apartheid civil society and political activity, and have also intersected with anxieties about race, shaping the gender and GBV narratives present in post-1994 South Africa: "apartheid and colonial scripts concerning race and gender are intertwined and embedded in private spaces, where they remain apparently impervious to public efforts... to dismantle them" (Moffett 2009: 156).

In South Africa, the most visible political and social distinctions (historically) have been along racial lines (with class also featuring prominently), rather than gender. As such, the emphasis of transformative agendas has tended to be on race, with gender being subsumed under racial and economic justice – i.e. "fix" racism and we will "fix" gender discrimination. This narrative was present during apartheid, when women struggle veterans were criticised for raising issues of gender-based violence and discrimination within the movement, and were accused of fragmenting the struggle and endangering the nationalist agenda.

Versions of this political and social script<sup>8</sup> – in which race and racism are the primary reference point for framing violence – are being rehashed in the ongoing process of nation-building, highlighting how tensions between gender, race and class priorities provide opportunities and obstacles to women and feminist activism. Specifically, narratives about gender-based violence tended to be "rewritten" as stories about race rather than gender (Moffett 2009: 155),<sup>9</sup> with many (particularly the political elite) arguing that the outcry around gender-based violence are racially-motivated attacks on black South African men.<sup>10</sup>

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<sup>8</sup> By "script" I refer to patterns of political and social narratives which frame an issue (such as violence or gender) in a particular way, and are considered to be (mostly) legitimate and authoritative through the appearance of consensus.

<sup>9</sup> Moffett is specifically addressing the issue of rape, but her arguments are certainly true of gender-based violence more generally.

<sup>10</sup> Narratives on GBV are also rewritten in terms of class, with poverty and social exclusion being used as the primary explanation for the high levels of GBV in South Africa. Overall, the issue of problematic and violent masculinities tend to be less visible.

Arguably, much of the outcry around GBV has tended to demonise black men, particularly poor black men, while failing to adequately address the issue of violent masculinities more broadly, and how gender identity intersects with class, ethnicity, race and sexuality.<sup>11</sup> It would be naïve, however, to assume that the primary reason for this rejection of a discourse which focuses on power, privilege and gender identity is because of these concerns with the racist discourses which can infuse the framing of GBV. Rather, this avoidance of addressing gender identity, power and violence highlights the extent to which South Africans, including the political elite, are reluctant to make the links between masculinity and violence.

For example, in a highly-publicised incident in 1999, South-African born Hollywood actress Charlize Theron was featured in two-minute anti-rape broadcasts on television, in which she specifically addressed men, urging them to take a stand against sexual violence. Within weeks, the Advertising Standards Authority of South Africa pulled the broadcasts, in response to complaints from viewers, on the grounds that they were offensive to men by stereotyping them as being rapists or at least being complacent and therefore complicit. Moffett has referred to this incident (and others) as an indication of the kinds of GBV narratives that are considered “tolerable or disruptive” in the new democratic South Africa, and that the creators of the Theron broadcasts “were naïve in assuming that South African society could stomach any discourse... that located responsibility for [GBV] with the perpetrators: men” (2009: 162). This avoidance of addressing male power, combined with anxieties about race, has produced politically-endorsed scripts that avoid addressing the high levels of GBV while creating a climate of justification, or at least tolerance.

In conflict with these “acceptable” narratives is the alternative frame which highlights the intersections of violence, gender and power, and links this with the violent history of South Africa. Numerous scholars and activists, including Amina Mama, Gqola, Hassim and Gouws, have argued that state-sanction violence played an integral part in enforcing and sustaining apartheid as it was one way that the black majority was controlled and terrorised. Violence was used to regulate people, not only in the political realm – it also permeated social and domestic spaces, and it became a legitimate response to conflict, while also being used by the dominant group to control the disempowered and remind them of the hierarchical order.<sup>12</sup>

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<sup>11</sup> Moffett argues that apartheid narratives presenting black men as “savages, lusting after forbidden white flesh” have yet to be deconstructed, and that this is part of the scepticism with which many people view anti-GBV campaigns, discourses or research (2009: 163).

<sup>12</sup> While apartheid was primarily about maintaining white privilege, the “dominant” and the “disempowered” can change in meaning depending on the context, as apartheid was also about maintaining the dominance and privilege of the male, heterosexual and middle-class subject.

In contemporary South Africa, GBV violence has been used to main the gender hierarchy and regulate women<sup>13</sup> – Moffett (2009: 155), Gqola (2007) and Bollen et al. (1999) have argued that the terrorisation of women through the threat of violence (and actual violence as a reminder that the threat is real) has been used to constrict women’s sense of identity, autonomy and freedom of movement, all prerequisites to women being able to enjoy the promise of constitutional equality and citizenship. Moffett cites research conducted in South Africa which reveals that many men believe that there are exceptions to the rule of what constitutes rape or sexual violence, as some have specifically targeted women who “asked for it” – one respondent stated that he and his friends only raped “cheeky” women, the “ones that walk around like they own the place, and look you in the eye” (Moffett 2009: 166-167).<sup>14</sup>

Another example that illustrates how violence is used to regulate woman involves an attack on a woman at the Noord Street taxi rank in Gauteng, in February 2008. According to media reports, taxi drivers took offence at the fact that Nwabisa Ngcukana was wearing a mini-skirt. They stripped off her clothes and poured alcohol over her, while sexually and verbally assaulting her. Other commuters and taxi drivers looked on and apparently cheered, instead of coming to the young woman’s aid. This had not been the first attack on a woman wearing a short skirt (Sapa 2008a, 2008c).

