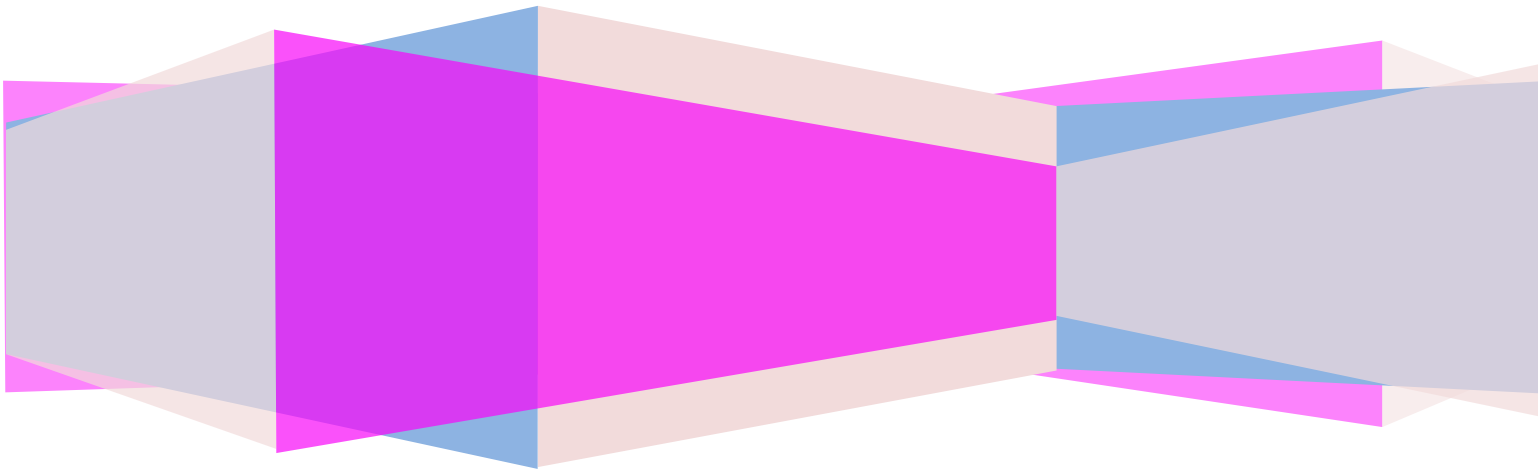


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**Sexual Violence against Women in South Africa:
The Social Climate Surrounding Rape and the Position of the
Internal Protection System**



AUTHOR: Azaliah Mapombere

ADVISER: Tobias Bütow

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“...if the liberation struggle was meant to free us from oppression, it must have been to free us all from all kinds of oppression...Liberation has no plural. Being an indivisible whole, liberation cannot be partitioned. It is radical. To opt for anything else is to endanger it.”¹

[Charlene Smith 2001]

¹ Smith, C., *Proud of Me: Speaking out Against Sexual Violence and HIV*, 2001, Penguin, Johannesburg, at p 211

1. INTRODUCTION

South Africa and her people are survivors of one of the most tragic forms of power abuse and racial discrimination. Millions were affected by the apartheid regime which followed the colonial era, but the present generation now has the hope of equality, rights and access to a life full of opportunities that were once considered privileges to a superior few. However, the society is still bound by heavy chains; individuals still live in fear, pain and anger. The people have been liberated from an oppressive regime, but in contrast to Madiba's² vision of freedom, many are still suppressed by social structures and evils that affect an unfortunate many.

South Africa is overwhelmed by some of the world's worst known figures of gender-based violence for a country not at war, thereby denying men and specifically women the realization and enjoyment of full citizenship rights as set out in the Constitution, and thus undermining development efforts, and worsening women's vulnerability.³ It is a known fact that at least one in three South African women will be raped in her lifetime, and one in four will face domestic violence. It goes without saying that the high rate of rape indeed fuels the HIV/AIDS pandemic. Many voices are being muffled by cultural expectations and society's deceptions. Few women have voices, and even fewer can be heard. The silence is deafening, and so are the sorrowful sobs.

Eliminating violence against women and improving educational opportunities for women were more or less universally supported goals in South Africa in the mid-

²Nelson Rolihlahla Mandela, an anti-apartheid activist devoted to democracy, equality and learning; an inspiration to the oppressed and deprived, not only in South Africa but worldwide; 1993 Noble Peace Prize winner; first South African President (1994-1999) to be elected in a fully (racially) representative Democratic election. *Madiba* as he is often called is the name of his (Xhosa) clan. Other given names are: *Tata*; *Khulu*; and *Dalibhunga*.

[REF: Nelson Mandela Foundation, 2011, "Madiba's Many Names", Retrieved from:

<http://www.nelsonmandela.org/index.php/memory/views/names/> retrieved on 15/05/2011]

³ *Fact Sheet: Gender Equality and Equity in South Africa – 1996-2008*, Social Development Department: Population and Development, Republic of South Africa, retrieved from

http://www.population.gov.za/pop_dev/index.php/NPU-factsheets/Gender-Equality-and-equity.html

accessed on 26/05/11

1990s, but these goals received only rhetorical support for the most part. Priorities were to eliminate the relics of apartheid legislation and to improve socio-economic conditions for the poor, for children, and for other especially disadvantaged groups. Arguably, gender-related inequities were belittled and given secondary importance, up until recently.⁴

Rape is about many things, including the poisonous after-effects of apartheid, but it is also a burning social issue that is provoked by discourse about race and malicious patriarchal constraint.⁵ And for so long, discourse on rape has been written with race in mind, instead of gender, this is why in this paper I propose that the prevalence and incidence of rape of women stems from perceptions and mentalities that are a deeply engrained culture in the psychologies, traditional and historical backgrounds of the peoples. Although recognizing that South Africa's difficult historical past is itself a huge contributor to the resulting victimization of women, and acknowledging that the divides of race, political status, class and ethnic divides are not entirely irrelevant, I propose that this ailment of society as I choose to call it, cuts across all these divides and affect all females.

Other forms of rape include 'Corrective rape' and marital rape. Corrective rape is a saddening concern in South Africa. Theories of sexuality, heterosexuality and homosexuality help to explain the phenomenon where men rape lesbian women (and in many cases murder them afterwards), in order to "turn them straight" or to "teach them a lesson." This form of discrimination, legally speaking is unconstitutional and activists fight to achieve justice and to see the rights of these affected and concerned women safeguarded. Another concern is the issue of marital rape in the country, the legal and social aspects of it. However, since my main interest lies in examining the shape of the society and the climate thereof, the paper will not go so far as to discuss these two abovementioned matters. It is simply for emphasis sake that I point out to the widespread existence of marital and corrective rape. It demonstrates the magnitude of the offence of rape on all levels, regardless of status and position in the beautiful country of South Africa.

⁴ Byrnes, R. M., ed., *South Africa: A Country Study*, Washington: GPO for the Library of Congress, 1996, retrieved from <http://countrystudies.us/south-africa/58.htm> accessed on 26/05/11

⁵ Moffett, H., Chapter 6, *loc. cit.*, at p161,177

My aim is not to show the existence of any top-down political system or racially/ethnically discriminative structure that oppresses the individual, but to consider the bottom-up form of suppression that has been and is still taking place in the South African society. While not claiming to undertake an exhaustive analysis of the narratives concerning violence against women in relation to rape, this paper deliberates the structure of the country in regards to the inequalities therein and the role gender, power, poverty, culture and race play as contributory factors to the rape-prone climate; with the key intention of showing the position of women in the society in order to understand why or how they ended up or still end up as the oppressed.

For our purpose I will shortly consider some of the flaws of the justice system, and in order to do so I will first of all outline South Africa's legal obligations under international and regional instruments as well as under its own Constitution. I also wish to briefly demonstrate the various routes that are taken by the people themselves in combating these sexual crimes. Lastly, I seek to show how the lives of the rape survivors can be affected, and discuss the support avenues available to them.

i. DEFINITIONS FOR THE PURPOSE OF THIS PAPER

Internal protection system refers to the South African criminal justice system [including the police, prosecutors and the judges]. The meaning shall extend to encompass the independent activists and activist groups; and mob/township justice.

Racial meanings the word “black” refers to a person or people once classified as “African” or “black” under the apartheid system, and now intends to refer to those of solely African ancestry; the word “white” refers to those of European ancestry; “coloured” refers to those of mixed racial ancestry; and “Indian” or “Asian” refers to those people historically from the Indian subcontinent.

‘Rape’ will be used in terms of and defined according to the new statutory law of South Africa which repealed and replaced the common law offence of rape. As defined by South African law⁶, rape occurs when an act of sexual penetration⁷ with a complainant (*victim*⁸) is committed unlawfully and intentionally without said complainant’s (*victim*’s) consent.⁹

‘Social climate’ refers to those norms, values, traditions, and structures (historical and present-day) that phenomenally define the society or rather societies in South Africa, i.e. those individuals, families, communities and organized civil societies. This definition extends to include the hierarchical structures and systems upon which the present day ‘society’ is built i.e. in regards to the gender system, the legal system, and the various cultural systems. The way in which all these factors affect every level of human interaction and the outcomes thereof constitutes the social climate.

‘Child’ under South African law¹⁰ is a person under the age of 18 years. Where necessary the term ‘baby’ will be used to refer to a child/children in the very early stages of life and development.

Violence (against women): The Convention on the Elimination of All Forms of Discrimination against Women – CEDAW defines violence against women as “any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of

⁶ Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, Date of commencement 16 December 2007

⁷ ‘Sexual Penetration’ includes any act which causes penetration to any extent whatsoever by-

- (a) the genital organs of one person into or beyond the genital organs, anus, or mouth of another person;
- (b) any other part of the body of one person or, any object, including any part of the body of an animal, into or beyond the genital organs or anus of another person; or
- (c) the genital organs of an animal, into or beyond the mouth of another person.

⁸ Word added

⁹ Chapter 1 – Definitions and Objects (ss 1-2), Definitions and Interpretations of Act, Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, Date of commencement 16 December 2007, retrieved from <http://www.justice.gov.za/legislation/acts/2007-032.pdf> accessed on 07/06/11, at p7

¹⁰ Ibid at p9

such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”¹¹

The Beijing Declaration and Platform for Action 1995 states that violence against women encompasses but is not limited to the following:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.¹²

Where the single word term *violence* is used, it shall have a corresponding meaning to the definition of *violence against women*.

¹¹ Joint Monitoring Committee on the Improvement of Quality of Life and Status of Women, Parliament of the Republic of South Africa, Report on Violence against Women, May 2002, retrieved from <http://www.info.gov.za/view/DownloadFileAction?id=70270> accessed on 07/06/11

¹² Annexe 2 – Platform for Action, Chapter 4, Sec. D, Para. 113, at p 48,9, United Nations report on the Fourth World Conference for Women, Beijing 4-15 September 1995, retrieved from <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf> accessed on 08/06/11

ii. STATISTICS AND GENDER RATIOS

The Republic of South Africa, a multi-cultural and multi-lingual country, is one of the strongest economies in the African region. Total investment in the country has been increasing at about 11%, resulting in an annual growth of about 4.5%. The country has a Human Development Index estimate of 0.67. Approximately 84.5% of households have access to pipe-borne water, 61.6% to waste removal services and 86.4% to modern sanitary facilities.¹³

In order to get a more in depth picture of South Africa and the equalities and inequalities therein in relation to gender where required, statistics and graphs are presented below comprising information regarding the population dynamics, health, education, employment, crime and rape. The data is compiled from various sources of the World Bank¹⁴ and the World Data Bank¹⁵. The most up-to-date data available is used and in a few categories two year groups were recorded in order to compare data and for the purpose of deducing improvements or regression. Below are two tables indicating the population dynamics of the country.

¹³ 'Public Cooperation at a Glance', World Health Organization, May 2009, retrieved from: http://www.who.int/countryfocus/cooperation_strategy/ccsbrief_zaf_en.pdf accessed on 30/05/11

¹⁴ All data compiled from the below World Bank sites, accessed on 29/05/11:

1. South Africa: Quick Facts
<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/SOUTHAFRICAEXTN/0,,print:Y~isCURL:Y~menuPK:368102~pagePK:141132~piPK:141109~theSitePK:368057,00.html>
2. EdStats Country Profiles
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTEDUCATION/EXTDATASTATISTICS/EXTEDSTATS/0,,contentMDK:22614780~menuPK:7196605~pagePK:64168445~piPK:64168309~theSitePK:3232764,00.html?ZAF,188>
3. Health, Nutrition and Population (HNP) statistics at a glance, South Africa
http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=1&REPORT_ID=10309&REQUEST_TYPE=VIEWADVANCED&HF=N
4. Data Profile, South Africa http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=&REPORT_ID=9147&REQUEST_TYPE=VIEWADVANCED

¹⁵ Gender Statistics: South Africa, World Data Bank retrieved from http://databank.worldbank.org/ddp/home.do?Step=2&id=4&hActiveDimensionId=GS_Series accessed on 29/05/11

POPULATION DYNAMICS	FIG.	YEAR
Population (millions)	49.3	2009
Population growth, annually (percent)	1.1	2009
Life expectancy at birth (total years)	52	2009
Mortality rate under 5 (per1,000 of population)	62	2009
Population ages 15-64, total (millions)	32.1	2009
Population ages 15-64, female (millions)	16.2	2009
Population ages 15-64, male (millions)	15.9	2009
Population ages 65 and above, female (millions)	13.5	2009
Population ages 65 and above (% of total)	4.5	2009
Population, female (% of total)	50.7	2009
Age dependency ratio (% of working-age population)	53.9	2009
Literacy rate, adults (total % of population ages 15+)	89	2009
Literacy rate, youth (total % of population ages 15-24)	97.6	2007
Poverty headcount ratio at national poverty line	23.0	2005
Income share held by lowest 20%	3.1	2000

In a 2008 UNAids report¹⁶, it is estimated that 5.7 million people in South Africa are living with HIV. Approximately 3.2 million of these people are women and 280,000 are children (ages 0-14). South Africa has comprehensive policies and programmes to address the epidemic, although some of these are still yet to have a significant impact, others have seen noteworthy levels of success¹⁷. In order to evaluate the different perceptions of the two genders, it was reported in a study that, 63% of men reported to never go for health care check-ups, and 37% said that they do not. 76% of those who said that they do not go for health check-ups indicated that they eventually do make use of health services in cases of chronic illness, but 24% maintained that they do not go at all.¹⁸ Even in the face of an epidemic it is reported that men are less likely than women to seek medical attention or to go for HIV testing.¹⁹

¹⁶ *Country Situation*, Joint United Nations Programme on HIV/AIDS, South Africa July 2008, retrieved from: http://data.unaids.org/pub/FactSheet/2008/sa08_soa_en.pdf accessed on 30/05/11

¹⁷ *Country Overview*, Joint United Nations Programme on HIV/AIDS, South Africa, Retrieved from <http://www.unaids.org/en/regionscountries/countries/southafrica/> on 29/05/11

¹⁸ Letsela, L. And Ratele, K. Fact Sheet, *"I am a tsotsi from Sophiatown, you must cure yourself": Masculinity and health seeking behaviours in South Africa*, November 2009, MRC-UNISA Crime, Violence and Injury Lead Programme, Institute for Social & Health Sciences, University of South Africa, retrieved from <http://www.mrc.ac.za/crime/maschealthseek.pdf> accessed on 23/05/11

¹⁹ Reasons found from the study as to why they do not go for health check-ups are: the lack of medical aid/insurance; distrust of public services; the view that visiting health services are a waste of their tie; the fact

Besides the epidemic, there is also a high affliction rate of tuberculosis, cardiovascular diseases, violence and road traffic accident associated injuries. Human resources for health are somewhat available with existing shortages; the distribution thereof of course favouring urban areas. The country is making efforts at addressing the health needs of the population. Access to services such as antenatal care is about 94%. Skilled attendance at birth seems to have dropped to 84%²⁰. Prevention of Mother to Child Transmission (PMTCT) is available in 90% of facilities with a 66% uptake in 2007. About 80% of the population has access to the essential package of interventions within an hour²¹ of a health facility.²²

These brief details allow one to comprehend and consider the devastating results that could be and in most cases, are produced with the combination of persistent incidents of rape in a country further tormented by an HIV/AIDS epidemic.

There has been however a self-evident increase in women's access to reproductive health care services, and as a result there has been a decrease in deaths and illness amongst women. Very poor women though are much more likely to give birth at home, worsening their vulnerability and undermining development potential. A serious concern is therefore high rates of infant, child and maternal mortality.²³

HEALTH	2009
Fertility rate total (births per woman)	2.5
Adolescent fertility rate (births per 1,000 female ages 15-19)	56
Births attended by skilled health staff (% of total)	*91.2
Prevalence of HIV total (% of population ages 15-49)	17.8
Prevalence of HIV male (% of population ages 15-49)	4.5
Prevalence of HIV female (% of population ages 15-49)	13.6

* In the year 2003

that they had regular exercise and ate healthy; the fear of finding out of any health problems; the idea that health check-ups are for weak men. This directly confirms previous findings from other studies that men see visits to health services as an *unmasculine* activity. "When a man brags, 'I haven't been to a doctor in years', he is simultaneously describing a health practice and situating himself in a masculine arena."

²⁰ The figure in the 'Health' table is the last accurate data available at the time of writing, however the World Health Organization article, 'Public Cooperation at a Glance' has recorded a lower figure for the time of publication of the article in 2009.

²¹ Roughly based on any mode of transport available at the time

²² 'Public Cooperation at a Glance', *loc. cit.*

²³ *Fact Sheet: Gender Equality and Equity in South*, *loc. cit.*

Education has often been linked to empowerment, improving development and productivity. It is often seen as an investment into the lives of children, youth, men and women. Research has established that basic education of girls and women improves key development outcomes, such as reducing fertility and child mortality. It is believed that “education enhances women’s well-being and gives them a greater voice in household decisions, more autonomy in shaping their lives, and better opportunities for participating in the community and labour market...women are more likely to control their own destinies and effect change in their own communities when they have higher levels of education.”²⁴ Thus education in general and education of women and girls is regarded as fundamental to the empowerment of women and gender equality.²⁵ It goes without saying that poverty and socio-economic circumstance, amongst other factors are two of the constraints that can impede on people having the chance to equal opportunities in regards to access to and completion of education.

Unlike many other developing countries, access to schooling in South Africa has, more or less, been equally achieved for both males and females; and the female drop-out rate is lower than that for boys. There are however more males than females in the foundation and primary levels of schooling, while females outnumber males in secondary school and tertiary levels - where they obtain about 60% of all university qualification. There has been a 44.5% increase in the proportion of females under 19 years old attending school from 21% between 1995 and 1999²⁶. There are also noteworthy increases in the participation rate of all children in education with almost universal access and achievement of the Millennium Development Goals²⁷ on education.²⁸ Included in the table and graph below are some gender ratios and information relating to education in the country.

²⁴ *A Second Look at the Role Education Plays in Women’s Empowerment*, International Center for Research on Women (ICRW), 2005, USA, retrieved from: <http://www.icrw.org/files/publications/A-Second-Look-at-the-Role-Education-Plays-in-Womens-Empowerment.pdf> accessed on 27/05/11

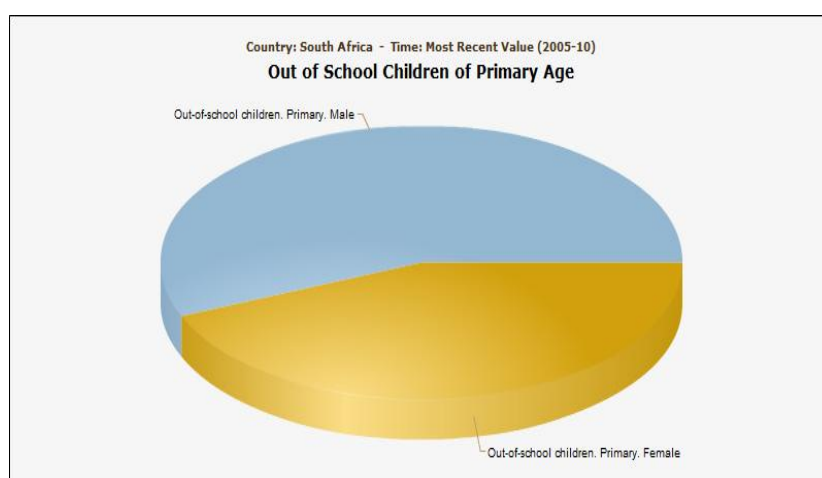
²⁵ *Fact Sheet: Gender Equality and Equity in South Africa*, *loc. cit.*

²⁶ Additionally, there has been an increase in the number of not only women graduates, but black graduates as well.

²⁷ The Millennium Development Goals (MDGs) were adopted by world leaders in 2000 and set to be achieved by 2015. They provide concrete, numerical benchmarks for tackling extreme poverty in its many dimensions. The MDGs also provide a framework for the entire international community to work together

EDUCATION	2009
Primary school completion rate total (% of relevant age group)	93*
Ratio of girls to boys in primary and secondary education (percent)	99
Ratio of female to male primary enrolment (%)	96.0
Ratio of female to male secondary enrolment (%)	104.9
Secondary education, pupils (% female)	51.0
Primary completion rate, female (% of relevant age group)	93.7
Primary completion rate, male (% of relevant age group)	92.6
Primary education, teachers (% female)	77.2
Secondary education, teachers (% female)	54.8
Children out of school, primary, total	<i>estimate: 715,593</i>

* An increase of 6% from the year 2000



Moving on to employment, quite a significant increase in female participation in the labour market has been observed over the decades starting from the mid-1990s. However, unemployment remains much higher for females than for males, from 18% in 2007 to a mere 24% in more recent years. Female unemployment rates have been higher than male rates and similarly in absorption and labour

towards a common end i.e. ensuring that human development reaches everyone, wherever they may be. Of successful, world poverty will be cut by half, tens of millions of lives will be saved, and billions more people will have the opportunity to benefit from the global economy.

[REF: *What are the Millennium Development Goals?*, United Nations Development Program, Millennium Development Goals, Retrieved from: <http://www.undp.org/mdg/basics.shtml> accessed on 05/06/11]

²⁸ *Fact Sheet: Gender Equality and Equity in South Africa, loc. cit.*

²⁹ EdStats Country Profiles, *loc. cit.*

force participation rates. Even though females make up more than half of the working age population, they remain less likely to be employed than males.³⁰

EMPLOYMENT	FIG.	YEAR
Contributing family workers, female (% of females employed)	1.1	2003
Contributing family workers, male (% of males employed)	0.5	2003
Employers, total (% of employment)	15.1	2003
Employers, female (% of employment)	15.4	2003
Employers, male (% of employment)	14.8	2003
Labour force, total	18.9	2009
Labour force, female (% of total labour force)	43.7	2009
Labour force participation rate, female (% of female population ages 15-64)	50.8	2009
Labour force participation rate, male (% of male population ages 15-64)	66.6	2009
Self-employed, female (% of females employed)	17.7	2003
Self-employed, male (% of males employed)	17.1	2003
Unemployment with primary education, female (% of female unemployment)	47.5	2003
Unemployment with primary education, male (% of male unemployment)	53.1	2003
Unemployment with secondary education, female (% of female unemployment)	43.6	2003
Unemployment with secondary education, male (% of male unemployment)	38.7	2003
Unemployment with tertiary education, female (% of female unemployment)	5.7	2003
Unemployment with tertiary education, male (% of male unemployment)	4	2003
Unemployment, total (% of total labour force)	23.8	2009
Unemployment, female (% of female labour force)	25.9	2009
Unemployment, male (% of male labour force)	22	2009
Unemployment, youth female (% of female labour force ages 15-24)	52.5	2009
Unemployment, youth male (% of male labour force ages 15-24)	44.6	2009
Proportion of seats held by women in national parliaments (%)	44.5	2009

A lot of violent crime takes place in South Africa, and that is a fact which is hardly disputed. During the period 1 April 2009 to 31 March 2010, the police recorded about 2.1 million serious crime cases nationwide.³¹ According to the provincial figures, Gauteng and KwaZulu-Natal are the most crime-ridden provinces, especially in respect of murder and carjacking. Police officials say that crime in Gauteng makes up roughly half of South Africa's crime in total. The affluent suburb of Sandton in Johannesburg, Gauteng, has one of the highest rates of house robbery in South Africa. The poverty-stricken township of KwaMashu

³⁰ *Fact Sheet: Gender Equality and Equity in South, loc. cit.*

³¹ South African Crime Statistics, submitted 16/09/10, retrieved from <http://www.southafricaweb.co.za/article/south-african-crime-statistics>, accessed on 06/06/11

north of Durban, Kwa-Zulu Natal, is South Africa's murder capital. In 2009 KwaMashu had 235 murders (from an estimated total population of 500,000).³²

Below are two tables from the National Victims of Crime Survey carried out among residents in the various South African provinces in 2003. The data indicates the public opinion and perception of crime in their respective areas.

Table 3: The one type of crime that respondents were most afraid of in their area of residence (%)

	Eastern Cape	Free State	Gauteng	KZN	Lim-popo	Mpum-alanga	North West	Northern Cape	Western Cape	Total
Murder	31.1	26.1	23.4	23.4	18.0	22.1	32.0	30.2	26.4	25.1
Housebreaking	20.3	14.7	18.0	34.4	23.9	32.7	21.7	6.5	20.1	23.4
Rape	24.9	31.8	14.8	11.6	22.6	12.1	22.1	40.8	18.1	18.6
Robbery	9.9	6.6	23.6	11.6	4.7	16.5	9.9	9.1	13.7	13.4
Property theft*	1.7	10.8	5.8	4.3	14.8	8.8	8.5	2.5	5.0	6.5
Assault	5.1	7.5	1.7	3.8	7.1	3.0	2.0	8.4	13.2	5.0
Car hijacking	0.6	1.1	12.1	4.5	0.5	3.0	1.0	0.7	1.9	4.3
Stock theft**	5.5	0.9	0.0	3.9	6.7	0.5	1.9	0.5	0.0	2.5
Other	0.5	0.2	0.3	1.8	1.0	0.6	0.5	0.4	0.8	0.8
Vehicle theft	0.5	0.3	0.3	0.7	0.7	0.7	0.3	0.8	0.9	0.6

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Table 2: One type of crime that respondents thought occurred most in their area of residence (%)

	Eastern Cape	Free State	Gauteng	KZN	Lim-popo	Mpum-alanga	North West	Northern Cape	Western Cape	Total
Housebreaking	41.8	30.0	30.9	48.4	35.4	54.5	44.5	15.8	37.8	39.4
Property theft*	7.3	26.1	19.9	11.8	25.4	15.9	18.0	9.2	14.0	16.3
Robbery	11.5	10.2	24.0	11.8	3.3	12.9	9.7	12.4	16.4	14.0
Murder	6.0	6.0	6.6	10.6	3.6	8.2	5.5	8.9	9.0	7.3
Livestock theft**	20.0	5.5	0.3	5.8	12.9	2.0	11.1	8.4	1.9	6.9
Assault	7.5	11.5	2.8	2.3	8.2	1.5	4.5	27.6	11.6	5.9
Rape	4.3	8.8	3.0	1.7	8.3	2.6	5.4	14.6	3.0	4.2
Vehicle theft	1.5	1.8	3.9	2.6	2.0	1.9	0.9	2.5	4.8	2.7
Car hijacking	0.0	0.0	7.2	2.8	0.0	0.3	0.5	0.0	0.2	2.3
Other	0.2	0.0	1.6	2.1	0.8	0.3	0.0	0.6	1.3	1.1

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³² Ibid

³³ Burton, P., Du Plessis, A., *et al.* Table 3, Appendix 2, Provincial Tables, National Victims of Crime Survey South Africa 2003, Institute for Security Studies Africa, retrieved from:

<http://www.iss.co.za/pubs/monographs/No101/Append2.htm> accessed on 02/06/11

³⁴ Burton, P., Du Plessis, A., *et al.* *Loc. cit.*

In directing the crime statistical findings towards women and rape, it is known that South Africa has one of the highest incidents of reported rape in the world. Statistics show that 36,190 cases of rape were reported to the police between April and December 2007, though experts believe that number only accounts for one out of nine cases. But the numbers of rape cases that make it to court are far fewer, not to mention those cases that actually result in a conviction.³⁵ Provincially, Mpumalanga reported the highest percentage of women ever raped. The lowest percentage belongs to the North West province. 4% of women from the age of 15 to 49 years reported having been raped at some stage of their life. Women below the age of 35 were more likely to report that they had been raped at some stage of their life than women in other age groups.³⁶

Women tend to report rape that has been committed by strangers more often than when the rape is committed by someone who is familiar to them. With the bulk of rapes taking place on weekends (Saturdays – 23,2% and Sundays 20,3%), young women between the ages of 19 and 24 are the most vulnerable age group. Furthermore, in 88,1% of rape episodes there was one offender; there were two offenders in 6,3% of episodes; and in 5,6% of rape episodes there were three or more offenders. In 56,1% of rape episodes where there was one offender weapons were used. Where there were two or more offenders, weapons were used in 28,690 of the cases, that is in 87,2% of the incidents. Rapes involving multiple offenders have an even greater percentage of weapons used in the attack, otherwise and generally physical force is used. The chosen weapon was a gun in 16,5% of the cases; 68% a knife or other sharp object; the weapon was unspecified in 9,6% of cases; and weapons classified as ‘other’, such as rocks or chains, were used in 5,9% of the cases.³⁷

³⁵ Lindow, M., Rep. “*South Africa's Rape Crisis: 1 in 4 Men Say They've Done It*”, Saturday, 20 June 2009, Time, Cape Town, retrieved from: <http://www.time.com/time/world/article/0,8599,1906000,00.html> accessed on 30/05/11

³⁶ Quantitative research findings on Rape in South Africa, Statistics South Africa 2000, retrieved from <http://www.statssa.gov.za/publications/Rape/Rape.pdf> accessed on 25/05/11, at p17

³⁷ Quantitative research findings on Rape in South Africa, Statistics South Africa 2000, retrieved from <http://www.statssa.gov.za/publications/Rape/Rape.pdf> accessed on 25/05/11, at p13

The table below³⁸ shows that the majority of offenders were unknown to their victims, nonetheless the percentage of attacks committed by people familiar to their victims is comparably high. The largest proportion of reported rapes occurred at the offender's residence, although episodes in open spaces and at the residence of the victim are the next common places of occurrence.³⁹

AGE AT TIME OF RAPE (YEARS)	No.	%
Under 11	54	9,8
12-14	49	8,9
15-18	103	18,8
19-24	148	27,0
25-30	72	13,1
31-40	76	13,8
41-50	31	5,6
51+	8	1,5
Unspecified	8	1,5
TOTAL	549	100,0
PLACE OF OCCURRENCE	No.	%
Victim's residence	80	14,5
Rapist's residence	170	30,9
Friend/family member's home	34	6,2
Place of entertainment	5	0,9
Street	23	4,2
Open space	149	27,0
Parking/taxi rank/bus stop	4	0,7
Other	57	10,3
Unspecified	29	5,3
TOTAL	*551	100,0
RACE OF VICTIM	*No.	%
African	478	87,0
Coloured	29	5,3
Indian	3	0,5
White	37	6,8
Unspecified	2	0,4
TOTAL	549	100,0

³⁸ Data gathered from a police docket study conducted by the Crime Information Analysis Centre of the South African Police Services, Quarterly Crime report 3/98

³⁹ Quantitative research findings on Rape in South Africa, Statistics South Africa 2000, retrieved from <http://www.statssa.gov.za/publications/Rape/Rape.pdf> accessed on 25/05/11, at p25,6

RELATIONSHIP TO OFFENDER	No.	%
Stranger	435	57,1
Acquaintance	177	23,2
Relative or intimate	61	8,0
Family friend/neighbour	59	7,7
Unspecified	23	3,0
Other	7	0,9
TOTAL	*762	100,0

*Some totals exceed the number of victims and suspects since more than one victim or suspect could have been involved in cases⁴⁰

The aim of the statistical overview is for the reader to gain an overall and beyond general picture of the country that this research paper will focus on.

⁴⁰ Quantitative research findings on Rape in South Africa, Statistics South Africa 2000, retrieved from <http://www.statssa.gov.za/publications/Rape/Rape.pdf> accessed on 25/05/11, at p25

2. THE SHAPE OF THE SOUTH AFRICAN SOCIETY

This chapter aims to expose the mentalities and attitudes of the population in regards to gender and the way in which females and males relate and perceive each other. In order to achieve this aim I will refer to the relevant gender theories; and to illustrate how this affects rape I will point to several examples of studies and interviews that have been conducted.

To begin with, a study conducted by South Africa's Medical Research Council in a 2009 *Time* article release, exposed that a quarter of men in South Africa admitted to having raped, and 46% of those said that they had raped more than once. 1,738 men of all race groups, in both urban and rural settings in the Eastern Cape and KwaZulu-Natal provinces were interviewed. Out of those that admitted to having raped, 73% said that they had committed their first assault before the age of 20. According to the researchers, many of the study's participants appeared to see no problem with what they had done. The researchers found that the men most likely to rape were not the poorest, but those who had attained some level of education and income.⁴¹ A senior program advisor at Sonke Gender Justice⁴² said that such findings: *"highlight the lack of remorse among men in our country, and also the attitude that women remain fair game for us... [Men] continue to abuse even to the point of getting away with murder."* The study reveals a deeply rooted culture of violence against women, in which men rape in order to feel powerful, and do so with impunity, with the belief that their 'superiority' entitles them to vent their frustrations on women and children.⁴³

In a CNN interview in the same year, one of the men mentioned that he and three friends gang-raped a girl they met at a party. He confidently explained that: *"With me it was not a problem...but when I went to the bathroom having to find the third guy busy with her it was like I had a problem because she was crying, she was not*

⁴¹ Lindow, M., Rep. *Loc. cit.*

⁴² Sonke Gender Justice is an advocacy group for abused women

⁴³ Lindow, M., Rep. *Loc. cit.*

happy." His friend contributed: *"I would tell myself that there is nothing I want in life that I can't get, even a beautiful woman because when you try your luck with them, their response makes you feel like you are nothing. That's why we decide to do things like this, having sex with them forcefully."* These men have all spent time in prison but have never been convicted of rape.⁴⁴ The narratives in the interview underline the huge divide between South Africa's democratic and liberal constitution, which upholds and includes the rights of women and children, and the realities of the society.

Lastly and notably, gender advocates have said that the 2006 rape trial of the then prominent politician, and now President of the Republic, Jacob Gedleyihlekisa Zuma, was incredibly damaging to their cause. Zuma was tried and acquitted of raping an HIV-positive family friend. Aernout Zevenbergen⁴⁵ says, "Rape is a signal of a society that is sick to the core," and goes on to explain that President Zuma's plainspoken views as a polygamist and a traditionalist appeal to many men who feel adrift in a society that defines men by the material trappings they attain.⁴⁶ Rhoda Kadalie⁴⁷ explains *"while we have those paper rights, in reality the gender politics and behaviour of men towards women...haven't changed."*⁴⁸ Indeed some men believe that they are participating in a socially approved 'project' to constrain women within certain boundaries and categories by resorting to sexual violence.⁴⁹

⁴⁴ Mabuse, N., 'South Africa fights rape crisis', CNN World, 30 June 2009, retrieved from: http://articles.cnn.com/2009-06-30/world/sa.rape.crisis_1_south-africa-raped-alexandra-township?_s=PM:WORLD accessed on 18/05/11

⁴⁵ Zevenbergen, A. author of 'Spots of a Leopard', a book on masculinity in Africa

⁴⁶ Lindow, M., Rep. *Loc. cit.*

⁴⁷ Former Human Rights Commissioner and founder of the Gender Equity Unit at the University of the Western Cape

⁴⁸ "Sexual assault hidden in culture of violence", Zimbabwe Independent, Friday 6 August 2004, retrieved from: <http://www.theindependent.co.zw/international/16401.html> accessed on 30/05/11

⁴⁹ This type of 'control mechanism' is used when the group believed to be inferior sees it as absolutely necessary for the continued comfort and survival of those in power. As an illustration, the vast majority of white South Africans who openly and enthusiastically supported apartheid entrusted the cooking of their meals and the care of their children to black servants. This points to the paradoxical vulnerability of the dominant class being serviced.