Journalists and reporters interviewed people at the taxi rank in the week following the attack and, not surprisingly, found that some men and women agreed with the principle that it was inappropriate for the young woman to have been wearing a short skirt. One taxi driver said that women were abusing men by appearing “half-naked” in public, and that before 1994, “women wore clothes neatly and properly, now they say they have rights” (Sapa 2008a)., Another man was reported as saying that women should not wear short skirts because this aroused men, which led to rape and other crimes against women. A woman commuter at the taxi rank stated that “Sometimes, even as a woman, I feel some women are dressed in inappropriately short skirts. I do not believe what happened to the woman was right, but I do realise why they did it ... they tried to teach these girls a lesson to respect their bodies. I am sure they will never forget” (Sapa 2008b).

In a patriarchal and violent society, when women move outside of pre-defined gender roles, men are then permitted to also act outside of their stereotypical protective roles in order to

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<sup>13</sup> This is not the sole function of GBV, but rather one aspect of it.

<sup>14</sup> This respondent did not initially use the word “rape” – when the interviewer pointed out that he was describing rape, he seemed astonished (Moffett 2009: 166), highlighting the extent to which violence – when used to regulate women’s behaviour – is no longer seen as violence but merely an appropriate response to ensure social order through the maintenance of a gendered hierarchy.

punish these “deviant” women. This does not then constitute violence that should be sanctioned, but rather becomes part of the project to ensure social stability. This regulation of women and the protection of a gendered hierarchy fit predictably into the framework of post-liberation reconstruction. A paradox of post-independence countries emerges when attempts to morally and socially rehabilitate a society are sometimes in tension with the commitment made to liberal democratic ideas of economic and political freedom.<sup>15</sup>

In South Africa, the discourse of nationalism and “moral renewal”, as defined by the state and the political elite,<sup>16</sup> has been at the heart of the discourse on GBV. For example, in a document entitled “The Restoration of Moral Communities”, the leadership of the state-driven Moral Regeneration Movement (MRM) state that a

...democracy such as ours, which has emerged from the apartheid ashes, should be founded on sound moral values that will inculcate in each of us a sense of national pride, oneness and commitment to the common good (Moral Regeneration Movement 2003).

This emphasis on moral renewal has resulted in the government’s framing of violence as a moral issue, rather than a gender issue. This is evident in the MRM documentation which frequently cites the breakdown of the family structure as the primary cause of GBV. Similarly, during the Parliamentary debate on the DV Bill in November 1998, more than one Member of Parliament referred to the breakdown of the family as the cause of violence. For example, an IFP MP stated that contrary to popular belief, “traditional nuclear families” experience the least violence and that the home is the safest place for women and children, adding that the “roots of violence lie largely in the withering of the family and the marriage as institutions and the collapse of a common moral order” (*Second Reading of the DVA* 2 November, 1998). In other words, perpetrators of violence are primarily immoral deviants, and GBV has little or nothing to do with power and identity. Undoubtedly, there are individuals within government and the political elite who do make the connections between violence and gender – the point is that the promoted and preferred framing of violence has very little to do with gender.

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<sup>15</sup> For example, Baron highlights this in her analysis of post-independence Egypt, when the responsibility for family honour (through the policing of women’s sexuality) was transferred to the state, at the same time that the new government was passing legislation and taking other measures to criminalise violence against women which was being done in the name of protecting family honour and ensuring social stability (2006).

<sup>16</sup> It is problematic to conceive of the state as a monolithic and homogenous entity that speaks with one voice, and I am certainly aware that in South Africa, numerous individuals within government have challenged the dominant discourses being pushed by the ANC leadership. It is also true, however, that the ANC has been widely criticised for its centralised decision-making and its tendency to discipline members that speak out of turn, as this has created a climate in which internal disagreements are suppressed. In this RP, I am generally referring to the publically dominant discourses and ideas presented by government officials and ANC leadership, while remaining cognisant of the potential for alternative voices.

The social and political context of violence, therefore, has three distinct and interrelated features:

- The reframing of violence as being rooted and somehow caused by historical race and class discrimination (almost exclusively) with a rejection of any reference to violent masculinities
- The reframing of GBV advocacy as driven by racist agendas
- The over-riding discourse of nation-building (as conceived by the political elite) as being the legitimising frame for any gender-related advocacy<sup>17</sup>

In this context, the focus of the women's movement in the 1990s – which tended to address GBV through legislation and systems – fails to adequately acknowledge the obstacles and opportunities presented by this complexity. When it came time to craft a new democratic nation, the emphasis was on addressing men's power and gender inequity in the state rather than challenging structural barriers to women's liberation. This approach, what Hassim calls inclusionary feminism, has been the focus of women's activism in the post-apartheid era, where the democratisation of the public sphere has received precedence, sometimes at the expense of overturning social norms and gendered discourses which serve to maintain men's position of power and privilege. Liberal or inclusionary feminism “emphasizes upward linkages to power brokers and rarely questions the structural conditions of women's inequality. The result is a tendency towards accommodation with existing institutions, ideologies and powerholders” (Hassim 2005b: 178).

Both Gqola and Wieringa (2007, 1994) have highlighted how non-transformative approaches to women's empowerment has little impact on violence and the social relations of power, especially when the language of empowerment is “hijacked” by politicians who frame political empowerment as the route to transformation, while leaving “violent masculinities untouched” (Gqola 2007: 117). The result is a technocratic approach which avoids “direct challenges to gender inequality” by emphasising “service to women within the framework of existing gender relations” (Meer 2005: 43). A consequence of this is that gender experts become technical advisors who are delinked from and unaccountable to grassroots movements, and become part of a system constructed and controlled the political elite, which is dominated by men and non-transformative women. Gender justice becomes defined in technical and legal terms rather than political and substantive change.

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<sup>17</sup> One aspect of the nationalist discourse that I do not address here is the increasing reference to the importance of “tradition” and “culture”, which have frequently been used in South Africa to deny the right of anyone to question so-called “cultural practices” which discriminate women, including the abduction of women for the purposes of “traditional” marriage and the practice of virginity testing.

### 3.4 The depoliticisation of the feminist agenda

One reason why the dominant political and ideological framing of GBV fails to substantively address issues of identity and power is because of the relative demobilisation of the feminist agenda in the context of democratic consolidation. A feminist perspective of violence highlights the complexities of power and identity – in the absence of this framing, the dominant discourse becomes divested of its political content and radical message of gender transformation. The converse is also true. The depoliticisation of the feminist agenda is also a *result* of the increasingly technocratic approach to GBV, a trend which has its roots in the nature of the democratic transition.

Like in most transition contexts, democratisation resulted in increased political opportunity structures and the space for relatively open political, social and resource mobilisation, which had been curtailed under the apartheid regime (Habib 2005: 677-768). In this context, civil society in South African began moving in new directions in this enabling environment. For example, international donors were increasingly channelling aid towards initiatives and activities which focused on the institutional development of the South African government, resulting in an increased emphasis on democratic consensus-building, as well strengthening the formal and procedural aspects of liberal democracy (Hearn 2000: 824 and 827).

Civil society advocacy, particularly with regard to gender and domestic violence, was primarily based on struggle-era relationships, placing feminists in the new position of working from within state bureaucracy, when they have historically remained outside the state, through a combination of preference and necessity. The initial goal of the women's movement in the 90s was to institutionalise gender equality by focusing on state structures and ensuring the creation of a national machinery on gender quality (Hassim's notion of inclusionary feminism) – the intention was that these institutions would be places for activists and organisation in civil society to articulate their needs and interests, and it rested on the strength of struggle-era relationships, making the boundaries between state and civil society far more flexible, which women's organisations exploited:

This attempt to capitalise upon the existing elasticity in the relationship between the state and civil society was not a symptom of naivety on the part of women activists who harboured false beliefs in the transformative potential of the state; rather, it reflected a conscious, pragmatic attempt to utilise the old friendships, alliances



and radical rhetoric of many political parties to pressure for change (Britton and Fish 2009: 22).

This new collaborative approach to civic engagement, as well as the increased attention to procedural democracy, both so prominent in the mid-90s, meant that women and feminist activists were able to push through broad-ranging legislation relevant to gender equality. It is worth considering, however, if the institutionalisation of the feminist agenda within Parliament and the national bureaucracy resulted in the loss of momentum for progressive gender politics by diluting the radical aspects of this agenda, undermining the long term potential for meaningful and substantive transformation, even while it allowed activists to push for legislative and structural change within a limited timeframe.

After the 1999 election, the ANC intensified its efforts at centralisation and suppressed the dynamism and radical voice of feminists within government by replacing and disciplining feminist MPs.<sup>18</sup> Many women lost faith in the increasingly limited ability of the state to drive or even support sustainable transformation and some, such as Pregs Govender, left in frustration. Both Walsh and Albertyn have argued that at the end of 90s, many talented women left Parliament and provincial legislatures and the result has been a loss in momentum for transforming gendered relations of power (Albertyn, interview, 22 October 2009, Hassim 2005b: 190, Walsh 2009: 54 and 63).

The ANC was simultaneously diminishing the transformative potential of civil society by insisting that NGOs “be in line with government policy to get funding” (Walsh 2009: 54). These measures meant that women and feminist activists struggled to retain old relationships or build new ones, in the same vein of the collaborative spirit of the early and mid-90s, without their autonomy being threatened by the increasing ANC influence on organisational agendas (Walsh 2009: 54).

An autonomous women’s movement is an essential part of ensuring that measures adopted to address domestic violence go beyond merely bureaucratised processes which fail to have any substantive impact on GBV, which is a highly political issue. In post-liberation and democratising contexts, this autonomy is often difficult to sustain. Hassim points out that while political and organisational autonomy is highly valued in Western women’s movements, this is less so in postcolonial countries, like South Africa, where women’s activism “has been enabled

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<sup>18</sup> For example, Hassim cites an example of the “redeployment” of Thenjiwe Mtintso from the Commission on Gender Equality (CGE) – where she was building a successful and independent organisation – to the post of Deputy Secretary-General of the ANC. ANC officials have referred to this latter post “as the burial ground for militant feminist activists” (Hassim 2003: footnote 16, 108). Redeployment is an ANC euphemism for getting rid of trouble makers or people who underperform by moving them to less influential positions.

by larger struggles against colonial and class oppression [and] the result is a more highly developed politics of alliance rather than autonomy” (2006: 9).