[REF: Moffett, H., Chapter 6, *loc. cit.*, at p168,9]

Rachel Jewkes⁵⁰ outlined that generally, “*rape is more common in countries with both a marked gender hierarchy and a culture where violence is used to assert dominance in whatever form that takes – either by the state or by individuals.*”⁵¹ To support Jewkes statement are the findings of a 2001 study of rape cases⁵² in South Africa’s Limpopo province, in which the findings were that some men who were marginalised in their community had raped in order to assert masculine domination – symbolically. Niehaus discovered through three case studies that men had used rape to play up their heterosexual virility; to disgrace and humble women that were more successful than them; and to enact a standard of their patriarchal rule within households.⁵³

Generations of families were broken apart due to South Africa’s history of migrant labour in which men left home to work in the mines, especially under Apartheid policies which compelled parents to live apart from their children, leaving them to be raised by relatives and neighbours. In this way many children have been particularly vulnerable to assault. Children and the youth remain vulnerable today as poverty prevails and many are orphaned by AIDS.⁵⁴ Zevenbergen suitably said that the effect of this history is that in the absence of positive male role models, a wave of young men “are now consumed by a sense of anger and entitlement.”⁵⁵ Karen Krueger suitably underlines that the practice of violent acts reflects the mind-set of the perpetrators⁵⁶, and one can undoubtedly say that this is directly relevant to the dilemma that is being experienced in South Africa even today. In general, women’s experiences of rape and violence in the South African society are met with silence. Rhetorically, and meditatively Zevenbergen concludes: “*What we have are the wounds of men creating wounds*

⁵⁰ The head of the South African Medical Research Council’s Gender and Health Unit

⁵¹ “*Sexual assault hidden in culture of violence*”, *loc. cit.*

⁵² They study was conducted by Isak Niehaus, an anthropologist from the University of Pretoria.

⁵³ “*Sexual assault hidden in culture of violence*”, *loc. cit.*

⁵⁴ *Ibid*

⁵⁵ Lindow, M., *Rep. Loc. cit.*

⁵⁶ Buetow, T., Christ, M., and Gudehus, C., *Approaching Collective Violence: On Methods and Perceptions – Introduction*, L’Europe en formation No. 357, Automne 2010, retrieved from:

http://www.cife.eu/index.php?id_rub=1170318030&id_parent_rub=1170317838&id_top=1169138322&url_to_go=&titre=Dernier%20num%C3%A9ro accessed on 09/02/11, at p10

in women, creating wounds in children...Who is going to stop the vicious circle?"⁵⁷

i. GENDER RELATIONS

Generally all the racial and ethnic groups in South Africa have age-old beliefs concerning gender relations and roles, and most are based on the assertion that women are less important, or deserve less power than men. For the most part African traditional social organizations are male centered and male dominated. For example, in some rural areas of South Africa in the 1990s, in keeping with tradition, wives walk a few paces behind their husbands. Afrikaner religious beliefs place strong emphasis on the theoretically biblically based idea that it is the norm that women's contributions to society should be approved by, or be on behalf of, men.⁵⁸ South African women were however faced with new obstacles and new opportunities to exercise influence in the twentieth-century, which brought with it economic and political developments.⁵⁹

Gender is a complex multilayered phenomenon and in order to understand the dominance of masculinities over femininities, one must seek to understand the existing gender relations and how they work at all levels of social, political and even economic life.⁶⁰ Feminists, see gender as the constitution of power relations through exclusions and privileges that are associated with masculinity and femininity.⁶¹ The concept of gender can be theorised in various different ways and for many different purposes. As a starting point is the definition of gender by

⁵⁷ Lindow, M., Rep. *Loc. cit.*

⁵⁸ Byrnes, M. R., ed, *South Africa: A country study, Women in Society*, Washington: GPO for the Library of Congress, 1996, retrieved from: <http://countrystudies.us/south-africa/58.htm> accessed on 25/05/11

⁵⁹ *Ibid*

⁶⁰ True, J. Chapter 24 – *The Ethics of Feminism*, *The Oxford Handbook of International Relations* [edited by Reus-Smit, C. And Snidal, D.] 2010 Oxford University Press New York, at p408

⁶¹ Whitworth, S. Chapter 23 – *'Feminism'*, *The Oxford Handbook of International Relations* [edited by Reus-Smit, C. And Snidal, D.] 2010 Oxford University Press New York, at p403

Sally Haslanger, who defines it in terms of the social positions that men and women occupy.⁶²

A person belongs to a gender because she or he is thought to have certain bodily features that uncover hers or his reproductive capacities, thus classifying individuals as either woman or man. Gender thus becomes projected on ‘sex’, the biological category. The concept of gender indicates that women and men are treated according to their social positions for reasons that do not have much to do with their biological position. A way in which this concept can be further brought to light, for the purpose of this paper, is to explain gender in light of norms (legal, social or moral), identities and social institutions.⁶³ These explanatory concepts will be touched on further on in this paper.

Feminist critical theory examines the existing assumptions about men and women i.e. what it is to be a man or woman, what is *appropriately* masculine or feminine behaviour, the *appropriate* roles of women and men within society, the family, the workforce, etc. They argue that the prevailing norms associated with masculinity should too be examined as these norms can have a huge impact on men across the board. Critical feminists insist that gender depends (in part) on the real, material, and lived condition of men and women in particular eras and places; thereby including the lived conditions of race, class, sexuality, ethnicity and religion.⁶⁴ *Postcolonial feminist theorists* go further and argue that imperialism constitutes one of the vital processes through which modern identities actually become ingrained.⁶⁵

Human gender is made up of two halves, with each defining the other; this twofold division can take a range of forms. The two halves can be seen to be equal but opposite, in a complementary relationship, although more often than not the female is in an inferior position: “*Gender is the culturally variable elaboration of sex, as a hierarchical pair, where male is coded superior and*

⁶² Browne, J. Ed. *The Future of Gender*, 2007, Cambridge University Press, Cambridge, at p56

⁶³ Ibid

⁶⁴ Whitworth, S., *loc. cit.*, at pg 395

⁶⁵ Whitworth, S., *loc. cit.*, at pg 395

female inferior.”⁶⁶ So gender is not simply the gender that one is, but it is rather a set of meanings that sexes assume in particular societies, therefore it is not a mere biological given, but a social construct. Christine Delphy, among other socialist feminists maintains that sex roles became part of our bodies because of a hierarchical division of labour which initiated the elaboration of hierarchies, not merely because they expressed masculinity or femininity.⁶⁷

Basic common knowledge prescribes that there are two sexes: when filling in a form we are required to tick either male or female; symbols/signs on doors to public toilets compel us to choose one or the other. Ideas and perceptions of gender and sexuality are so intertwined that it is often difficult to see where one ends and the other begins. In answering the question of where gender begins, psychoanalysis feminists give two answers. The first is supported by the Object relations theorists⁶⁸, who argue that gender is acquired in the course of socialisation and the internalisation of norms; it is a set of roles and cultural meanings gained in the course of ego formation within family structures; and that transformations in child-rearing practices and in the family/clan organisation can alter its meaning and close the hierarchical gap between the genders of man and woman. The second answer appeals to the (Freudian-derived) French Lacanian School, and it refers to sexual differences and not to gender. In this way their conviction is revealed, that in order to become speaking subjects we must be sexed, i.e. sexual difference is a process rather than something which is acquired; so the subject itself is formed through a subjection to sexual difference.⁶⁹ The theoretical debate goes on: which precedes the other, gender or sex, nature or culture.

Kate Millet argues in her 1970 book ‘Sexual Politics’, that intimate relations of sexuality, love and family are at the same time relations of power that could be viewed as the origin and foundation of gender divisions in many other areas of

⁶⁶ Cranny-Francis, A. *Et al.* Gender Studies Terms and Debates, 2003, Palgrave Macmillan New York, at p2

⁶⁷ Cranny-Francis, A. *Et al. Loc. cit.*, at p2-4

⁶⁸ Object relations theory is a school of thought associated with the work of Melanie Klein and Nancy Chodorow.

⁶⁹ Cranny-Francis, A. *Et al. Loc. cit.*, at p3-5

social life. In this light, she saw personal relations of intimacy in the private sphere as being central to the political relations of public life. Cultural representations and values create sexual differences of behaviour in family households and make them seem to be palpable and natural, thus legitimizing gendered forms of domination in other areas of social practice. So however intimate these personal relations might be there can at the same time be considered as relations of exploitation and oppression through which control is ordered. Feminists have described these power relations as patriarchy.⁷⁰

Patriarchy (or as sometimes called, sexism) indicates a social system in which structural differences in privilege, power and authority are invested in masculinity and the cultural, economic and social positions of men. Under a patriarchal regime women are excluded from positions of power and authority unless that power and authority works to support individual men or the social system as a whole, although this status may be challenged still. That means that for example, a woman might be authoritative as a teacher in the hope of reinforcing the values and attitudes that make up the social system; or she might be authoritative in the home towards her children and as a result offer a calm and supportive environment for her husband.⁷¹

However the term patriarchy has been critiqued for its monolithic interpretation of men and masculinity as the oppressor and the enemy, as well as for its inability to explain complex social processes such as class, and cultural dynamics.⁷² The position of some feminist theorists is that men have all the power and maintain it by systematically oppressing women. This view too has had negative consequences in that women are made to be the victims and structurally incapable of improving their social position other than by the benevolence or support of individual men.⁷³

⁷⁰ Scott, J. *Power*, 2001, Polity Press in assoc. With Blackwell Publishers Ltd. Cambridge/Oxford, United Kingdom, at p143

⁷¹ Cranny-Francis, A. *Et al. Loc. cit.*, at p15

⁷² Cranny-Francis, A. *Et al. Loc. cit.*, at p15,16

⁷³ Cranny-Francis, A. *Et al. Loc. cit.*, at p66

Cultural dialogue of masculinity and femininity, patriarchy and the patriarchal family, and the male breadwinner, set out the foundation for the dominant pattern of male strategic control in households.⁷⁴ The terms ‘male hegemony’ or ‘hegemonic masculinity’ are commonly used instead to refer to what is the widespread domination of men in the social, economic and cultural spheres. Hegemonic masculinity consists of practices and ways of thinking that allow and legitimise the dominant position of men and the subordination of women. This hegemony exists through family institutions, corporate and government institutions.⁷⁵

With this in mind, one can derive that because throughout their lives boys and men are under the supervision and surveillance of other males they may come to feel that at one point or another they may be deprived of their status as men. Consequently, excessive masculinity becomes the goal. This can be signified by anything from a muscular body, a so-called impressive sexual scorecard or an expensive car, to acts of violence towards women and children or even other men, particularly homosexual men, all in an attempt to assert their masculinity in the eyes of their male ‘superiors’ or comrades. These competitive features of hegemonic masculinity result in men’s demands for explicit emotional support from women, and where the women are not able to or are unwilling to provide it; this unmet need can easily turn to violence.⁷⁶

In many of the affected communities in South Africa, political conflict has been a reinforcement of a violent and ‘*macho*’ definition of manhood. A consequence of the apartheid system was the erosion of the traditional systems of patriarchy that operated in the pre-colonial South African societies. That is to say that as political power and duties were taken away, the men hung on to their dominant role in the family as breadwinner and head of the household in which women and children (including male children) deferred to the husband and father. Subsequently in the 1970s and 1980s a steep increase in male unemployment prevented many young males from creating families (or an *institution*) due to many financial constraints

⁷⁴ Scott, J. *Loc. cit.*, at p148

⁷⁵ Cranny-Francis, A. *Et al. Loc. cit.*, at p15,16

⁷⁶ Cranny-Francis, A. *Et al. Loc. cit.*, at p17

and above all the incapability to support a wife and children. Furthermore, the increasing politicization of the youth brought with it higher expectations and challenged the existing order of racial domination. There was then a need to reassert masculinity or *machoness* in a system that particularly disempowered men of colour.⁷⁷

There is no real link between political violence and violence against women, but the notion and pattern can be used to demonstrate the link between the deterioration of masculinity and self-esteem, along with the deterioration of the political situation in South Africa. It can also explain how identity and perceptions shifted to create inner power struggles, spilling over into the household (or domestic institutional) setting, and then affecting the society as a whole.⁷⁸

In order to demonstrate and highlight the inner gender and power struggle in South Africa, reference is made to Steve Mokwena's 1991 seminar paper on the 'jackroller' rapist youth gangs in the Soweto township urban area. He explains that term "jackroll" was created to refer to the forceful abduction of women in the township by a specific gang called the Jackrollers which operated in the Diepkloof area under the leadership of Jeffrey Brown in 1987-1988. The most notable practices of the Jackrollers were rape and abduction, car theft and bank robbery. But as the abduction of women became *fashionable*, anyone who did it could be called a jackroller, and jackroll became a commonly used verb in the township vocabulary.⁷⁹

The dramatic increase in township youth-based violence was specifically directed against young women, as was (and still is) the fashion. Initially many of the victims of jackroll were those women who were thought to be out of reach because of their class and status. It is apparent that rape, like all forms of male perpetrated violence against women, is connected to the broad socio-cultural

⁷⁷ Human Rights Watch/Africa, Women's Rights Project, *Violence Against Women in South Africa – State Response to Domestic Violence and Rape*, 1995, Human Rights Watch USA, at p21,22

⁷⁸ Ibid

⁷⁹ Mokwena, S. Seminar No. 7, 30 October 1991, "The Era of the Jackrollers: Contextualising the Rise of Youth Gangs in Soweto", delivered at the University of Witwatersrand, Johannesburg, South Africa, retrieved from the Centre for the Study of Violence and Reconciliation
<http://www.csvr.org.za/wits/papers/papmokw.htm#note55> accessed on 02/06/11

environment which is immersed in beliefs of male dominance, supremacy and aggression. Men have been *taught* to define their power in terms of their capacity to realize their will especially over women, without their consent or the consent of any of those involved. This was and is evident in the attitudes of young males towards sex and sexuality.⁸⁰

It is within this context that jackroll has taken root. An unusual characteristic of jackroll is that it is seen as a sport of the tough gangsters, i.e. the ‘macho’. There is actually a common township saying that: "*Jackroll is not a crime, it is just a game*". Mokwena quotes a commentator who mentioned that, it "*has become a male fashion...a popular form of male behaviour indulged in by even young school boys...The tough and ‘manly’ Jackrollers become their role models.*" It seems reasonable to argue that jackroll is directly linked to attempts by young males to reassert their power by means of warped masculine sexuality. There are a number of things which make jackrolling different from ordinary rape. Firstly, it is primarily a youth phenomenon. Secondly, it is almost always committed in the open, in public places like shebeens⁸¹, picnic spots, schools, nightclubs and in the streets and the rapists do not even try to conceal their identity. In fact, one could construe that part of the *exercise* is to be exposed so as to earn “respect”.⁸²

Other gangs like the ‘Zebra Force’, have claimed many women as their victims. Women are insignificant yet crucial components of this youth culture. They are seen as objects of competition and as sources of affirmation of the masculinity of the young men. This gender specific youth subculture draws from and exaggerates and distorts commonly held values in the township. Young women are thus victimised both directly and indirectly. They have to be ultra cautious in their movement, what they wear, and which places they visit. These added restrictions help to further entrench their particular sense of inferiority and marginalisation.

⁸⁰ Mokwena, S. *Loc. cit.*

⁸¹ Shebeens were originally illicit bars or clubs where alcohol was sold illegally, particular to Ireland, Canada, Scotland, Zimbabwe, Namibia and of course South Africa. In Zimbabwe under the Rhodesian era and in South Africa under apartheid the shebeens mostly served black township areas as blacks could not enter white bars. Today they are legalized and still serve as a symbol of community and identity.

⁸² Mokwena, S. *Loc. cit.*

Mokwena referred to a remark by a 17 year old female student in Soweto who said: *“I am afraid of the jackrollers. They are affecting all of us as girls. We are not safe anymore. We can't even walk in the streets without being harassed by hooligans.”*⁸³

Sexual roles and stereotyping imparted through the home and the school environment, and reinforced by the media, are retained in such youth subcultures instead of action being taken against such sexual hegemonic norms.⁸⁴

ii. POWER: THE ROLES OF GENDER, POVERTY AND APARTHEID

In analyzing forms of violence against women such as rape, one has to analyze power dynamics, as well as the social developments therein. Herbert Jaeger fittingly points out that:

*“individual actions cannot be interpreted in terms of isolated deeds and selective events, but only in terms of the broader frame of collective action that constitutes the basic prerequisite for all individual actions. The single deed is conditioned by a conflict occurring in society as a whole and is, thereby, embedded in specific events on a macro-level. It is in this sense that it [violence] does not signify deviant but conformal behaviour.”*⁸⁵

Rape is a complex construction of power and power relations that are given meaning through personal and social identities.⁸⁶ Generally speaking, power is the production of causal effects; and agents exercise causal power that produce specific effects. The outcomes and effects of social power, a type of causation,

⁸³ Mokwena, S. *Loc. cit.*

⁸⁴ *Ibid*

⁸⁵ Buetow, T., Christ, M., and Gudehus, C., *loc. cit.*, at p8

⁸⁶ Moolman, B., Chapter 7 – ‘Race, Gender and Feminist Practice – Lessons from Rape Crisis Cape Town’, in *Women's Activism in South Africa*, University of Kwa-Zulu-Natal Press, South Africa, 2009, at p185

can be seen in and through social relations. Within any society there is a given distribution of power, with some agents holding more of the power than others.⁸⁷

Power can be considered as relational, as opposed to hierarchical. So that is to say, instead of seeing power as a repressive force that some people have access to and others do not, it can be thought of as an enabling force – enabling things to happen. Foucault’s description of power is referred to here: *“power is not an institution, and not a structure; neither is it certain strength we are endowed with; it is the name that one attributes to a complex strategical situation in a particular society.”*⁸⁸ So for Foucault power is our perception of, what he called ‘the matrix⁸⁹ of forces’ in operation that we recognise as power; and not that power is essentially in particular institutions, situations or individuals. Importantly, according to Foucault, power is pervasive: *“power is everywhere; not because it embraces everything but because it comes from everywhere.”*⁹⁰ Thus, we are all involved in the operations of power, and no particular group can exclude itself from the operation of power because no group exists in isolation. Therefore power will operate and produce effects even in the most isolated group. This is not to say that some groups are not potentially privileged by their position within conventional society, but it argues against basic structural models which maintain that all men are abusive and perpetrate and all women are subjected their victims.⁹¹ Tussles over the distribution of this power always involve winners and losers. In this cycle, individuals pursue their own interests, appetites and desires at the expense of others.⁹²

Foucault points out: *“If we speak of structures or mechanisms of power, it is only insofar as we suppose that certain persons exercise power over others.”*⁹³ In this

⁸⁷ Scott, J. *Loc. cit.*, at p1,2,7

⁸⁸ Browne, J. Ed., *loc. cit.*, at p66

⁸⁹ The matrix is constituted firstly by many different relations of force (cooperative, resistant and transformative) that function in a given sphere of activity; and secondly, by the strategies by which they operate. This matrix is what Foucault described as power.