This, of course, can be valuable to women’s movements, as it was and has been in South Africa. Throughout the 90s, the ability for the women’s movement to access the political elite before and after the 1994 election was unprecedented in South African history, and it ensured that gender equality was enshrined within the Constitution and subsequent legislation, despite opposition from parties such as the IFP, the ACDP and traditional leaders.<sup>19</sup> In short, alliances with the state can offer access, and can avoid women’s movements being confined to a “political ghetto in which they are marginalised from national political processes that they are unable to shape political outcomes to favour women” (Hassim 2006: 9-10).

### 3.5 Concluding thoughts

Mainstreaming gender issues can be in and of itself a problem, as it allows political and civil society structures which are infused with gendered power relations to act as gatekeepers to political structures and decision-making bodies and which places feminist organisations in the precarious position of keeping the male-dominated political elite happy in order to ensure the continuation of their patronage. The effectiveness of the women’s movement is necessarily limited if it is subject to the rules and political direction of a male-dominated political elite. If these structural issues are to be defined, highlighted and addressed, some degree of autonomy for the women’s movement is necessary so that they can retain the ability to question, challenge and define, outside of the state and governance structures. In South Africa, claiming back the space given to the political elite in the 90s, due to strong strategic alliance and historical relationships, is an essential part of both monitoring the DVA but of also moving beyond legislation and regaining that radical political space which is essential for transformation. The limiting frames which dominate the political and social spheres cannot be challenged by a women’s movement unable to autonomously articulate its interests.

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<sup>19</sup> For example, traditional leaders delayed the political negotiations during the end of apartheid, arguing that the gender equality clause in the Bill of Rights should be removed (Meintjies 2003: 142). In addition, during the Parliamentary debate on the trio of gender-related bills of 1998, an IFP MP (MA Mzizi), stated that his party objected to the Recognition of Customary Marriages Bill on the grounds that it will cause “the slow but certain emasculation and strangulation of customary marriage”, adding “We do not oppose polygamy. We do not oppose the abduction of women in accordance with cultural norms” (*Second Reading of the DVA* 2 November, 1998)

## Chapter 4

# The Domestic Violence Act

This chapter analyses the process of negotiating and passing the Domestic Violence Act (DVA), by first providing a brief historical perspective of women's mobilisation in the early 90s, including how the act and domestic violence (DV) was framed through the process. This process is analysed from the perspective of internationality and socio-legal theory, arguing that the mono-causal frameworks of international law has limited applicability to national and local contexts without a more nuanced understanding of gender-based violence, and how power operates on multiple levels.

### 4.1 Legislating Domestic Violence: Party Politics and the WNC

Legislative reform on the issue of domestic violence is rooted in the evolution of the women's movement in South Africa in the early 90s. Individual women and organisations came together to ensure that women's rights and the feminist agenda were an integral part of the democratic transition, and they endeavoured to do this by forming the Women's National Coalition (WNC). The WNC was made up of political and non-political organisations, such as trade unions representatives, academics and individuals from the women's leagues of political parties (Hassim 2001: 28-29, Meintjies 2003: 140). This diversity was both a strength and a weakness of this coalition, and was ultimately partly (if not primarily) the cause of the eventual disintegration of the WNC, although it provided a "tantalising glimpse" of what a strong and influential feminist and women's rights-focused movement could look like and accomplish (Hassim 2001: 37).

It is important to note that the space for ensuring that gender equality was central to the democratic transition had to be claimed, sometimes forcefully, and was by no means easily accepted into the male-dominated political space in which apartheid negotiations were unfolding. For example, when political parties were selecting representatives for the first round of multi-party democratic negotiations in 1992, all-male teams were selected – this became the first issue that women and organisations mobilised around, providing the impetus for the formation of the WNC, as the political parties' "apparent disdain for women's demands for representation in the multi-party negotiations... lit a spark that had until then been flickering only faintly" (Hassim 2001: 25). Various individuals and organisations in politics and civil society criticised the

exclusion of women, and in March 1993, angered at being left out of democratisation talks, women from the African National Congress (ANC) forcibly entered the negotiation chambers and refused to leave until they had literally been given a place at the table. Shortly after this, all 26 negotiating parties agreed that 50 percent of all representatives needed to be women (Seidman 1999: 294).

Ideologically and politically, the members of the WNC were diverse and sometimes divergent – this became clear during the drafting of the Women’s Charter for Effective Equality. This Charter was intended to be a politically influential document that captured the spirit of women’s activism while also providing a concrete set of demands that would influence and shape national politics during and after the democratic transition. The very idea of a charter had a polarising effect due to its political and ideological connections with the ANC and therefore with the political left – for example, the Inkatha Freedom Party (IFP) was wary of the dominance of the ANC Women’s League (ANCWL) within the WNC. More importantly, however, there were disagreements over the tone and content of the Charter, with some members who were politically or religiously conservative expressing discomfort with the idea of including issues relating to women’s reproductive rights or other “private” or familial issues (Hassim 2001: 28-30).

There were also disagreements regarding the extent to which the Charter should be making demands on formal and procedural equality, especially when couched in rights-based claims – this was seen by some feminists as part of the “limited liberal democratic ideals” and therefore undesirable if there was to be any meaningful social, political and economic transformation. There were those within the WNC – such as individuals from the trade union tradition – who argued that substantive demands which drew on more radical and transformative discourses of the liberation movement should be the emphasis of the Charter, and who believed that an “equality clause in the constitution was not so much an achievement as a weapon to be used in the struggle against women’s subordination” (Hassim 2001: 29-30).

In addition, an important trend that began to emerge in the early 90s within civil society as well as the state, and that was part of the ideological and organisational disagreements within the WNC, was an increasing shift away from grassroots participation and an amplified focus on legal and political expertise (Meintjies 2003: 143). This was a consistent feature of the democratic transition, in which experts on law, economics and public administration became central to the restructuring of the post-apartheid state. This increased focus on professionalism added to the frustrations of activist-orientated individuals and organisations who felt that the opportunity to secure substantive transformation outside the limits of constitutional and structural reform was

slipping away at a crucial time in South African history, and that the significant changes taking place at the political and institutional levels were increasingly happening outside the control of those who needed it most.

#### **4.2 The Domestic Violence Act**

The first legislation to specifically address violence against women was the Prevention of Family Violence Act of 1993, passed by the outgoing National Party (NP) as part of a “last ditch ‘face-saving’ reform agenda” of the apartheid state (Usdin et al. 2000: 56). Overall, the implementation of the act was rather poor, with little training and education on offer for magistrates, the police or the public. In addition, the act failed to provide a clear definition of what constitutes domestic violence while also only offering protection within marriage. The law was criticised as being flawed and ineffective, primarily by women’s rights activists. For example, at its 1993 conference, the WNC addressed the act specifically, criticising both its content as out of touch with the realities of women, as well as criticising the lack of consultation with civil society before the act was passed (Meintjies 2003: 149, Usdin et al. 2000: 56).

In 1995, numerous meetings and workshops between government officials and civil society (including activists and scholars) culminated in an international conference on violence against women in November, with a particular emphasis on rape and domestic violence. The two primary women involved in pushing government from within were Geraldine Fraser-Moleketi (then Minister of Welfare and Population Development) and Dr. Manto Tshabalala-Msimang (then Deputy Minister of Justice). Their engagement with civil society resulted in the formation of the National Network on Violence Against Women, which was funded by the United Nations Development Programme (UNDP). The Network and the WNC, in collaboration with the South African Law Commission (SALC) and the Joint Monitoring Committee on the Quality of Life and Status of Women (JMC), formed the basis for almost all significant work on domestic violence, including advocating on improvements to policy and legislation, as well as providing training for government officials and service providers.

While civil society had been advocating on this issue and challenging the appropriateness of the available legislation as early as 1993, the act was only revisited by the South African state after numerous alleged abusers challenged the constitutionality of the law. The SALC took up the issue and made a number of recommendations in 1996 and 1997. In February 1998, the SALC Project Committee that had been tasked with addressing domestic violence legislation produced a detailed discussion paper on domestic violence as well as a draft bill, and invited comments from all sectors of civil society. Various NGOs and service organisations who were

members of both the WNC and the Network, made submissions to the SALC Project Committee, including a submission by a coalition of Rape Crisis, Black Sash and the ANC Women's Parliamentary Caucus (among others), which specifically focused on international and constitutional human rights jurisprudence. Meanwhile the JMC, chaired by Pregs Govender, was lobbying the Minister of Justice Dullah Omar, the Chairperson of the Justice Committee Adv. Johnny de Lange, and other high-level ANC members, which resulted in the expediting of the draft legislation through Parliament and the relevant committees (Meintjies 2003: 153).

Before the bill was submitted to Parliament, however, there was a delay when the draft legislation was submitted to the SALC Commissioners – they rejected the bill and the report compiled by the SALC Project Committee primarily because they believed that the bill and report proposals should use gender neutral language, while the Project Committee believed that a more gender-sensitive approach should be adopted, given that women were disproportionately the victims of domestic violence. The members of the Project Committee – who were primarily legal and domestic violence experts – were outraged at the dismissive one-page report written by the Commissioners. De Lange intervened by rejecting the objections of the SALC Commissioners, and the initial bill was then tabled before Parliament in August 1998 with a memorandum which detailed the South African government's international and regional obligations with regard to the eradication of violence against women (Meintjies 2003: 155-156).

After three months of discussions and public hearings by the Justice Committee as well as the JMC, the bill was passed with little controversy, as part of a trio of bills: The DV Bill, the Maintenance Bill and the Recognition of Customary Marriages Bill. The Maintenance Bill was intended to compel fathers (primarily) to pay maintenance for their children, and the Recognition of Customary Marriages Bill would provide improved protection for women in customary or "traditional" marriages, in line with the gender equity principles enshrined in the Constitution.

### **4.3 The DVA in Parliament**

The initial discussions in Parliament on the DVA happened within two committees: the Committee on Justice and the JMC. The key submissions made to these committees came from civil society organisations (CSOs) such as the Black Sash, the Gender Advocacy Programme (GAP), Rape Crisis, and numerous law societies and academic institutes working on gender and violence. In addition, the Commission on Gender Equality (CGE) also made several submissions. Overall, more than fifty submissions were made over a period of less than four months. An overwhelmingly common theme that emerges from almost all submissions is that

the state, primarily the police, are presented as being best located with providing victims with protection, information and support.