⁹⁰ Browne, J. Ed., *loc. cit.*, at p67

⁹¹ *Ibid*

⁹² Scott, J. *Loc. cit.*, at p1,2,7

⁹³ Scott, J. *Loc. cit.*, at p30

regard, power needs to be understood as a social relation between two agents: the principal who is the paramount agent, exercises the power; and the subaltern who is the subordinate agent, is the affected party. When principals have the ability to restrict the choices that subalterns are able to make, acts of power are realised. So the greater the restrictions are, the greater the power of the principal.⁹⁴

Power is or becomes legitimate because and when it is accepted as being right, correct, justified or valid in one way or another. This legitimacy flows from the internalisation of notable cultural meanings (this could be norms of male superiority) and an identification of a kind with those seen to be in positions of authority.⁹⁵ According to Foucault, violence takes place when the limits of power are reached; therefore power is not coercion or violence in itself.⁹⁶

According to Giddens' theory of *structuration*, agency is only possible because of resources that exist as a result of the meaning that society ascribes to them. For instance, because of the given meaning of money and authority, the affluence of a wealthy person or command of a political leader prevails. Giddens also believes that power is exercised as a process and it is enabling as well as constraining. In this sense, power cannot be accredited to (availability of and access to) resources; it is comprised through processes of negotiation or conference between individuals in society.⁹⁷ Steven Lukes examines power in terms of interests and argues that power is formed by society. From this viewpoint, biases [or rather prejudices] are inherited from the past by way of the structured or culturally patterned behaviour of groups. Another aspect of Lukes' concept of power is the relationship between power and knowledge: power distorts knowledge by

⁹⁴ Ibid

⁹⁵ Scott, J. *Loc. cit.*, at p2,3,20

⁹⁶ Csaszar, F., *Understanding the Concept of Power*, In: Alsop, R., Ed. *Power, Rights, and Poverty: Concepts and Connections*, A working meeting sponsored by DFID and the World Bank, March 23-24 2004, The International Bank for Reconstruction and Development/The World Bank and the Department for International Development, London/Washington, retrieved from:

<http://siteresources.worldbank.org/INTEMPowerment/Resources/PPFinalText.pdf> accessed on 25/06/11 at p141

⁹⁷ Csaszar, F., *loc. cit.*, at p142

distorting the truth to the benefit of the dominant group's interests. Lukes stresses that when analyzing power, overlooking the relationship between social knowledge and power is a mistake.⁹⁸

How one thinks and feels about power depends on a number of factors: first, the identities imparted in childhood (such as female, Coloured, upper class, Christian); second, the chosen identities (such as feminist, internationalist, anti-racist); third, the way one learned and thinks about how the world works, from how one has been educated and the disciplines one has specialized in (for instance, sociology, economics, engineering); fourth, the course of one's engagement with development⁹⁹; and fifth, other contingent life events that have shape one's intellectual and emotional comprehension of why the world is as it is, how one places oneself in that world, and how one would like that world to be transformed or to remain as it is. These factors are put into effect when discussions are engaged on the subject of power, empowerment, as well as poverty reduction.¹⁰⁰

Understanding the operations of power unavoidably means examining gender more closely and the frameworks thereof. Gender essentially is a term intended to investigate the conceptual, material, historical and institutional construction of power that together contribute to the understandings and perceptions about women and men, masculinities and femininities, which exist in any given place at any given time. In situations of armed conflict or political violence for instance, women and men can both be active agents and victims of conflict and political violence, although the two groups are positioned and perceived quite differently. Women are usually portrayed as the victims of violence, and men as the actors and agents. So in this sense prevailing understandings about women and men, as

⁹⁸ Csaszar, F., *loc. cit.*, p140

⁹⁹ That could be one's career and current professional standpoint.

¹⁰⁰ Eyben, R., *Linking Power and Poverty Reduction*, In: Alsop, R., Ed. *Power, Rights, and Poverty: Concepts and Connections*, A working meeting sponsored by DFID and the World Bank, March 23-24 2004, The International Bank for Reconstruction and Development/The World Bank and the Department for International Development, London/Washington, retrieved from:

<http://siteresources.worldbank.org/INTEMPowerment/Resources/PPFinalText.pdf> accessed on 25/06/11 at p15

well as the material conditions of their lives can notably shape their experiences in institutions, nations or social processes.¹⁰¹

A sizeable number of international relations feminists see gender as the relational construction of masculine and feminine identities, with masculine identities being the preferred ones, and the identities that signify power relations of domination and subordination among individuals and groupings in general. Gender is thus understood to infuse all aspects of international relations.¹⁰² Importantly though, power does not just operate at a distance; it is not detached from the lives of individuals. Power informs all social relations. Sandra Whitworth quotes Peterson in her writing, who wrote: “[power] orders ‘everything’ and disrupting that order feels threatening – not only at the ‘level’ of institutions and global relations but also in relation to the most intimate and deeply etched beliefs/experiences of personal (but relentlessly gendered) identity.”¹⁰³ This emphasizes how personally powerful gender is, and does not merely emphasize the primacy of gender over other relations of inequality. It points out the ways in which gender enlightens and impacts the most intimate parts of individuals and indicates how effective forms of exclusion systematized through gender can be.¹⁰⁴

Although the apartheid system focused on race and ethnicity, gender was a part of the picture too. Women of all races were legally inferior to men and were brought under direct state control to a great extent than in the period before 1948. Thus it can be said that in every respect women, especially women of colour and African women were especially disadvantaged.¹⁰⁵ Poverty for instance, remains to be a disproportionately female phenomenon.¹⁰⁶

To be able to appreciate the workings of power in the context of South Africa, one needs to comprehend the contribution of the apartheid system and the significance of any existing poverty that was the result of the system. Despite being a middle

¹⁰¹ Whitworth, S., *loc. cit.*, at p398

¹⁰² True, J., *loc. cit.*, at p414

¹⁰³ Whitworth, S., *loc. cit.*, at p398,9

¹⁰⁴ Whitworth, S., *loc. cit.*, at p399

¹⁰⁵ Human Rights Watch/Africa, *loc. cit.*, at p15

¹⁰⁶ *Fact Sheet: Gender Equality and Equity in South Africa, loc. cit.*

income country, South Africa is one of the most unequal societies in the world, and to a large extent and primarily (but not entirely¹⁰⁷) the inequalities are based on race. South Africa's rich are exceptionally rich and South Africa's poor are particularly poor (even relative to other unequal societies). The policies of apartheid highlighted the economic disparities between races that had already been introduced by segregation during the colonial era prior to 1948. Black South Africans were forced to live in substandard housing in townships or in the colonial time African tribal reserves after being removed from the "white areas" forcibly. The blacks were excluded from opportunities for development by legal restrictions in economic activity for non-whites among other strategies. There were laws that prohibited Africans without official permission from working, travelling or living outside certain areas.¹⁰⁸

In the hope of new horizons, the 1994 election manifesto of the leading political party, the African National Congress (ANC) Reconstruction and Development Programme, promised that the topmost priority of the new democratic government would be "attacking poverty and deprivation". They promised a "better life for all".¹⁰⁹ More concretely, socio-economic rights were even included in the 1996 constitution.¹¹⁰ The 1997 preamble to The White Paper on Social Welfare of South Africa envisioned, "*a humane, peaceful, just and caring society which will uphold welfare rights, facilitate the meeting of basic human needs, release people's creative energies, help them achieve their aspirations, build human*

¹⁰⁷ In a 2005 analysis of the changing nature of inequality in South Africa in the second half of the twentieth century, Seekings and Natrass argue that the basis of inequality had shifted from race to class quite before 1998. The shift from Apartheid meant that the state could dismantle policies of racial discrimination. White privilege was not undermined, and black South Africans could be move upwards into the middle class. Privilege no longer was associated with race.

[REF: Seekings, J., *Poverty and Inequality after Apartheid*, Paper prepared for the second 'After Apartheid Conference', Yale, 27-28 April 2007, retrieved from: <http://www.yale.edu/macmillan/apartheid/seekingsp2.pdf> accessed on 25/05/11 at p9]

¹⁰⁸ Human Rights Watch/Africa, *loc. cit.*, at p15

¹⁰⁹ Seekings, J., *loc. cit.*, at p 3

¹¹⁰ Section 2 specifies everyone's right to have access to healthcare services, food, water and social security. Section 28 stipulates specific rights for children and section 29 pertains to rights to education. And according to section 7 para. 2, these among other rights are said to be based on the "democratic values of human dignity, equality and freedom".

[REF: Seekings, J., *loc. cit.*, at p3]

capacity and self-reliance, and participate fully in all spheres of social, economic and political life."¹¹¹

Nonetheless, income poverty and inequality have increased according to the 2003 UNDP South Africa Human Development Report. The defeat of the apartheid political order did not motion a decline or reversal of poverty, inequality or social and economic dynamics of exclusion. The total percentage of people living in poverty had fallen from 51.1% in 1995 to 48.5% in 2002, when a national poverty line based on 1995 values, of ZAR354 per month per adult equivalent was used. The figures based on the World Bank's line of US\$2 per day had also dropped from 24.2% in 1995 to 23.8% in 2002. However, the number of people living in destitution i.e. US\$1 per day, had risen from 9.4% in 1995 to 19.5% in 2002. Furthermore, from 1995, regardless of the drop in the rate of people living in poverty, the total number of poor people had reached 21.9 million by 2002, which was an increase of 1.7 million people. These increases have led economists to debate the presence of new dynamics that are aggravating the apartheid movements of exclusion and impoverishment.¹¹²

In his April 2004 inauguration speech and after ten years of democracy, the then re-elected President of the post-apartheid nation of South Africa, Thabo Mbeki, aimed to fight the threatening poverty situation.¹¹³ He said:

¹¹¹ *The Measurement of Poverty in South Africa Project: Key Issues*, Studies in Poverty and Inequality Institute, Johannesburg, 27 February 2007, retrieved from:

http://www.sarpi.org.za/documents/d0002801/Measurement_poverty_SA_SPII_Feb2007.pdf accessed on 25/06/11, at p27

¹¹² *The Measurement of Poverty in South Africa Project: Key Issues*, loc. cit., at p6,7,17

¹¹³ 'Mbeki sworn in for a second term', Daily Mail Online, 27 April 2004, retrieved from:

<http://www.dailymail.co.uk/news/article-259997/Mbeki-sworn-second-term.html> accessed on 12/06/11 accessed on 12/06/11.

Most people in South Africa agree upon the need to address and reduce poverty. This can be identified in several national initiatives that have attempted to identify ways in which to reduce unemployment and poverty. For example, the 1998 Presidential Jobs Summit; 2003 Growth and Development Summit and the provincial Growth and Development initiatives. High levels of public engagement around poverty have been lead by (amongst others) former President Nelson Mandela, Emeritus Archbishop Desmond Tutu and their respective philanthropic trusts. The country has also seen a sizeable increase in the rate of corporate social investment in recent years, in addition to the high level of individual donations to charities, especially to the religious organisations addressing various states of vulnerability.

*"Endemic and widespread poverty continues to disfigure the face of our country. It always will be impossible for us to say that we have fully restored the dignity of all our people as long as this situation persists. For this reason the struggle to eradicate poverty has been and will continue to be a cornerstone of the national effort to build the new South Africa."*¹¹⁴

Mbeki¹¹⁵ has described South Africa as a 'two-nation' society, with each 'nation' distinguished by unequal access to infrastructure and opportunities:

*"One of these nations is white, relatively prosperous, regardless of gender or geographical dispersal. ...The second and larger nation...is black and poor, with the worst affected being women in the rural areas, the black rural population in general, and the disabled."*¹¹⁶

For our purpose, I will now attempt to expand on this notion of poverty and the causes thereof in the South African context.

The narrow concept associates poverty with the lack of resources necessary for a human being's basic survival. Broader concepts appreciate that poverty is multidimensional and that a far more extensive range of resources is required than just merely what is necessary to ensure survival, for the well-being or social inclusion of any human being. This view includes issues such as housing, health, education, access to services, social power relations and the like. A more recent conceptualization aims to define the required resources of any individual that lives in a community or society as inherent to human dignity in promoting social cohesion and inclusiveness. So a person could be considered poor if they lack the ability to participate in their broader society as a full citizen. The term *deprivation* extends these concepts and indicates the effects of poverty on an individual's life, by taking into account how being poor puts limitations on what an individual can and cannot do, in relation to both immediate and future actions.¹¹⁷

[Ref: *The Measurement of Poverty in South Africa Project: Key Issues, loc. cit.*, at p17]

¹¹⁴ *The Measurement of Poverty in South Africa Project: Key Issues, loc. cit.*, at p1

¹¹⁵ House of Assembly, 29 May 1998

¹¹⁶ Seekings, J., *loc. cit.*, at p 9

¹¹⁷ *The Measurement of Poverty in South Africa Project: Key Issues, loc. cit.*, at p1, 8

There are several ways in perceiving the causes of poverty. *Residualist* notions see poverty as the result of being left out of the growth and development process. On the other hand, *structural* notions indicate that growth and development can in themselves produce poverty and inequality. Poverty can also be a political issue in the sense that it relates to the allocation or distribution of resources and reflects upon the impact of policy choices whether past or present.¹¹⁸ In an example taken from South Africa, unemployment is understood to be the main cause of poverty for many people; and education, or the lack of it as a contributory factor.

Unemployment is influenced by the changes in global and domestic production strategies, as well as the political economy's historical trajectory.¹¹⁹ The effects of unemployment on poverty are heightened by the growth of an 'underclass' of people that face no actual possibility of escaping from poverty because these people suffer systematic disadvantage in the labour market. Surveys suggest that around 1994 the unemployment rate was about 30% - by the broad or expanded definition¹²⁰. By early 2003 unemployment had reached 42.5% and approximately 8 million people were unemployed - by the broad definition¹²¹, under the post-1994 ANC governments. Although these rates have dropped, unemployment rates are much higher today than they were in 1994 and remain higher than most places in the world. For many of the affected people, poverty will end when they find employment. However, others lack crucial elements which would otherwise have assisted them in the search for jobs: the skills, credentials and social capital i.e. connections, for example employed friends or family who could help someone find employment.¹²² In his paper, David Mosse argues that effectively changing

¹¹⁸ *The Measurement of Poverty in South Africa Project: Key Issues, loc. cit.*, at p5

¹¹⁹ *The Measurement of Poverty in South Africa Project: Key Issues, loc. cit.*, at p15

¹²⁰ By the strict or narrow definition, the unemployment rate was less than 20%. The strict definition includes only active job-seekers, while the broad definition includes also people who want employment but are not 'actively' searching for it.

¹²¹ By the strict definition the rate had increased to 31.2% by 2003 and more than 4 million people were unemployed.

¹²² Seekings, J., *loc. cit.*, at p 12,13

power relations and empowering poor people always involves influencing political structures and processes to change the relative position of the poor.¹²³

Education as the second immediate cause of (income) poverty and inequality is brought about by the low quality of education that South African schools offer. In some cases this is due to constraints of inadequate conditions (although the redistribution of public resources to schools in poor areas has gotten rid of the most evident inequalities and conditions for the most part). Inequalities in the classroom are a result of differences in the quality of teaching¹²⁴ and the level of student discipline remain; as well as inequalities in family background. Pass rates in the essential subjects remains low, and surveys show that a minority of about 40% of each age group completes grade 12 (i.e. matric level, the last year of high school) successfully. The end result of the low standard and quality of education is that most young South Africans leave school for the labour market with limited skills, and unequipped for skilled or even semi-skilled employment, thus producing a mismatch between the supply and demand for labour in an economy which continues to restructure around skilled employment. Those unskilled that are fortunate enough to find employment in such conditions are afflicted by low earnings. And so continues the cycle of unemployment, poverty and inequalities.¹²⁵

Inequality, taken in a sociological sense for the purpose of this chapter, is a characteristic of social power relations and is present if disparity in power relations is connected to membership of different social groups. That means that

¹²³ Alsop, R., and Norton, A., *Power, Rights and Poverty Reduction*, In: Alsop, R., Ed. *Power, Rights, and Poverty: Concepts and Connections*, A working meeting sponsored by DFID and the World Bank, March 23-24 2004, The International Bank for Reconstruction and Development/The World Bank and the Department for International Development, London/Washington, retrieved from:

<http://siteresources.worldbank.org/INTEMPowerment/Resources/PPFinalText.pdf> accessed on 25/06/11 at p8

¹²⁴ The school curriculum was restructured after 1994 but the quality of education was not improved. In fact, it may have exacerbated inequalities because teachers in schools in poor areas often lack the necessary skills or motivation required to apply the new curriculum. As an illustration, in the Trends in International Mathematics and Science Study 2003 round, South African grade 8 students performed worse in both science and mathematics tests than their counterparts in all the other participating countries, including Egypt, Botswana and Ghana. The 75th percentile in South Africa achieved around the same score as the 25th percentile in Botswana. [REF: Seekings, J., op. Cit. at p14]

¹²⁵ Seekings, J., *loc. cit.*, at p 14,15

unequal power relations can be associated with differential access to political or socio-economic rights, thereby linking inequality to the concept of social exclusion. Inequality is also a feature of relations. It has been linked to the existence of social hierarchies that are extremely institutionalized, for instance in societies where class identity and race are closely connected or in slave and post-slave societies.¹²⁶

It can be said that the notions or beliefs that make up specifically gendered and racialized men and women, masculinities and femininities, or nations and institutions, that is to say, the forms of exclusion or privilege organized through gender, are never closed or fixed, they are instead always being produced and reproduced.¹²⁷ In South Africa, the spill-over effect of first the colonial era of segregation and then the racist era of apartheid compounds this dynamic through the creation of powerlessness and impotence which imposes a form of "inferiority complex" upon its victims. Males of colour of all ages, for the most part, have to deal with their inferior status, often experienced as enfeeblement, in society and in the workplace. This inferior status contradicts their socialisation and leads to chronic feelings of inferiority, accompanied by deteriorating economic circumstances and the resulting periods of unemployment. Unemployment in this context would then be experienced as a personal, rather than a social failure. A sense of inferiority can then be induced often resulting in aggression. A situation is therefore created where violence is used as a means of increasing self-esteem. Women become the victims of displaced aggression, the victims of a symbolic reassertion of masculinity and control as the more vulnerable party. Thus, the use of physical force against the 'weaker' young women has found widespread acceptance and has become the 'norm'.¹²⁸

¹²⁶ *The Measurement of Poverty in South Africa Project: Key Issues, loc. cit.*, at p11

¹²⁷ Whitworth, S., *loc. cit.*, at p399

¹²⁸ Mokwena, S. *Loc. cit.*

iii. CULTURAL PERCEPTIONS AND RAPE MYTHS

Cultural taboos around sexual violence means that it is usually approached in a one-dimensional way. Jewkes observed that rape occurs within a range of sexual violence offences which can range from pressurised consensual intercourse to attaining sex by lying or threatening; using physical force; or drugging someone. In a 2004 study conducted by Mexico's Centro de Investigacion de Enfermedades Tropicales (CIET), with almost 270,000 South African boys and girls aged 10 to 19, it was found that 58% of all the respondents were of the opinion that "sexual violence does not include forcing sex with someone you know". "Girls do not have a right to refuse sex with their boyfriend", was the answer of another 30% of respondents¹²⁹. Out of the respondents, 8.6% of them, male and female, had been forced to have sex in the past year. It turns out that 66% of males and 71% of females who admitted to having had forced someone else to have sexual intercourse, had themselves been forced to have sex at some point in their lives.¹³⁰

Findings from a previous study (The South African Medical Journal, 1996) of surveys conducted in the Eastern Cape province were that 28% of young girls became sexually active because they were "forced by a partner" and a further 20% mentioned peer pressure. 24% of young girls in the KwaZulu-Natal province surveyed in 2001 said they were "persuaded" or "tricked" into their first sexual experience, as reported in the *Reproductive Health Matters* journal. This prevalence of sexual violence against adolescents creates attitudes that condone or expect such violence, and stereotypes about sexual violence thus remain.¹³¹

Furthermore, South African women are reminded more than is necessary that their democratic equality in the public domain does not translate into equality in the private domain. This is better illustrated by the statement: "Democracy stops at my front door" or by men (or people) who do not believe in democracy in the home; that believing in democracy outside the home is the necessary extent of the

¹²⁹ The article does not however indicate the gender proportions of the feedback given. The percentage provided is collective, referring to answers given by both male and female respondents.

¹³⁰ "Sexual assault hidden in culture of violence", *loc. cit.*

¹³¹ *Ibid*

requirement of participation in the new democratic South African Republic.¹³² So although the importance and value of human rights is recognized, cultural and religious objections are often raised to the question of women's human rights, and matters that are believed to be personal or things that happen under ones' own roof are difficult issues to approach.¹³³ As proposed, it is possible that rape covertly is a way in which to *police* this fault line.¹³⁴

Dynamically, culture can be seen as “unbounded, contested, and connected to relations of power, as the product of historical influences rather than evolutionary change.” This is a broad way of comprehending culture and it emphasizes the active making of culture, society and institutions. Raymond Williams' perspective of culture explains heterogeneity of cultural practices in society. Williams makes a distinction between the forms of culture accordingly: dominant, residual and emergent. The dominant culture he says is a “central system of practices, meanings and values” that is in a process of continuous modifications and is selected from a series of possibilities. Relying on this explanation means that culture is not fixed, and as Hobsbawn continues, customs and traditions are “constantly invented to serve the interest of particular groups within culture.”¹³⁵

In order to uncover the notion of culture and cultural perceptions in relation to rape in South Africa, the 2006 rape trial of the former Deputy President, Jacob Zuma¹³⁶ will be used as a case study. The trial and judgment exposed many

¹³² Moffett, H., Chapter 6, *loc. cit.*, at p172,3

¹³³ Cole, E. A., Ed., 'Rights for all in the new South Africa' – An interview with Christopher Harper, *Violence Against Women, Human Rights Dialogue*, Series 2 Number 10, Fall 2003, Carnegie Council on Ethics and International Affairs, retrieved from: http://www.carnegiecouncil.org/media/1061_hrd2-10.pdf accessed on 24/05/11

¹³⁴ Moffett, H., Chapter 6, *loc. cit.*, at p172,3

¹³⁵ Krieg, S., *Culture, Violence and Rape Adjudication: Reflections on the Zuma Rape Trial and Judgment*, Internet Journal of Criminology, retrieved from: <http://www.internetjournalofcriminology.com/Krieg%20-%20Culture,%20Violence%20and%20Rape%20Adjudication.pdf> accessed on 09/06/11, at p5,6

¹³⁶ Zuma became Deputy President of South Africa and Vice President of the leading African National Congress (ANC) party in 1999 where he was once the favourite to succeed President Thabo Mbeki after he leaves office in 2009. He was relieved of his duties as Deputy President of the country in June 2005 after corruption charges were laid against him. He had also stepped down from all political offices for the duration of the rape trial (although remaining chancellor of the University of Zululand. He was back in office as Vice President for the ANC after his acquittal in the rape case. Like many leaders of his Zulu community, Mr Zuma is a polygamist; he has been married at least five times, and has reportedly 20 children who are not necessarily only by his wives.

aspects such as the question of South African culture and tradition, which can be useful for the purpose of this research paper. More concretely, the extent to which cultural arguments play a role in rape and some types of understandings of culture and traditions can be demonstrated through this case. The relevant legal aspects of this case will be discussed in later chapters.

In November 2005, the complainant, a 31 year old daughter of a family friend and a publicly known AIDS activist, laid a charge against the 64 year old Jacob G. Zuma, alleging that he had raped her on the night of the 2nd November 2005 which she spent at his house, in the guest room, in Forest Town, Johannesburg¹³⁷. Both sides agree that sexual intercourse took place. The exact course of events regarding where the intercourse took place and whether the complainant consented were in dispute¹³⁸. Subsequently, the case was tried at the Witwatersrand Local Division of the High Court of South Africa in April 2006¹³⁹ and ended with the acquittal of Zuma in May 2006.

An-Na'im argues for a cultural mediation of human rights and bases his concept of cultural dynamism. This assumes that "*powerful individual and groups tend to monopolize the interpretation of cultural norms and manipulate them to their own advantage*"¹⁴⁰. The power imbalance between complainant and the accused was clearly reflected in the support they each had. A simple observation is the way in which they entered the courthouse: Zuma arrived in pricey state cars, escorted by

¹³⁷ It is an uncontested fact that the complainant visited Zuma on 2nd November 2005 in his house in Johannesburg and stayed overnight in their guest room.

¹³⁸ The true story of that encounter remains murky. The claimant says she was sleeping overnight in a guest room in Zuma's flat when he came to the room, offered her a massage, then raped her when she declined. She has said she did not resist because she was too shocked to respond. Police reports indicate that Zuma initially said the encounter occurred in the guest room. But he has since testified that the woman came to his bedroom, climbed into his bed and asked for a massage, and that he concluded that she wanted sex.

[REF: Wines, M., 'A Highly Charged Rape Trial Tests South Africa's Ideals', The New York Times, published 10 April 2006, retrieved from:

<http://www.nytimes.com/2006/04/10/world/africa/10africa.html?scp=1&sq=a%20highly%20charged%20rape%20trial%20tests%20south%20africa's%20ideals&st=cse> accessed on 14/06/11]

¹³⁹ The trial proceeded after the recusal of one judge and the non-availability of two deputy judges in February 2006

¹⁴⁰ An-Na'im thus argues for an internal cultural discourse challenging certain elements of prevailing perceptions of the culture in question.

[REF: Krieg, S., *loc. cit.*, at p6]

armed security while being cheered on by his supporters (it is astonishing that on both sides most of the supporters were women); whereas the complainant sneaked in under police escort in order to stay anonymous for the sake of her safety. It is shown that it is vital to outline the importance of power and interests in deliberating on cultural arguments.¹⁴¹

Zuma's supporters drew on cultural justifications by appearing in Zulu ceremonial dress, singing traditional Zulu songs and performing traditional dances. There were even people wearing t-shirts reading "100% Zuluboy". They supported him on the basis that they belonged to the same ethnic group.¹⁴² Many supporters are reported to have been unemployed and were all convinced that the trial was a conspiracy against Zuma (in connection with the previous corruption charges) led by the then President Thabo Mbeki and his supporters. Along the same lines, the crowd's disdain for the complainant also seemed to be influenced by this ethnic loyalty, in that the complainant, also a Zulu, was rebuked by the supporters for not showing solidarity with her Zulu leader and ignoring her culture (i.e. "in our culture, rape is not a crime"). This can all be seen as some part of *African traditionalism*¹⁴³ which refers to the idea of *ukusizelana* i.e. mutual help or empathy. "To the typical Western person, the African must look very stupid supporting a man charged with corruption." writes Protas Madlala when commenting on Zuma's speech to his supporters during the Shaik corruption trial. But as Robinson cited, it is exactly this type of traditionalism that has been overlooked and disregarded. Strikingly it should be noted that the supporters were further fuelled in their ethnic rivalry by Zuma himself who led the crowd in choruses of an old anti-apartheid struggle song¹⁴⁴ when he would address them.¹⁴⁵

¹⁴¹ In spite of her attempt to protect herself, she did experience private humiliation when her home was broken into and ransacked and death threats were made to both her and her mother.

[REF: Krieg, S., *loc. cit.*, at p8]

¹⁴² Their support for Zuma also is due to an alleged ethnic rivalry between the Zulus and Xhosas. Zuma as a Zulu leader is meant to represent Zulu interests in the Xhosa (led by former President Thabo Mbeki) dominated ANC.

¹⁴³ During the Shaik corruption trial in Durban (which was related to the corruption charges against Zuma), Vicki Robinson explains that supporters took the side of 'their fellow' because "tradition dictates that helping a friend, as they believe Shaik [the then accused] assisted Zuma, is not a crime".

¹⁴⁴ *Awulethu mshini wam'* [Bring me my machine gun]

Even in court Zuma appeared as the model of the traditional Zulu man. And although he normally uses fluent English to communicate, in court he testified in Zulu.¹⁴⁶ He used patriarchal wording when he had to give descriptions of private details in court¹⁴⁷: when admitting to having entered the complainant's *isibhaya sika bab'wakhe* [her father's kraal¹⁴⁸] without *ijazi ka mkhwenyana* [the groom/husband's coat], while addressing the judge with the title of king of the court, '*nkos'-yenkantolo*.¹⁴⁹

Evocatively, in explaining his behaviour Zuma referred to Zulu culture on some occasions, and daringly turned the cliché argument 'she wanted it' into a cultural one going so far as to insist that the complainant sent him sexual invitations by ending off text messages with 'love, hugs and kisses', and by only wearing a kanga¹⁵⁰ without underwear when going to bed in his house.¹⁵¹ He went further in his testimony and said that the complainant had "signaled a desire to have sex with him by wearing a knee-length skirt to his house and sitting with legs crossed, revealing her thigh...in the Zulu culture, you cannot just leave a woman if she is ready" and denying her sex would be equivalent to rape. These statements lead Michael Wines of the New York Times to assert that Zuma was trying to put forward that he was being persecuted for his cultural beliefs.¹⁵² No further arguments based on culture were made once the claimant made clear that she would not have consented to intercourse without a condom, and that she said "no"

¹⁴⁵ Krieg, S., *loc. cit.*, at p8

¹⁴⁶ He had every right to do so since Zulu is one of the eleven official languages of South Africa as specified in section 6 of the Constitution.

¹⁴⁷ Although he knew that she was HIV positive and neither of the parties had a condom, Zuma said he was convinced that his chance of contracting HIV was small and that he took a shower after sex to minimize the risk. That has stunned AIDS experts here, who note that as the then deputy president, Zuma was perhaps the leading government official responsible for women's rights and the effort against AIDS.

[REF: Wines, M., *loc. cit.*]

¹⁴⁸ A Kraal is an Afrikaans and Dutch word for a traditional African village of huts enclosed by a fence; or an enclosure for livestock.

¹⁴⁹ Krieg, S., *loc. cit.*, at p9

¹⁵⁰ A kanga is a piece of colourfully printed cotton fabric which is usually worn by women. It is wrapped around the waist like a skirt. It is a most common traditional dress from East and Central Africa.

¹⁵¹ Krieg, S., *loc. cit.*, at p9

¹⁵² Wines, M., *loc. cit.*

twice [furthermore in the cross-examination she stated that in any case, she considered herself to be a lesbian].¹⁵³

Despite the immense support for Zuma, many South Africans were left disappointed by his insistence that his testimony reflected traditional values. Ms. Nomboniso Gasa, a political analyst¹⁵⁴ stated that these non-supporters find it abhorrent that Zuma has broken every socio-cultural rule. She said that Zuma was likely to maintain broad support in parts of South African society, regardless of what the Constitution and laws state, even if only because much of the population remains staunchly patriarchal.¹⁵⁵

By Zuma changing arguments into cultural ones it appears to be exploitation of cultural arguments and in so doing, ignoring that the usage of ‘modern laws’ is also part of another sort of culture - ‘human rights culture’. Zuma’s usage of culture in the trial is recognized as being fixed, rigid and in opposition to the ‘modernity’ of human rights laws. So although this case does not fit the so-called typical violent forms of rape in South Africa, cultural contexts are still used in justifying it.¹⁵⁶

Culture and conflicting perceptions are not the only issues that South Africans need be concerned about. As a matter of fact, more extreme issues plague the rape scene. Myths and misconceptions that float around in the society about rape, sex and AIDS often result in inhumane and unconceivable actions. For the purpose of this research paper the rape myths that affect children and babies will be briefly discussed. A few media and research reports will be used to briefly expose and expand on the matter.

BBC news in December of 2001 released a shocking report that a five month old girl was found covered in blood and tears in Johannesburg. She was not the only victim. On an impoverished Johannesburg residential property in early December

¹⁵³ Krieg, S., *loc. cit.*, at p10

¹⁵⁴ Ms. Gasa spent the 1980's in the African National Congress's underground and later worked on gender-equality issues for the party. She, at the time of the report, was writing a book about South African history.

¹⁵⁵ Wines, M., *loc. cit.*

¹⁵⁶ Krieg, S., *loc. cit.*, at p9

of the same year, where a family of eight sleeps in one bedroom, a neighbour seized the nine year old daughter, and after showing her pornographic magazines raped and indecently assaulted her. He apologized as he gave her a few coins. The girl required extensive surgery and her parents, who were not alone in their rage, were inconsolable. Almost daily newspapers would reveal devastating discoveries: nine month old gang raped by six men; an eight month old raped and left by the roadside.¹⁵⁷ The number of rape cases dealt with by child protection units more than doubled from 7,559 in 1994 to 15,732 in 1998.¹⁵⁸ From all implications the number is not seeing decline, and by the end of 2001 almost 32,000 reports of sexual assault on children were made.¹⁵⁹

Sexual violence against girls is commonly attributed to what seems to be popular belief in some communities, that sexual intercourse with a (young) virgin can "cleanse" men with HIV/AIDS.¹⁶⁰ Many are concerned that the myth may be the reason behind the increase in child rape cases over the years, however this is still debated. One prosecutor who represents many HIV positive children told Human Rights Watch that:

“The virgin rape myth is a major problem...The kids often die before we are able to finish the prosecution of their abuser. We're seeing younger and younger victims with an average age of six-guaranteed to be virgins. I am seeing more than one HIV-positive child a week. I can't completely attribute all their HIV status to the virgin rape myth, because it could be

¹⁵⁷ Phillips, B., 'Baby Rapes Shock South Africa', BBC World News: Africa, published: 11 December 2001, retrieved from: <http://news.bbc.co.uk/2/hi/africa/1703595.stm> accessed on 15/06/11

¹⁵⁸ Redpath, J., *Children at Risk*, Focus, 18 June 2000, Helen Suzman Foundation, retrieved from: <http://www.hsf.org.za/resource-centre/focus/issues-11-20/issue-18-second-quarter-2000/children-at-risk> accessed on 15/06/11

¹⁵⁹ Smith, A. D., 'South Africa Shocked as six Charged with Raping Baby', The Independent – Africa, 13 November 2001, retrieved from: <http://www.independent.co.uk/news/world/africa/south-africa-shocked-as-six-charged-with-raping-baby-girl-616747.html> accessed on 14/06/11

¹⁶⁰ Stephanie Shutte, a counsellor for Childline in the Western Cape, thinks that the increase in child-rape is directly related to the way HIV and Aids is perceived in the community, that the cleanliness and pureness of the child will eradicate the virus.

*that the mother was HIV-positive, but I do feel the myth is causing an increasing number of younger rape victims.”*¹⁶¹

Traditional healers, or otherwise known as ‘witchdoctors’, are blamed for spreading this idea. However it remains uncertain where the myth about sex with a virgin curing HIV/AIDS came from. A sociologist, Lisa Vetton, compares the situation to a time in Europe when child prostitution was rampant:

*“At that time venereal disease like AIDS today was incurable. If you had gonorrhoea or syphilis you were going to die. And exactly the same myth emerged, that sex with a virgin is going to cure you - so it seems like a very old response whenever sex and death are combined. Suddenly women - girls - get attributed with magical healing powers”.*¹⁶²

Other research suggests that child rape is also committed to avoid contracting the virus from older women i.e. as a preventive measure. The common belief is that they are less likely to be infected with HIV, so on these grounds and quite disturbingly, young women and girls have become particularly ‘attractive’ to men of all ages as sexual partners, willing or unwilling.¹⁶³

Childline’s Joan van Niekerk¹⁶⁴ expanded on the matter and said that it is hard to provide information on the extent of the sex-AIDS myth but confirmed that Childline was in contact with children who appeared to have been victims of the myth:

*“...They have been abused by adults and youths who are HIV-positive and ordinarily would not be sexually attracted to or active with children.”*¹⁶⁵

¹⁶¹ Chapter 4 – Background: Sexual Violence Against Girls, ‘Scared at School: Sexual Violence Against Girls in South African Schools’, 2001, Human Rights Watch Publications, retrieved from: http://www.hrw.org/legacy/reports/2001/safrica/ZA-FINAL-03.htm#P491_63053 accessed on 15/06/11

¹⁶² Phillips, B., *loc. cit.*

¹⁶³ Chapter 4 – Background: Sexual Violence Against Girls, ‘Scared at School: Sexual Violence Against Girls in South African Schools’, *loc. cit.*

¹⁶⁴ The Director of Childline at the time of the publication of the report.