The nature of these submissions tended to deal with the technical details of the act rather than providing commentary or analysis on the social and political dimensions of DV, despite the invitation made by the JMC for submissions on DV more generally, rather than on the DVA exclusively. It is clear, however, from reviewing the material that most CSOs assumed that most victims were female, although issues of gender, power and identity are almost never mentioned explicitly. The “empowerment” of women was framed as being essentially about women accessing the state through the justice system, by numerous CSOs and members of the committees (*JMC Hearing on the DVA* 24 August 1998).

Despite the labelling of women as victims of DV, the concomitant fact – that the perpetrators are therefore predominantly men – was almost never explicitly pointed out within the committees or in Parliament during the debates on the DV Bill. In other words, the shift from “women as victims” to the acknowledgement of problematic *gendered* identities never occurred – instead, a review of the documentation would suggest that those organisations and individuals are under the impression that the women are overwhelmingly the victims by pure coincidence. This is, of course, untrue. The JMC chairperson, Govender, as well as GAP and Rape Crisis (among others) are all known for explicitly addressing gender and power through their work. Rather, this absence of any reference to the intersections of gender and power (as well as race, class or sexuality) is partially the result of the constraints of formal equality and the nature of the legislative process which reduces issues of power to technical and bureaucratic concerns.

#### **4.4 International law and transnational influences**

Gender-based violence has increasingly become a major issue of discussion and debate at the international level, starting in the late 80s and gaining momentum in the 90s. The highly mobile nature of international discourses on human rights issues, such as conceptual and practical approaches to GBV and women’s rights, has meant that national and regional governance structures are under pressure to adopt policies and legislation consistent with the principles and values of the global gender equality regime. These norms frequently strain the boundaries of national and cultural traditions, and governments often find themselves trying to appease local populations who may not support the principles and values being espoused at the international level, while trying to fulfil their obligations to the international community.

The increasing influence of external (non-South African) democratic traditions and approaches to gender equality became central to the DVA specifically and the women's movement more generally. For example, in May 1993 the WNC organised an international conference to investigate and discuss what the best way forward was for South Africa in terms of gender equality. Drawing on democratic political and legal structures in Canada, Scandinavia and Uganda (among others), the WNC compiled a "package" of institutional mechanisms aimed at addressing gender inequality in the state and society. This package included mechanisms like a Standing Committee in Parliament that would ensure that legislation was gender-sensitive, and a gender commission (a central feature of the Beijing Platform of Action) tasked with assessing and ensuring that departmental policies and programmes mainstreamed gender and equality. In addition, during the committee hearings in Parliament for the DVA, submissions by committee researchers and CSOs made extensive use of jurisprudence from the United States, Canada and Norway, including examples of the extent of police responsibilities and the functioning of the courts (*JMC Hearing on the DVA* 24 August 1998, *DVA Submissions* 17 August 1998).

The mobilisation of the WNC coincided with a heightened awareness being given to violence against women at the international level, starting with the 1993 Vienna Protocols and the UN Declaration on the Elimination of Violence Against Women in the same year (Meintjies 2003: 149). This international pressure included the appointment of a United Nations Special Rapporteur on Violence Against Women in 1994 as well as the Beijing Conference of 1995, both of which were used strategically by South African civil society to push the South African state towards legal reform. In addition, the UN Special Rapporteur on Violence Against Women, Radhika Coomaraswamy, visited South Africa in 1996 and reported that the criminal justice system would need to be completely overhauled if it was to address crime against women adequately. Civil society also pointed out that the ANC-led government had made commitments to addressing violence against women in its 1994 Beijing Conference Report (Meintjies 2003: 152).

Furthermore, the high levels of gender-based violence in South Africa were being increasingly cited as an issue of concern both nationally and internationally. For example, in 1995 and 1997, Human Rights Watch published two reports on the state's response to gender-based violence in South Africa, which were highly critical of legislation, policy and practices being engaged in by the government, including the police, courts and medical personnel. This was a sore point for the ANC-led government, particularly because opposition parties used these reports to criticise the ANC's commitment to ending GBV. Meanwhile, at a conference of the Southern African Development Community (SADC) in early 1998, South Africa signed the draft



Declaration on the Prevention and Eradication of Violence Against Women and Children (Meintjies 2003: 149-152, Usdin et al. 2000: 56).

It is worth considering the pressure that this international attention generated on the South African government, by offering a particular paradigm of gender and GBV as constructed by the global gender equality regime. Both Merry (2006a) and Kardam (2004) argue that international and national laws are cultural systems which emerge from particular processes and shared understandings on the law, human rights and social justice. These norms and principles, however, are not neutral as they are framed and shaped by global power and resource inequities, as well as by the values and assumptions of dominant voices at the international and transnational levels, and remain relatively “unproblematized” by individuals and organisations which are responsible for ensuring compliance with international human rights law.

Individual countries, usually in the Global South, are evaluated against these international norms and principles, and local practices are scrutinised to ensure their alignment with transnational understandings. These gender-related human rights principles carry the weight of authority by being commonly understood, even if contested. This places pressure on governments to ensure that their legal and social processes and institutions align with international expectations, even if they conflict with the prevailing norms and standards of local communities (Merry 2006a: 4).