¹⁶⁵ Redpath, J., *loc. cit.*

There are known cases of township youths who specifically target virgin girls and physically separate them from their colleagues (for instance, when walking home from school) and gang rape them. These girls are intimidated and seldom report the rape because of shame and their fear of retaliation.¹⁶⁶ As a result, very young girls run an increased risk of sexual harassment on their way to and from school. This has in turn led to isolated cases of girls being withdrawn from school or refusing to attend school.¹⁶⁷

Because rape perpetrators are rarely arrested and brought before the court; but even in those circumstances where they are caught and taken to court, they seldom acknowledge the crime, so it is not easy to comprehend and pick up on the motivation that lies behind the offence. Niekerk explains that, “*sometimes the motivation is not a simple one but a complex mix of myths and motivations. For example - 'I'm HIV positive and angry - I want to take revenge and infect as many others as possible.'*”¹⁶⁸

At the time of the media publication, November 2001, six men from a South African township were due to appear in court charged with raping the nine month old girl nicknamed ‘baby Tshepang’, in a two-room brick house in the Northern Cape. The baby’s grandmother found the child, covered in blood, without a diaper and crying uncontrollably on that Friday night¹⁶⁹. She called an ambulance and sent a neighbour to alert the priest. Mr Stuurman, the United Congregational Church priest professed that he was not surprised by the baby's rape because on a weekly basis he would hear of rapes¹⁷⁰, and that baby Tshepang’s 68 year old grandmother was raped three weeks before her. The police held six coloured men,

¹⁶⁶ Redpath, J., *loc. cit.*

¹⁶⁷ Chapter 4 – Background: Sexual Violence Against Girls, ‘Scared at School: Sexual Violence Against Girls in South African Schools’, *loc. cit.*

¹⁶⁸ Redpath, J., *loc. cit.*

¹⁶⁹ Police say the baby's mother who was aged 16 at the time, had left the baby “in the care of someone” while she went to buy food. The carer, a woman married to one of the accused, says she was sleeping in the next room with her 10 month old girl, and heard nothing. The father, (aged 21 then) who supposedly had a four year old boy by another woman, says he was at his own house.

¹⁷⁰ The priest shared that, “Often, when it is the white farmers doing it, they pay the victim 150 rands (£12) to withdraw the charge.”

aged 24 to 66,¹⁷¹ include the baby's grandfather and other relatives in custody. The baby was admitted to a hospital in Kimberley, where she was operated on to repair her injuries and given anti-retroviral drugs to try to minimize the chances of HIV infection.¹⁷²

Unimaginably, in the same week a 17-year-old boy was arrested for the rape of a four year old; another teenager appeared in court in connection with the rape of a three year old; a four year old girl died after allegedly being raped by her father; and two men were arrested for allegedly raping their 14 month old niece.¹⁷³ Reasonably, a resident, Johan van Wyk inquired: "...*Why a child? The baby was so young and could do nothing.*"¹⁷⁴ These cases terrify, repulse and bewilder many South Africans and worldwide observers alike who cannot conceive such atrocities. The escalation of not merely brutal rapes in recent years, but of baby rapes too, has shamed the nation into asking, "What is wrong with our men?"¹⁷⁵

Cultural beliefs, perceptions and justifications clearly play a significant role in matters of rape. A simple rumour can dramatically affect the way a man behaves and perceives a woman and the girl child. Tradition is used to fault and error, and its misuse is responsible for forming excuses that no one, even the courts, see fit to challenge or even question. The ailments in the South African society and in the attitudes and mentalities of her people go far back, deep into the very being of man, and surface as power or weakness; superiority or inferiority complexes; enlightenment or misconceptions. But either way it is clear that there are two separate and distinct struggles: the one of the women struggling against suppression and oppression; and the one of the men, an entanglement of inner complexities amidst unfavourable circumstances, which manifests in aggression. There is however, only one battle, a battle against rape and ideology.

¹⁷¹ At the time DNA tests were still yet confirm whether the baby was raped by all six men or not.

¹⁷² Smith, A. D., *loc. cit.*

¹⁷³ *Ibid*

¹⁷⁴ *Ibid*

¹⁷⁵ Moffett, H., Chapter 6, *loc. cit.*, at p178

3. THE SOUTH AFRICAN INTERNAL PROTECTION SYSTEM

What is being done to solve the rape problem is an issue that cannot be ignored. If the people believe that the justice system cannot help them recover from victimisation or inhibit further offending; and that the police and courts are indifferent to the needs of victims, or are incompetent, unfair or sexist, they are unlikely to turn to the justice system for help.¹⁷⁶ It is against this backdrop that the Department of Justice and Constitutional Development in the late 1990's drew up a framework for dealing with sexual offences. The document was meant to serve as a practical tool for the officials that work in the area in order to improve the experiences of victims in the legal system as a whole. I will make reference to this document in the sections below.

Besides relying on the law and enforcement, the actions of individuals, families, communities and organised civil society are as important as state efforts to reduce crime in general, and the level of occurrence of rape. Activist groups play an important role in seeing this through. Whether on a small community scale or in a political way, activist and support groups make noteworthy contributions and are a much needed force in society. Space does not permit for the activity of these groups to be discussed at length, but their influence and purposes will be briefly underlined below. However, the society does not always respond to crime in a constructive manner. Vigilantism¹⁷⁷ can be the result of the public losing faith in government's ability to offer protection, with destructive consequences for the functioning of the criminal justice system and in some cases the affected areas or

¹⁷⁶ Burton, P., Du Plessis, A., et al. *Chapter 5, Public Perceptions About Crime Prevention and Criminal Justice*, National Victims of Crime Survey South Africa 2003, Institute for Security Studies Africa, retrieved from <http://www.iss.co.za/pubs/monographs/No101/Append2.htm> accessed on 02/06/11

¹⁷⁷ **Vigilantism** "is the practice of taking the law into one's own hands, or in short, asserting justice based on the ideals, morals, and practices of an individual or group of persons. In practice, vigilantism may be in response to failures of existing law enforcement enforcing existing laws, or as the result of lack of laws governing or prohibiting a certain action or practice."

[REF: CriminalDefenseLawyer.com, retrieved from <http://www.criminaldefenselawyer.com/resources/criminal-defense/criminal-defense-case/what-vigilantism> accessed on 02/06/11]

communities.¹⁷⁸ In the particular case of South Africa, vigilantism is known as ‘mob justice’ or ‘township justice’, which will also be discussed further below.

Firstly though, I will outline the relevant international and regional African women’s and human rights instruments that the South African state and government is a party to, and therefore show its obligations under the provisions thereof. Following which I will turn to South Africa’s so called ‘new’ Constitution, and summarize the women’s and human rights provisions and structures therein that are meant to govern the nation and her peoples.

i. INTERNATIONAL AND REGIONAL LEGAL INSTRUMENTS

This section lays out the international and regional women’s and human rights instruments which South Africa has committed to and require compliance by government. As a source I refer to the paper prepared by the Department of Social Development of South Africa in 2009¹⁷⁹.

Human rights begins with the *Universal Declaration of Human Rights* which lays down that human rights applies to all people equally without any kind of distinction. The United Nations 1979 International Women’s Human Rights Treaty, the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW)¹⁸⁰, was ratified by South Africa in December 1995, and

¹⁷⁸ Burton, P., Du Plessis, A., *et al. Loc. Cit.*

¹⁷⁹ Molebatsi, K., Chapter 5, *Towards a 10-Year Review of the Population Policy implementation in South Africa (1998-2008)*, ‘Gender Equality and Equity’, February 2009, Department of Social Development Republic of South Africa, retrieved from: http://www.population.gov.za/pop_dev/index.php/Population-Policy-+-10-Review/View-category.html?mosmsg=You+are+trying+to+access+from+a+non-authorized+domain.+%28www.google.com%29 accessed on 24/05/11, at p12-20

¹⁸⁰ Article 16 of CEDAW speaks to equality in marriage and Family Law. Article 15 of CEDAW obliges State Parties to accord to women:

- a. Equality with men before the law;
- b. In civil matters, a legal capacity identical to that of men; in particular it gives women equal rights to conclude contracts and to administer property; and treat women equally in all stages of procedure in courts and tribunals;

subsequently so was its Optional Protocol in March 2005. CEDAW was the first document to comprehensively address women's rights in the realms of politics and culture, as well as in economic, social and family spheres. In 1993 the *Declaration on the Elimination of Violence against Women* (DEVAW) outlined ways in which governments should act in order to prevent violence and to safeguard women's rights. Under the DEVAW states are responsible "to exercise due diligence to prevent, investigate, and...punish acts of violence against women..."

The human rights of women and the girl child are recognized as an integral and indivisible part of universal human rights by the *Vienna Declaration and Programme of Action* 1993. Gender-based violence and all forms of sexual harassment and exploitation, not excluding those resulting from cultural prejudice, must be eradicated due to their incompatibility with the dignity and worth of the human person. The 1994 *International Conference on Population and Development* (ICPD) acknowledges the goal of the empowerment and autonomy of women, and the improvement of their political, social, economic and health status to be of key importance and vital for the achievement of sustainable development. Therefore enabling everyone to meet basic human needs and exercise human rights means investing in health and education for particularly the girl child and women. Governments are bound to implement the strategic objectives of the twelve agreed areas of concern concerning women, under the *Beijing Declaration and Platform for Action* (1995)¹⁸¹.

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- c. The same rights to that of men with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

¹⁸¹ The Declaration lists the human rights of women as a critical area of concern, and set the following strategic objectives:

- a. Promoting and protect the human rights of women through the full implementation of all human rights instruments, especially the CEDAW;
- a. Ensuring equality and non-discrimination under the law and in practice; and
- b. Achieving legal literacy

States are to fight all forms of discrimination against women by way of adopting and implementing suitable legislative and institutional measures, amongst others, as laid out in the *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*. The important African instrument for promoting gender equality and women's empowerment, the *Solemn Declaration on Gender Equality in Africa* (SDGEA)¹⁸², was adopted in Ethiopia in 2004. The Declaration strengthens African ownership of the gender equality agenda and at the highest political level in Africa, keeps these gender issues alive. Signatory governments commit to present annual progress reports on gender equality and implementation of the Solemn Declaration, as well as report on the state of gender equality and mainstreaming at both national and regional levels.

Additionally, the legally binding regional SADC *Protocol on Gender and Development* was signed in 2008, thereby representing an important step forward towards the empowerment of women; elimination of discrimination; and the achievement of gender equality and equity. The inclusion of gender equality and equity in National Constitutions; and the revoking of all discriminatory laws are some of the goals of the Protocol. Regional goals in relation to constitutional and legal rights, education and training, gender based violence, health and HIV/AIDS, and so on are also included in the Protocol. The Protocol contains solid, time-bound commitments aimed at protecting women's rights and ensuring equality between women and men. State parties are required to present progress reports every two years.

¹⁸² The Solemn Declaration compels signatories to:

- a. Ensure the active promotion and protection of all human rights for women and girls including the right to development by raising awareness or by legislation where necessary;
- b. Actively promote the implementation of legislation to guarantee women's land, property and inheritance rights including their rights to housing

ii. THE CONSTITUTION

The ‘new’ Constitution *had to* enshrine the rights of all groups in society because the aim at the time it was drafted was to ensure equality for everyone in the aftermath of a legacy of racism, sexism, homophobia and xenophobia. It was driven by a sense of ‘never again’. But in the areas of gender and sexuality the nation was arguably not ready for equality in the full meaning of the word; neither was such equality popularly endorsed.¹⁸³

South Africa, like most of its Southern African neighbours, has a mixed legal system comprising Roman-Dutch civil law, English common law, and customary law¹⁸⁴. The judicial authority of the Republic lies with the courts, which are independent and are subject to the Constitution and the law. Magistrates Courts, High Courts, Supreme Court of Appeals and a Constitutional form the judicial branch of the country. Each of the nine provinces maintains the legislative authority to pass a constitution for its province, only bound by it and the national Constitution.¹⁸⁵ Sexual Offences Courts were also established in the late 1990’s in order to reduce the possibility of secondary trauma for rape survivors which were caused by inappropriate and insensitive handling of cases in court.¹⁸⁶ By 1997 there was a marked increase in the reporting of cases and conviction rates in these

¹⁸³ Moffett, H., Chapter 6, *loc. cit.*, at p171

¹⁸⁴ Customary law in most African countries is based on the practices of the pre-colonial African societies. In some cases customary law reflected closely pre-colonial and contemporary African views on the nature of family and marriage. This view ended up becoming accepted as the correct interpretation of the position of women in African society, but when applied in courts, has failed to challenge certain discriminatory aspects of attitudes towards women in many ways. In light of previous cultural examination, it is significant that the Constitution provides for the function of customary laws; it guarantees cultural rights and has established formal structures for traditional status, roles and leadership. The courts, where applicable, must apply customary law. [Section 211(1-3)] Particularly in regards to South African customary law, it should be noted that the construction of norms and culture, as well as nature play an essential role. Ref. Also to Section 39 of the Bill of Rights.

¹⁸⁵ See: Chapter 6, Sec 146 of the Constitution on Conflicts between national and provincial legislation

¹⁸⁶ Other independent state-funded constitutional institutions and statutory bodies which monitor the protection and promotion of human rights, including the human rights of women include: the Public Protector, the Commission for the Promotion and Protection of Rights Cultural, Religions and Linguistic Communities, the Commission for Employment Equity (CEE); and the Commission for Conciliation Mediation and Arbitration (CCMA). South Africa retains the combination of marital regimes that were outlined in South Africa’s First CEDAW Report and which include civil, customary and religious laws. [REF: Molebatsi, K., *loc. Cit.* at p56]

courts in comparison to other courts.¹⁸⁷ For the purpose of this section, the relevant sections of the Constitution will be highlighted. All provisions will be compiled from the official South African Government Information site.¹⁸⁸

As laid out in the founding provisions of the Constitution of The Republic of South Africa, and as enshrined by the Bill of Rights, the sovereign, democratic state is founded on human dignity; the achievement of equality and the advancement of human rights and freedoms; non-racialism and non-sexism; supremacy of the rule of law; and a multi-party system of democratic government, to ensure accountability, responsiveness and openness. All citizens are equally entitled to the rights, privileges and benefits of citizenship.

Chapter 9 of the Constitution lays out the functions of the state institutions that support constitutional democracy. Of relevance to this paper is firstly, the Human Rights Commission, which must “promote respect for human rights and a culture of human rights; promote the protection, development and attainment of human rights; and monitor and assess the observance of human rights in the Republic.”¹⁸⁹ Furthermore, the Commission has the powers to “investigate and to report the observance of human rights; to take steps to secure appropriate redress where human rights have been violated; to carry out research and to educate.”¹⁹⁰

Secondly, the Commission for Gender Equality which must: “promote respect for gender equality and the protection, development and attainment of gender equality.”¹⁹¹ Respectively, the Commission has the power to “monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.”¹⁹²

¹⁸⁷ Statement by the Minister of Justice, Dr A.M. Omar MP, on the launch of a Sexual Offences Court in Wynberg, Cape Town on 1 August 1997, South African Government Information, 31/07/97, retrieved from: <http://www.info.gov.za/speeches/1997/08010X70797.htm> accessed on 17/06/11

¹⁸⁸ Constitution of the Republic of South Africa 1996, South African Government Information, retrieved from: <http://www.info.gov.za/documents/constitution/1996/index.htm> accessed on 16/06/11

¹⁸⁹ Section 184 (1)(a-c)

¹⁹⁰ Section 184 (2)(a-d)

¹⁹¹ Section 187 (1)

¹⁹² Section 187 (2)

Lastly, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, as set out by Section 185 of Chapter 6. The Commission must be representative of the main cultural, religious and linguistic communities in South Africa and widely reflect the gender composition of the country. It has the power “to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.” It may report any matter which falls within its powers and functions to the South African Human Rights Commission for investigation. Its primary objectives however are:

- a. to promote respect for the rights of cultural, religious and linguistic communities;
- b. to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association...¹⁹³

The Constitution provided and provides a set of rules to regulate and reconstitute the political, social and normative rights framework for South Africa and gender relations. With the previous cases and theories deliberating on the shape of the South African society in mind, it is clear that the lived reality of the society sometimes exists in stark contrast to the substantive equality of the values of non-sexism and non-racism grounded in the Bill of Rights.¹⁹⁴ Oliver Tambo, the late former president of the ANC, summarized the impact this has on the true freedom and equality of the people with a simple remark: “*No country can boast of being free unless its women are free.*”¹⁹⁵

¹⁹³ Chapter 9 – State Institutions Supporting Constitutional Democracy, South African Government Information, retrieved from: <http://www.info.gov.za/documents/constitution/1996/96cons9.htm#185> accessed on 16/06/11

¹⁹⁴ Meintjes, S., Chapter 3 – ‘Gender Equality by Design: The Case of the Commission on Gender Equality’, in *Women’s Activism in South Africa*, University of Kwa-Zulu-Natal Press, South Africa, 2009, at p91,2

¹⁹⁵ Speech by Dr N. Dlamini-Zuma, Minister of Health of South Africa, to the Fourth World Conference on Women in Beijing, 6 September, 1995, retrieved from <http://www.un.org/esa/gopher-data/conf/fwcw/conf/gov/950910174126.txt> accessed on 16/06/11

iii. THE POLICE

Women face great difficulties in reporting rape incidents to the police. This is especially the case where there is no evidence of obvious physical violence or substantial distress. Women also find it difficult to file charges if the perpetrator is not a stranger to them, were 'provocative' in their dressing, or are prostitutes. Experiences with the police are often described as humiliating or dehumanising. Many complain that police officers dealt with their trauma insensitively to the point that the victim would feel like the perpetrator. Some would get laughed at and others turned away for whatever sexist or stereotypical reason, and still some would see their case being dropped because a bribe was involved. There have also been incidents where investigating officers lose case dockets and valuable evidence, or they give the wrong details and overlook vital aspects of a case when giving testimonies in court. Such cases would result in the acquittal of the accused, and a disheartened and frustrated rape survivor.¹⁹⁶

Zwelithini Sono, a former defense lawyer¹⁹⁷ summarized the common concerns about the law enforcement authorities that people generally see. He said that, "police inefficiency, criminal justice backlogs, ill prepared prosecutors who in some instances are really not sensitive about the cases and the kind of trauma that the victims are normally exposed to, and the time that it takes between arrest and the prosecution or even finalization of these cases is really too much for some of the victims to even be able to stay in the system and ensure that they finally get the justice."¹⁹⁸ Some blame these deficiencies on the fact that there are not enough female police officers to handle these cases, while other do not see gender as the issue and consider that 'a trained male officer can be better than an untrained female officer'.¹⁹⁹

It was noted by People Opposing Women Abuse (POWA) in 1995 that rape survivors are often told that there are no available police cars to transport them

¹⁹⁶ Human Rights Watch/Africa, *loc. cit.*, at p91-93

¹⁹⁷ Sono now helps survivors of rape. He says he has never lost a rape case. He provides legal assistance for rape victims and counsels young men about the seriousness of violence against women

¹⁹⁸ Mabuse, N., *op cit*

¹⁹⁹ Human Rights Watch/Africa, *loc. cit.*, at p94

from the police station to a district surgeon for a medical examination, and as a result of such excuses they sometimes wait for hours. POWA's Lisa Vetten noted that the police commissioners need to prioritize the issue in order to stop having police that are rude to rape survivors, and careless police investigations.²⁰⁰

From the mid 1990's it was observed that the basic problem with the police services in handling rape cases and victims was their lack of training and social skills. Where such training was made available over the years, male officers took it less seriously than their female colleagues because of the impression that rape cases are 'women's work'. This is best demonstrated with the example of the 1992 ad hoc rape training workshop that was set up in Johannesburg by SAPS to which only 25 random female police officers were sent to participate, most of which had never and were likely to never attend to a rape case.²⁰¹ However since then the need for police training has since been given attention and policies have been developed to guide the treatment of rape victims.

Now, the principle of rendering a service of the South African Police Service (SAPS) is "victim assistance/support". The Department of Justice document²⁰² lays out that any complainant that files a complaint with the police has the right to be treated with the necessary respect, empathy and professionalism, and must be given immediate attention. The document states that allegations of sexual offence are to be accepted as such until and unless the contrary is proved.²⁰³ It also goes on to explain the procedures and processes that are to be followed by the SAPS in sexual offences complaints. In striving to improve their service quality and effectiveness, the SAPS Annual Performance Plan 2010/2011 amongst other objectives, aims to see visible deterrence in crime and in so doing plan to have an

²⁰⁰ Human Rights Watch/Africa, *loc. cit.*, at p94,5

²⁰¹ Rauch, J., *A Critique of South African Police Training for Dealing with Rape Cases*, Centre for the Study of Violence and Reconciliation, retrieved from: <http://www.csvr.org.za/wits/papers/paprapej.htm> accessed on 18/06/11

²⁰² National Policy Guidelines for Victims of Sexual Offences 1998

²⁰³ South African Police Services (SAPS) Support to Victims of Sexual Offences, National Policy Guidelines for Victims of Sexual Offences, retrieved from: http://www.justice.gov.za/policy/guide_sexoff/sex-guide01.html#Chap1 accessed on 18/06/11

additional 79 police stations that render services to victims of rape and sexual offences/abuse. Currently there are 802 such stations.²⁰⁴

Improvements and the manifestation of tangible results is a slow process, because not only do policies and checks need to be in place, but also mentalities and working cultures need to be challenged and nourished in order for the police to make positive changes in their services and treatment of the oppressed. One can only hope that more and more women will develop confidence in the system with time and positive experiences, so long as the national level efforts continue to address burning concerns.

iv. THE COURTS

The ‘new and improved’ South Africa has allowed many women to believe that they have the right to a comprehensive and undeniable justice, based on the provisions of equality and access to all. However, this has always been a debatable fact. Stereotyping by the presiding judges and inexperienced prosecutors are some of the problems faced in the pursuit of justice. I refer to the Department of justice guidelines once again, where it was recognised that haphazard approaches to victims of sexual abuse is ineffective and exposes the victim to secondary victimization by the courts. Women are often perceived as being revengeful or dishonest and as a result not treated with due respect, or their matter not treated with urgency.²⁰⁵

I would like to again analyse the Zuma rape trial and at this stage my focus will be on the judgement and the flaws of the proceedings thereof. Serious challenges to gender equality in social institutions and public processes were presented in this case due of the weakness of the prosecution and the implications of the sexism of

²⁰⁴ South African Police Services (SAPS) Annual Performance Plan 2010/2011, retrieved from: http://www.saps.gov.za/saps_profile/strategic_framework/strategic_plan/2010_2011/annual_perf_plan_2010_2011.pdf accessed on 18/06/11

²⁰⁵ Department of Justice National Guidelines for Prosecutors in Sexual Offence Cases, National Policy Guidelines for Victims of Sexual Offences, retrieved from: http://www.justice.gov.za/policy/guide_sexoff/sex-guide01.html#Chap1 accessed on 18/06/11

the judgment.²⁰⁶ The way in which the complainant was treated is questionable, tried and treated as if she were a criminal, disempowered her. The defining power was also taken away from her when the judge would not acknowledge her as a lesbian, although she defined herself as one, simply because of her apparent sexual history.²⁰⁷ It is disappointing that the complainant's sexual history, including her (unrecorded) past allegations of rape as a child, was completely uncovered and used to discredit and emphasise the unreliability of her testimony.²⁰⁸ The argument was that the complainant was therefore 'prone' to making false allegations. This use of the "cautionary rule" by the judge is critical.

In using the "cautionary rule"²⁰⁹ in rape cases, the court is required to exercise particular care when assessing the credibility of a rape survivor, more so when her testimony is not supported. The application of this rule to cases involving sexual violence is based largely on a perception that women are deceitful and frantic, thus in contrast to rational and credible male witnesses. The *raison d'être* of the rule is to ensure that false rape allegations are not brought to court. Unfortunately the rule has been used in many instances to discount the testimony of those women who do not fit the stereotype of a rape victim being helpless and violently attacked by a complete stranger in a back alley somewhere. This has resulted in judges being lenient in their sentencing or acquittal of rapists.²¹⁰ The Namibian High Court in 1991 abolished the use of the cautionary rule in sexual offences cases on the grounds that its use constitutes discrimination against women and is therefore unconstitutional. It was advised that South Africa follow suit.²¹¹

It is unclear why Judge van de Merwe chose to believe the witnesses who testified against the complainant instead, however this bias can be read in light of the cross-section of gender, class and race biases. The complainant seems to have

²⁰⁶ Moffett, H., Chapter 6, *loc. cit.*, at p173

²⁰⁷ Krieg, S., *loc. cit.*, at p11

²⁰⁸ Moffett, H., Chapter 6 *loc. cit.*, at p173

²⁰⁹ Cautionary rules are used by magistrates and judges in a range of cases where witness credibility could be a problem. The South African law of evidence would lay out the grounds and circumstances in which this rule should be invoked.

²¹⁰ Human Rights Watch/Africa, *loc. cit.*, at p101-3

²¹¹ *Ibid*

been portrayed as having a low level of education (and the judge duly pointed this out by making reference to her inability to acquire a matric certificate) and not having proper employment. The judge made assumptions and relied on stereotypes and myths about women, sexuality and rape. He called the complainant's kanga inappropriate clothing [thereby not disagreeing with Zuma's claim that 'she wanted it']; he brought up the legally irrelevant fact that she was not a virgin; and because the complainant is seemingly physically able to do so, the fact that she did not fight back against Zuma's actions was used against her i.e. the absence of physical violence or threat discredit the claim.²¹²

It is a crucial observation that there was no assessment of and no expert witnesses on cultural behaviour in relation to forced intercourse present at the trial. This means that there was no opportunity for any cultural criticism to be voiced on the topic of Zuma's Zulu culture claim, or on the legal 'culture' that Judge van der Merwe chose to adopt.²¹³ Therefore the discourse on the law's cultural intervention remains speculative.

About a decade ago, the ability of a woman to get justice in a South African court depended a great deal on whether she fitted the court's image of a raped woman, and each judge or magistrate had their own perceptions of how to determine whether a woman has been raped. In most cases there had to be blood and tears, staining a helpless weeping woman in distress. If one did not fit that stereotype, then one could not have possibly been raped.²¹⁴ Clearly, not much has changed over the years. Anyway, having said all, in the light of the status of the accused, the mere fact that the matter came to trial, was tried, and an application for the discharge of the accused refused, then a formal judgement reached, is in itself a positive step towards the advancement of both women's rights and gender equality.²¹⁵

²¹² Krieg, S., *loc. cit.*, at p12

²¹³ Krieg, S *loc. cit.*, at p11

²¹⁴ Human Rights Watch/Africa, *loc. cit.*, at p98,9

²¹⁵ Krieg, S., *loc. cit.*, at p11

v. ACTIVISM AND MOB/TOWNSHIP JUSTICE

“If you want your eggs hatched, sit on them yourself.”

[Haitian Proverb]

About fifteen years ago just after South Africa’s new constitution was in place, progress and significant efforts in South African women’s movements could already be seen. Even government action at the time to improve the women’s human rights situation could be traced to advocacy efforts by these nongovernmental women’s groups. An example is the acceptance of the Rape Trauma Syndrome in the Western Cape courts and the creation of centralized rape reporting centres at that time. These women’s organizations were also responsible for the setting up of shelters for women in need and establishing privately funded hot-lines. Another significant development is the increasing number of women’s groups in black, Indian and coloured communities. In the past women of colour were told (by society) that rape was a white woman’s issue, that there were more important political issues to focus on.²¹⁶ So by drawing on their strengths women have been able to fight against their marginalization.

Patriarchy is the primary source of women’s oppression in South Africa. Activists and scholars noted that during the transition to democracy the rhetoric of equality and rights tends to mask the reconstruction of patriarchal power.²¹⁷ The driving idea of women’s activism is based on this, that women’s organizations should be built exclusively as female operations that offer a nurturing, supportive, safe space for women.²¹⁸ The reason behind this was the theme of male reluctance to deal with ‘women’s issues’ in politics. So, exclusively women’s spaces were viewed as vital to the creation of survival strategies and pathways for social change.²¹⁹

²¹⁶ Human Rights Watch/Africa, *loc. cit.*, at p13,14

²¹⁷ Moffett, H., Chapter 6, *loc. cit.*, at p160

²¹⁸ Although power and racial power dynamics often take place and disrupt the work environment. [REF: Hassim, S., *Women’s Organizations and Democracy in South Africa – Contesting Authority*, The University of Wisconsin Press USA, 2006, at p 33]

²¹⁹ Moolman, B., *loc. cit.*, at p188

Deliberative inquiry²²⁰ among women is a source of strength for women. It helps create strategies for collective action and encourages women to learn from other women's experiences where they can identify. It is a solution for those who in the past have been silent as well as those who want to learn from them. Women make their activism better informed and more inclusive by creating alternative frameworks for women to deliberate within and learning from each other. They draw on their own resilience to find and speak with their own voices, and in this dialogue with each other, women learn from and express emotion thereby exercising their capacity for empathy.²²¹

Radical feminism helped to lay down the foundation for a broader knowledge of the sources of women's oppression. White feminists, based at rape crisis centers and university campuses that worked to end violence against women were the main promoters. Grassroots' activity during the time of the struggle for democracy also contributed to the laying down of the sustainable popular movement of women that would go on to define the shape of the post apartheid South African society. As progress was made, more women across the chart became involved, some in the 'less visible' community-based organizations while others took interest in a more political setting and from the beginning remained closely tied to policy-making processes.²²²

Despite the apparent weakness of the democracy, avenues have been opened up for women's organizations to take up issues outside the conventional definitions

²²⁰ Deliberative inquiry is the practice of generating knowledge through collective questioning, exchange of views, and discussion among critics and members of society. It serves two purposes: firstly, it promotes collective learning and understanding in a relatively safe and comfortable forum among those who have been silenced; and secondly, those that were once silent would then use their new-found knowledge to promote deliberative inquiry in the broader society, after having developed self-knowledge and understanding of the obstacles they face. Deliberation enables Third World feminists to envisage women's interests in solidarity, therefore not to obscure the interests of any woman; and the political strategy thereof is to oppose domination in its many forms, with the intention of promoting peace and equality while resisting oppression and suppression in solidarity and sisterhood. Furthermore, fundamentalism, national chauvinism, racism and sexism are challenged; dominant ideologies, authority, privilege and the production of knowledge are open to scrutiny.

[REF: Ackerly, B. A., at p59,77,78]

²²¹ Ackerly, B. A. *Political Theory and Feminist Social Criticism*, 2000, Cambridge University Press, Cambridge, at p79

²²² Hassim, S., *loc. Cit.* at p 33, 54

of political action and to call for attention from the state to address issues that it has been reluctant to address in the past, such as gender-based violence. These networks, although challenging to keep alive, are most effective when they speak with one voice²²³ and are able to lobby for policy alternatives. Where resources or funding is scarce, or organizations are campaigning for the spotlight as so to speak, it is then that these coalitions are most vulnerable.²²⁴

Indeed power relations within social movements can be masked and it remains obscure as to who has voice and agency. At the community level, in the occasional absence of the strength of the judicial system, women have been using other forms of agency to cope with their struggles and have on occasion effected ‘citizen’s arrest’ of disclosed rapists. The uncommon direct action (i.e. marching to police stations with rapists being dragged behind) happens often enough to serve as a reminder to observers of the massive degree of agency that lies at this level. And it therefore is at this level of the women’s movement that the most vibrant and innovative form of collective solidarity is emerging in the fight against everyday crisis’ even in the face of limited or no resources and expertise.²²⁵

I refer to the longest standing rape crisis organisation, Rape Crisis Cape Town (RCCT) in order to illustrate the development and purpose of activist and support centers that get involved on a personal level with victims and survivors of rape. The purpose of the RCCT in the late 1970’s was to provide safe opportunities for discourse on rape. The organisation began by offering counselling services to rape survivors before expanding by giving public educational talks and workshops for various community groups, churches, student groups, etc. The RCCT’s mandate was to deal with ‘crimes of sexual intent involving women, children and men’, and extend assistance to, ‘any person (irrespective of race, colour, sex, or

²²³ The problem is aggravated by the fact that most of the established and experienced activists in the field are white women, and when black women activists enter the violence-against-women activist field, they have to come up against these already and relatively well-established funding and advocacy networks. As a result racial tension is formed (these internal tensions within the movement are rarely examined or addressed). Thus these networks are the most unstable in the women’s movement.

²²⁴ Hassim, S., *loc. Cit.* at p 33, 54

²²⁵ Hassim, S., *loc. Cit.* at p256-8

creed)'.²²⁶ The RCCT is still in operation and is growing in effectiveness, capacity and influence. To sum up on this section on activists, I quote Amrita Basu who says that:

*“In fighting for what appear to be particularistic goals – finding their voices, setting their own agendas, and creating their own social spaces – women’s movements are seeking the most universal objectives.”*²²⁷

In different light, and moving on to less official structures of the protection system, I will go on to discuss mob/township justice. Developed in the context of ‘apartheid justice’, due to the lack of effectiveness of the police and judicial system especially in the ‘black’ township areas, vigilante alternative systems of justice became quite widespread.²²⁸ In many areas now, what used to be people’s courts are now youth-run, self-appointed lynch mobs meting out vigilante justice and operating as criminal mobs in some cases.²²⁹

In certain townships more than others, rape cases are more prevalent and the targets are mostly young women. In the cases which the police do not handle, it is for the *comrades* to find the perpetrator and “discipline” him. The forms of discipline which they could mete out include monetary payment to the rape victim, parading the accused through the township naked, or a physical beating. The type of punishment is decided by the group and how they feel about the situation on that day.²³⁰

As an illustration, in early 1995 a perpetrator of rape of a fourteen year old girl was arrested by the police. He was made to scrub the police floors as a punishment after which he was released. The comrades beat the accused up after the victim’s family approached them with the request that they take action on their

²²⁶ Moolman, B., *loc. cit.*, at p188,9

²²⁷ Ackerly, B. A. *Loc. Cit.* at p77

²²⁸ A form of local government considered to be informal during apartheid were the ‘street committees’ and ‘people’s courts’ although well-developed and with a large degree of accountability and public confidence attributed to them.

²²⁹ Human Rights Watch/Africa, *loc. cit.*, at p110

²³⁰ Human Rights Watch/Africa, *loc. cit.*, at p111,2

behalf.²³¹ However not all cases end up in satisfaction for the rape survivor. What would happen if a comrade was responsible for a rape? According to the group ‘principles’ he would be expelled from the group, but in reality the likelihood of getting any justice would probably be remote.²³²

In a different case in the same year as above, after a woman was raped and hospitalized for two months she realised that the police would take no action; so she approached the comrades who caught the man and brought him to a public meeting. The victim spoke openly for the first time in the anticipation of justice. The perpetrator, after admitting to the offence, signed and agreed to pay the woman a certain amount of money. However the agreement was not upheld and in the failed attempts of getting police attention and vigilante justice, the discouraged rape survivor simply wanted a reimbursement of her medical bills.²³³

More recently, a suspected serial rapist and his accomplice were murdered by an enraged mob in KwaMashu, near Durban in October 2006. The police Captain reported that police had arrested the men, who were part of a four-man gang. At the time of the attack, two policemen were taking the men to one of the victims for identification. The men were dragged out of the police car and killed. Police officers were also injured in the fiasco. The captain condemned the actions of the public seeing as the police already had opened several cases on the men in question and were handling the matter.²³⁴

Such vigilante, self-defence groups are an almost foreseeable response to the failure of the justice system’s ineffectiveness in protecting the community, but they are often enormously problematic in their own right. A danger is that ‘justice’ may be served on the wrong person or too severely, though the comrades often claim that they have never killed as part of disciplining an alleged perpetrator, other community members say otherwise. In spite of this, so long as the justice system and actors are seen to be ineffective and failing to bring the

²³¹ Human Rights Watch/Africa, *loc. cit.*, at p112,3

²³² Ibid

²³³ Ibid

²³⁴ Olifant, N. And Zulu, X., “Rape Victim Thankful for ‘Vigilante Justice’ “; IOL News, 27 October 2006, retrieved from: <http://www.iol.co.za/news/south-africa/rape-victim-thankful-for-vigilante-justice-1.300438> accessed on 15/06/11

criminals to justice, people in the townships will continue to take the law into their own hands.²³⁵

²³⁵ Human Rights Watch/Africa, *loc. cit.*, at p112,3

4. THE EFFECTS OF RAPE

“My grades are horrible. I'm not doing well because I missed so much school”.

[P.C. age 15, describing her school performance after being sexually assaulted by her teacher]

It is undeniable that the traumatizing effects and haunting memory of rape last longer with the victim/survivor than the rapist, the effect a ‘culture’ of rape has on the society is long lasting and undeniable.

With respect to rape of the girl child, it is common for most children to keep silent and not disclose the incident immediately, and regrettably the abuse may only be discovered when the victim's health begins to decline or when the child has a noticeable sexually transmitted disease. The families of children who are HIV-infected as a result of sexual abuse go through immense suffering. They need to battle with the sexual assault on their child as well as the child's potential illness. Many families’ lives are totally disrupted by the need to keep relocating in an effort to protect themselves.²³⁶ For young girls such as P.C. above, sexual violence in schools is highly disruptive to their education, and can end up having a negative impact on the educational and professional aspirations of girls. Where sexual assault is tolerated in schools it acts as a barrier to attaining education on equal terms with boys. It is commonly reported that after girls experience such violence at school they end up changing schools, losing interest in school, or dropping out entirely. The interruption of education, in whichever way it occurs, contributes to and is a cause of the chain of not-so-impressive educational statistical reports and standards of education in the country.