It was certainly the case that in South Africa, civil society used the values and principles emerging from the global gender equality regime, as well as documents such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), to argue that the government was compelled to enact legislation targeted at domestic violence. This was also the case during the debate at the final Parliamentary reading of the DV Bill, in which almost every speaker who addressed the house made explicit and extensive reference to the CEDAW and the importance of ensuring the South Africa’s international and regional commitments were met (*Second Reading of the DVA 2 November, 1998*).

It is simplistic, however, to argue that the women’s movement (as a collective) would have preferred alternative approaches to domestic violence (other than legislation) and that global norms were somehow “forced” on them. Despite the aforementioned disagreement over the extent to which the WNC should be focusing on legislative reform, the dominance of lawyers and academic legal experts, combined with the increased focus on legal and political expertise,

meant that the most logical outcome was an emphasis on the law at the primary focus in the 90s (Hassim 2001: 29, Meintjies 2003: 143).<sup>20</sup>

Merry's analysis of translators and intermediaries is useful here. She argues that those working on GBV at the national levels are usually the same people involved in defining and developing norms at the international level, and that this is what enables the transference of principles and human rights approaches at one level to another. Intermediaries

...foster the gradual emergence of local rights consciousness among grassroots people and greater awareness of national and local issues among global activists. These actors include national political elites, human rights lawyers, feminist activists and movement leaders, social workers and other social service providers, and academics (Merry 2006a: 134).

The primary drivers of the DVA process were political figures such as Pregs Govender, Geraldine-Fraser Moleketi and Manto Tshabalala-Msimang; lawyers and legal experts from the SALC and the Community Law Centre; providers of legal and social services such as Rape Crisis, Legal Aid Board, the Black Sash and GAP; and individual activists and scholars such as Lillian Artz and Lisa Vetten. Many of these individuals had represented South Africa at the international level, at forums such as the Beijing Conference (Cathi Albertyn, interview, 22 October 2009).

The presence of individuals and organisations who operated within a frame which emphasised the importance of international law is part of the reason why the women's movement strategically used this growing interest in violence against women (VAW) at the global level. These "categories of meaning" which emerge from negotiations and discussions at international forums have a powerful impact on local behaviour and understandings of GBV and gender. Understandings around human rights and particular conceptions of justice, as well as understandings of gender violence (its root causes, and how it can be prevented) are constructed, shaped and framed in particular ways in multilateral and transnational settings, and are therefore the product of historical influences. This is also true at the national and local level – in South Africa, the women's movement has been dominated by educated white women, who have access to those shared understandings at the international level, and use this to advocate nationally and locally. Merry argues that a "central feature of human rights advocacy is generating international pressure on one's own government" (Merry 2006a: 165). In fact, the preamble of the DVA

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<sup>20</sup> It is worth noting that the return of anti-apartheid activists from exile most likely played a part in shaping local understandings of global trends and principles related to human rights, social justice and gender equality, due to the transnational nature of the anti-apartheid movement.

makes explicit reference to international law, by acknowledging the commitments and obligations of the South African state towards ending violence against women and children, and mentions CEDAW and the Rights of the Child explicitly.

#### **4.5 Intersectionality: Representations of gender and domestic violence**

It is useful to consider how the concept of intersectionality can be used to analyse the role of international law at the national and local levels. From the perspective of political intersectionality, the construction of framing discourses are inherently imbued with the context within which they are shaped due to differences in power and access, which results in an uneven ability to contest and define. CEDAW, while a useful and valuable document, tends to address “women” as a category isolated from race, class, ethnicity, religion, sexuality and other identities. “Woman” thus becomes the exclusive reference point for GBV (this is also true of other documents, such as International Convention on the Elimination of all Forms of Racial Discrimination). The current fragmentation of conventions and human rights instruments such as treaties and treaty bodies is part of an understandable attempt to address one “problem” at a time. People are not one-dimensional, however. A woman is not only a woman – she is positioned (and she positions herself) in multiple identities of race, ethnicity, class and sexual orientation, among others.

International human rights law and practice tends to treat human beings as though we have linear identities. The reality of structural intersectionality in which the intersection of multiple identities shapes our experiences of power and privilege, can be best addressed by systems and theories which deal appropriately with the complexities of being a human being and the continuities of socially constructed identities, which are multiple and relational. The idea of linear identities is neat and relatively easy to work with, and the focus on legislation necessitates a certain amount of simplicity. The application of the law is made less complex if we know exactly what we are dealing with: which violation or crime, against whom, by whom and when. And yet, the experience of violence, oppression and social exclusion is different for each individual and community depending on their location in this nexus of discrimination and identity.

In terms of the DV in South Africa, the complexity of violence and identity is not unknown within civil society or the political elite. The frames and discourses promoted, however, have tended to gloss over this complexity in favour of simpler narratives. These are not neutral to the extent that these narratives can become authoritative and limit alternative understandings of DV. Political, legal and social practices directly and discursively create and recreate frameworks

through which we understand identity, oppression, violence and victimhood, and often “erase” marginal voices.

At the international level, institutions and processes which address racism, sexism and other forms of oppression as separate and mutually exclusive, can create exclusionary practices as they embrace what Crenshaw calls “monocausal frameworks”(1993: 112). The impact of this monocausal approach, as well as how it shapes political, legal and social discourses on any particular issue, has multiple dimensions. The value of interventions or “solutions” that are adopted at the international level (in conventions, law and practice) is diminished when it is “remade” at the local level without an intersectional approach that addresses violence as it occurs in a particular context. The way a woman experiences violence not only differs from the way a man may experience it, but factors like economic status, sexual orientation, race and ethnicity all play a significant part in her experience. The way that legislation is framed and how its implementers understand violence and frame solutions can be significantly improved through the application of an intersectional framework.<sup>21</sup>

While an emphasis on inclusion and access to political structures has resulted in many gains for women in South Africa and globally, the impact of institutionalising women’s interests into specialised institutions has had a negative effect as it “shifted the issues of gender inequality out of the realm of politics and into the technical realm of policy-making” (Hassim 2005b: 191), which results in the increasing depoliticisation of gender-related issues (such as domestic violence). In South Africa, this shifted the discussion and debates on how to address domestic violence and other forms of GBV to a remote set of policy-making agencies at the national level: gender quality concerns have “fallen hostage... to institutional hierarchies and system blockages that are hard to deal with from outside the bureaucracy” (Hassim 2005b: 191).<sup>22</sup>

The exclusion of marginal voices within the global gender equality regime which operate outside the bounds of mainstream assumptions and principles regarding GBV, is partially the result of the power differences at the global and national levels. This has an impact on the extent to which alternative approaches to GBV, beyond legislation, are considered acceptable. One set of experiences and understandings of a situation becomes less important or less credible than

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<sup>21</sup> Legislation is inherently limited, of course, and its textual components will always retain a certain amount of rigidity. That does not mean, however, that legislators, academics and activists need to frame legislation and violence as rigidly as the law does.

<sup>22</sup> This is evident in the 2009 review of the DVA currently underway in Parliament. In over ten submissions made to the relevant committees, almost exclusive attention was paid to the lack of capacity of the police and courts, and the need for increased training and funding, with very little mention of the context within which the DVA is being implemented, and how this affects the success of failure of such legislation.

another due to differences in power and access, which are weighted in favour of the international arena rather than national or local contexts (Merry 2006b: 42).

As such, if local interpretations of the causes and nature of DV differ from dominant understandings at the global level, the power balance is in favour of the latter, partially due to biases about culture, and assumptions about the level of conceptual sophistication one can expect at the local level. This is compounded by the legitimising effect of the political space which has been created by international institutions and organisations with claims to a global consensus. The result is an approach pursued at the national level which is out of touch with the complex political and social dynamics that shape power, identity and violence.

## Conclusion

This paper has examined the trajectory of the Domestic Violence Act (DVA) in the context of democratisation, and the formation of a technocratic-managerial response to domestic violence in a context of complexity. It tries to reveal how this process has depoliticised the feminist agenda, while also being a symptom of this depoliticisation, and poses new challenges for future strategies.

While alliances within the state ensured access and influence, which was to the benefit of South African women, it had the negative and unintended effect of depoliticising issues related to gender-based violence, and domestic violence in particular. The DVA was one of the few acts in the 1990s which specifically addressed an aspect of gender-based violence (GBV). Once the act was passed, the monitoring of its implementation (by civil society and the state) took on an almost exclusive formal and bureaucratic framework, in which less and less attention was paid to the political nature of domestic violence and its role in maintaining gendered relations of power.

Hassim's concept of inclusionary and transformational feminism is a useful framework for understanding how the focus on inclusion and access through alliance-building has meant sacrificing more transformational approaches and goals, perhaps unknowingly or unwillingly. Challenging political exclusion (equality feminism) means that women's interests are defined in terms of their relationship to the state. This form of feminist advocacy is reluctant to challenge the structural basis of gender inequalities, partially due to ideological reasons, as a key tenet of liberalism is that the family and market lie outside the realm of state action (Hassim 2006: 6). In South Africa, the very existence of such a powerful lobby for domestic violence (DV) legislation indicates that organisations and individuals are aware of the need for legislation that intrudes into the so-called "private" sphere. The dominance of liberal approaches to democracy, however, does mean that the primacy of legislation and the disproportionate emphasis on its potential impact results in less focus on deeper structural issues related to power and identity. Gender equality and eradicating GBV have become technical concerns requiring technical solutions, rather than political ones.

This discourse has limited potential to be transformatory, as it does not challenge the intersection of power and multiple identities which form the basis of domestic violence. Discourses become entrenched in institutional and organisational practices as the conventional mode of reasoning, and impose a self-reinforcing rationality that gives precedence to a particular conception of knowledge. Rethinking this rationality will require challenging the state and the political elite, and reconceptualising the relationship between the government and civil society as

well as the relationship between women and the state. The strategy of the inclusion of women in formal political institutions (state and party) has tended to displace the transformatory goals of structural and social change.

Similarly, the dominance of legal conceptions of justice and gender equality, while a necessary feature of any society, should not be the goal but the tool that women and the women's movement use to support alternative and transformatory approaches to the protection and empowerment of women. This dominance is understandable given the nature of the democratic transition which relied heavily on professionalism and expertise to restructure the state. The framing of violence by civil society, however, needs to be addressed through a critical theorisation of the role of international law and an intersectional approach to violence, gender and identity.

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