Health-wise, and besides the increased exposure of women to the already mentioned risk of contracting HIV/AIDS or any other sexually transmitted diseases, the injuries women sustain from rape can be brutal, whether they are

²³⁶ Redpath, J., *loc. cit.*

genital or non-genital injuries. A 1992 study by the Hillbrow medico-legal center found that 40% of the victims had sustained genital injuries, while another 40% suffered other injuries such as bruising, abrasions, fractures and lacerations. 60% of the women had to be referred to hospital for care and treatment.²³⁷

In relation to unwanted/unexpected pregnancies, it has been estimated that pregnancy will result in 10% of rape cases and thus forced motherhood. The consequences of which is loss of freedom for the woman's lifetime, subsequently preventing the women from pursuing their own desires, interests and goals [this is yet another way in which rape functions to keep women subordinate to men].²³⁸ Although there are legal avenues open for abortion in South Africa, the ability to carry one out largely depends on the knowledge and resources available to the affected woman to do so.²³⁹ Either way, one can imagine that the idea of bearing the child of a man that raped you adds to the trauma of the ordeal.

Other far reaching effects of rape are the physical, emotional and behavioural problems that could be suffered by the survivor. A kind of post-traumatic stress disorder can be experienced, medically referred to as Rape Trauma Syndrome (RTS). RTS is a natural response to the trauma of being raped of a psychologically healthy person i.e. it does not constitute a mental illness or disorder.²⁴⁰ According to the Community Crisis Center, victims immediately after the attack can feel shock (evident by feeling cold, faint, nauseous, or disoriented); pain; irritation; emotional; and/or withdrawn and in disbelief.²⁴¹ Behavioural symptoms include anything from, general depression; mood swings; difficulty concentrating or memory loss; speech impairment; being easily frightened; always

²³⁷ Human Rights Watch/Africa, *loc. cit.*, at p57

²³⁸ Mokwena, S. *Loc. cit.*

²³⁹ Human Rights Watch/Africa, *loc. cit.*

²⁴⁰ *Rape Trauma Syndrome*, Rape Crisis Cape Town Trust, retrieved from: <http://www.rapecrisis.org.za/help/rape-trauma-syndrome> accessed on 17/06/11

²⁴¹ *Ibid*

needing or avoiding the company of other people; sexual problems; increased washing or bathing; substance abuse; to suicide attempts.²⁴²

Psychologically these women may end up swimming in a pool of self-blame and guilt, helplessness and humiliation. They may have a lowered self-esteem, confusion, loss of hope and constantly have nightmares or flashbacks.²⁴³ Some women may suffer from such a problem or carry such symptoms for only a short period of time, while others for years and some not at all, or the symptoms may only surface at a later stage of the survivor's life. I am reminded of the African proverb which appropriately observes the way in which action and effect operate: "*The axe forgets, the tree remembers.*"

Rape, like any violence against women, reinforces the unequal gender and power relations between females and males in any given society. In South Africa the prevalence of rape is partially responsible for the breakdown of individuals, families and communities. It develops fear and threat to personal security and well-being, which brings with it a lack of trust. It stunts the personal, social and economic development of girls and women by disempowering them and thereby making them subject to silent ruling structures and forces of suppression, from which there is no escape until the tide turns.

²⁴² Ibid

²⁴³ Ibid

i. SURVIVORS AND SUPPORT

*“You may trod me in the very dirt
But still, like dust, I’ll rise.”*

[Maya Angelou]

Still alive today, the mission of the Rape Crisis Cape Town is to ‘promote and end to violence against women, specifically rape, and to assist women to achieve their right to live free from violence.’ RCCT works towards achieving its mission through counselling and training (volunteer lay counsellors are trained by the RCCT and 24 hour crisis lines are in operation); providing court support (supporters are based at four Sexual Offences courts to offer information and assistance to survivors about their trials); and forums for survivors to ‘speak out’ about their experience/s and in so doing encourage other survivors to seek help, and bring the attention to the society of the matter at hand.²⁴⁴ This goes to show that women can recognise their differences (where they exist) and still form alliances across those differences.²⁴⁵

A concept which enables groups to come together, around the articulation of shared experience is identity. Identity is a concept related to both subjectivity and experience. For many people it has been useful in enabling them to discuss their common experience/s with other whom they consider to be like them, i.e. others who share what is regarded by them as crucial features of their social positioning like gender, sexuality, ethnicity, class. Experience can be likened to identity in that it is fundamentally a relational concept; experience occurs in relationships with others or activities of some sort. It has a bodily impact on us, even though this impact is exhibited mainly in how we think and feel. So as individuals experience the world, a repertoire of subjectivities is developed with each

²⁴⁴ Rape Crisis Cape Town Trust, retrieved from: <http://www.rapecrisis.org.za/> accessed on 17/06/11

²⁴⁵ The concept of difference is a way of acknowledging difference while also recognising similarities (unlike the notion of otherness which suggests complete incompatibility.) It allows for conditional alliances to be made on the basis of shared purpose, without suppressing the differences between those involved. [Ref: Cranny-Francis, A. *Et al. Loc. cit.*, at p59]

appropriated to a specific situation.²⁴⁶ Experience therefore can be the channel through which we explore the ways in which we construct our world and the people in it. By recognising the role of experience in the production of subjects, thus seeing it as a discursive construct, it can be used to explore the relationships between individual subjects and the society and cultural frameworks in which they operate.²⁴⁷

While many and still increasing numbers of female support groups and centers exist today all over South Africa and at all levels of society, there are support centers that are realising the need to address the issue of sexual violence and violence against women in more holistic ways, going beyond support and counselling services. One example is the Masimanyane Women's Support Center in East London which aims at providing a space for men to unlearn patterns of violence against women and make changes in their lives; and for those that are not perpetrators, to become active in the struggle for gender equality and the elimination of violence against females. The men are then able to connect with other men in the community and challenge them to stop their violence and abuse. The Center extended their programs to include community outreach programs, public education and training, lobbying and more, and their efforts involve crisis intervention and even human rights and democracy training for communities.²⁴⁸ Although such programs face difficulties when addressing matters of deep-set traditional perceptions of masculinity and women's human rights, they are nonetheless becoming increasingly popular and influential.

The inclusion of men in activist and support organisations is beneficial in that it provides insight into men's behaviours and through combined responsibility builds up the work. The presence of men serves to provide role models for boys, increase the number of male clients, and reduce the unrelenting rate of gender based sexual violence. It also serves to deflate predominant myths about the notion of masculinity because it would increase the possibility to work alongside

²⁴⁶ Cranny-Francis, A. *Et al. Loc. cit.*, at p33,36

²⁴⁷ Cranny-Francis, A. *Et al. Loc. cit.*, at p36,39

²⁴⁸ Cole, E. A., Ed., *loc. cit.*, at p7-9

inspiring men who comprehend the huge impact of gender-based violence, particularly sexual violence. Above all, the perception of men as a homogeneous group and as violent perpetrators is being challenged by this male inclusion.²⁴⁹

Dehumanising relationships, practices and systems are reproduced when gender is used as form of exclusion. The exploration of men's role in putting a stop to rape and violence against women, presents opportunities for women to redefine themselves as women, for the men to do the same as men and for all as human beings; while at the same time encourage the development of healthy non-violent relationships and sexualities.²⁵⁰ Women are now able to find support and a voice where they were denied one before.

²⁴⁹ Moolman, B., *loc. cit.*, at p204,5

²⁵⁰ Moolman, B., *loc. cit.*, at p206

5. REFLECTIONS

Violence, violence against women and rape is both destructive and constructive; this means that although it destroys social orders, it creates new social structures and hierarchies.²⁵¹ If not creating new structures, then at the very least it reinforces the frameworks that already existed.

It is assumed that violent actions, in this case, rape, are socially determined. Violent incidents and actors follow certain ‘rules’ and practices that express different social, cultural and traditional mechanisms and structures. Those men that become rapists draw on acquired routines and customs, social and cultural norms, ritualized behavioural patterns, as well as other types of ‘experiences’. As was seen, in order to comprehend rape, or any form of violence for that matter, reconstruction of the social frames within which individuals behave, and those according to which they perceive their environment is necessary.²⁵²

The legacy of apartheid overlaps with justificatory narratives of rape and the use of sexual violence as a tool of social control and ‘intimate terrorism’. However, it must be mentioned that apartheid, race and the alleged degradation of masculine pride are more often than not used as justified excuses, thereby misleadingly assuming that all racists are black, poor, and ill-educated, which is certainly not the case.²⁵³ But one can ponder on the point that the majority of rapists or raped women are black not because race determines vulnerability or barbarism, but because of a simple population ratio: most part of the South African population is indeed of African descent.

Regrettably the Zuma rape trial according to activists, highlighted that the twelve years of democracy had no impact on shifting people’s beliefs about women, and that a new front on gender equality and the objectives of activism need to be opened to confront deep cultural beliefs across the divides of race, ethnicity and

²⁵¹ Buetow, T., Christ, M., and Gudehus, C., *loc. cit.*, at p8

²⁵² Buetow, T., Christ, M., and Gudehus, C., *loc. cit.*, at p7

²⁵³ Moffett, H., Chapter 6, *loc. cit.*, at p161,177

gender.²⁵⁴The Zuma trial exposed the depths of the belief that women are ‘at the service’ of men specifically in sexual terms; i.e. if women wear revealing clothes, they are ‘asking for’ sex, and saying ‘no’ is just another way of saying ‘yes’.²⁵⁵

The trial further shows that although the written law guarantees women’s rights as equal citizens, powerful elements still exist within civil society, political organisations, government institutions, the independent judiciary, and law enforcing police forces that rally against gender equality.²⁵⁶

In more optimistic light, and in conclusion, the efforts of activist and support organizations must not go unacknowledged for the positive effect they have managed to attain, in the midst of all the challenges. Indeed as they grow and spread their influence, and even as men increasingly become involved in the battle against rape and violence against women in general, more confidence and significance will be accredited to them. Such groups are the reason many South African women have hope and a future today. Their protests, counselling services, 24 hour hot-lines and legal guidance have made a difference in the lives of many rape survivors. Because these women and men refuse to keep silent, even while still in ‘crocodile infested waters’²⁵⁷, women that were not able to laugh anymore have now started smiling and are now actively looking out for each other by extending a caring hand.

South Africa still has the hope of a better tomorrow, and women are still in the struggle to see the day when South Africa’s infants will know no pain, when her girls can comfortably go to school and graduate from the highest level possible without any brutal disruption; when her young ladies can walk the streets safely in a skirt; and where her older women and grandmothers can look upon a new, enlightened generation and be proud that they fought the good fight. Being a southern African myself, this narrative of brutality and injustice is not far from home and is a familiar story told by many women, black and white, young and old

²⁵⁴ Meintjes, S., *loc. Cit.* at p159,176

²⁵⁵ Moffett, H., Chapter 6, *loc. cit.*, at p159,176

²⁵⁶ Moffett, H., Chapter 6, *loc. cit.*, at p159,176

²⁵⁷ Idea taken from the Bengali proverb, “*When you live in the water, you don’t argue with the crocodiles.*”

even beyond South Africa's borders. I for one earnestly look forward to the day the society chooses to eradicate this ailment from its midst.

BIBLIOGRAPHY

BOOKS:

- Ackerly, Brooke, A., *Political Theory and Feminist Social Criticism*, 2000, Cambridge University Press, Cambridge
- Britton, H., Fish, J., Meintjes, S., [Ed.], *Women's Activism in South Africa*, 2009, University of Kwa-Zulu-Natal Press, South Africa
- Browne, J., Ed. *The Future of Gender*, 2007, Cambridge University Press, Cambridge
- Cranny-Francis, Anne., Waring, Wendy., Stravropoulos, Pam., Kirkby, Joan., *Gender Studies Terms and Debates*, 2003, Palgrave Macmillan, New York
- Hassim, S., *Women's Organizations and Democracy in South Africa – Contesting Authority*, The University of Wisconsin Press USA, 2006
- Human Rights Watch/Africa, Human Rights Watch Women's Rights Project, *Violence Against Women in South Africa – State Response to Domestic Violence and Rape*, November 1995, Human Rights Watch USA
- Reus-Smit, C. and Snidal, D. - Ed, *The Oxford Handbook of International Relations*, 2010, Oxford University Press, New York
- Scott, J., *Power*, 2001, Polity Press in assoc. With Blackwell Publishers Ltd. Cambridge/Oxford, United Kingdom

ARTICLES:

- *A Second Look at the Role Education Plays in Women's Empowerment*, International Center for Research on Women (ICRW), 2005, Massachusetts, USA, retrieved from:
<http://www.icrw.org/files/publications/A-Second-Look-at-the-Role-Education-Plays-in-Womens-Empowerment.pdf>
- Alsop, R., Ed. *Power, Rights, and Poverty: Concepts and Connections*, A working meeting sponsored by DFID and the World Bank, March 23-24

2004, The International Bank for Reconstruction and Development/The World Bank and the Department for International Development, London/Washington, retrieved from:

<http://siteresources.worldbank.org/INTEMPowerment/Resources/PPFinalText.pdf>

- Buetow, T., Christ, M., and Gudehus, C., *Approaching Collective Violence: On Methods and Perceptions – Introduction*, L'Europe en formation No. 357, Automne 2010, retrieved from:
http://www.cife.eu/index.php?id_rub=1170318030&id_parent_rub=1170317838&id_top=1169138322&url_to_go=&titre=Dernier%20num%C3%A9ro
- Burton, P. Du Plessis, A. Leggett, T. Louw, A. Mistry, D. Van Vuuren, H. *National Victims of Crime Survey South Africa 2003*, Institute for Security Studies Africa, retrieved from:
<http://www.iss.co.za/pubs/monographs/No101/Contents.html>
- *Chapter 4 – Background: Sexual Violence Against Girls, 'Scared at School: Sexual Violence Against Girls in South African Schools'*, 2001, Human Rights Watch Publications, retrieved from:
http://www.hrw.org/legacy/reports/2001/safrica/ZA-FINAL-03.htm#P491_63053
- *Chapter 6 – 'Consequences of Gender Violence for Girls' Education and Health'*, in *Scared at School: Sexual Violence Against Girls in South African Schools*, Human Rights Watch 2001, USA, retrieved from:
http://www.hrw.org/legacy/reports/2001/safrica/ZA-FINAL-05.htm#P914_158138
- Cole, E. A., Ed., *'Rights for all in the new South Africa' – An interview with Christopher Harper, Violence Against Women, Human Rights Dialogue*, Series 2 Number 10, Fall 2003, Carnegie Council on Ethics and International Affairs, retrieved from:
http://www.carnegiecouncil.org/media/1061_hrd2-10.pdf
- Fact Sheet: *Gender Equality and Equity in South Africa – 1996-2008*, Social Development Department: Population and Development, Republic

of South Africa, retrieved from

http://www.population.gov.za/pop_dev/index.php/NPU-factsheets/GENDER-Equality-and-equity.html

- Krieg, S., *Culture, Violence and Rape Adjudication: Reflections on the Zuma Rape Trial and Judgment*, Internet Journal of Criminology, retrieved from: <http://www.internetjournalofcriminology.com/Krieg%20-%20Culture,%20Violence%20and%20Rape%20Adjudication.pdf>
- Letsela, L. And Ratele, K. Fact Sheet, “*I am a tsotsi from Sophiatown, you must cure yourself*”: *Masculinity and health seeking behaviours in South Africa*, November 2009, MRC-UNISA Crime, Violence and Injury Lead Programme, Institute for Social & Health Sciences, University of South Africa, retrieved from <http://www.mrc.ac.za/crime/mashealthseek.pdf>
- Mokwena, S. Seminar No. 7, 30 October 1991, “*The Era of the Jackrollers: Contextualising the Rise of Youth Gangs in Soweto*”, delivered at the University of Witwatersrand, Johannesburg, South Africa, retrieved from the Centre for the Study of Violence and Reconciliation <http://www.csvr.org.za/wits/papers/papmokw.htm#note55>
- Molebatsi, K., Chapter 5, *Towards a 10-Year Review of the Population Policy implementation in South Africa (1998-2008)*, ‘*Gender Equality and Equity*’, February 2009, Department of Social Development Republic of South Africa, retrieved from: http://www.population.gov.za/pop_dev/index.php/Population-Policy-+-10-Review/View-category.html?mosmsg=You+are+trying+to+access+from+a+non-authorized+domain.+%28www.google.com%29
- Quantitative research findings on Rape in South Africa, Statistics South Africa 2000, retrieved from <http://www.statssa.gov.za/publications/Rape/Rape.pdf>
- Rauch, J., *A Critique of South African Police Training for Dealing with Rape Cases*, Centre for the Study of Violence and Reconciliation, retrieved from: <http://www.csvr.org.za/wits/papers/paprapej.htm>

- Redpath, J., *Children at Risk*, Focus, 18 June 2000, Helen Suzman Foundation, retrieved from: <http://www.hsf.org.za/resource-centre/focus/issues-11-20/issue-18-second-quarter-2000/children-at-risk>
- Seekings, J., *Poverty and Inequality after Apartheid*, Paper prepared for the second ‘After Apartheid Conference’, Yale, 27-28 April 2007, retrieved from: <http://www.yale.edu/macmillan/apartheid/seekingsp2.pdf>
- South African Crime Statistics, submitted 16/09/10, retrieved from <http://www.southafricaweb.co.za/article/south-african-crime-statistics>
- *The Measurement of Poverty in South Africa Project: Key Issues*, Studies in Poverty and Inequality Institute, Johannesburg, 27 February 2007, retrieved from: http://www.sarpn.org.za/documents/d0002801/Measurement_poverty_SA_SPII_Feb2007.pdf accessed on 25/06/11
- United Nations report on the Fourth World Conference for Women, Beijing 4-15 September 1995, retrieved from <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>
- World Health Organization article, ‘*Public Cooperation at a Glance*’, May 2009, retrieved from: http://www.who.int/countryfocus/cooperation_strategy/ccsbrief_zaf_en.pdf

ONLINE MEDIA/NEWS REPORTS:

- Lindow, M., Rep. “*South Africa's Rape Crisis: 1 in 4 Men Say They've Done It*”, Saturday, 20 June 2009, Time, Cape Town, retrieved from: <http://www.time.com/time/world/article/0,8599,1906000,00.html>
- ‘*Mbeki sworn in for a second term*’, Daily Mail Online, 27 April 2004, retrieved from: <http://www.dailymail.co.uk/news/article-259997/Mbeki-sworn-second-term.html> accessed on 12/06/11

- “*Sexual assault hidden in culture of violence*”, Zimbabwe Independent, Friday 6 August 2004, retrieved from:
<http://www.theindependent.co.zw/international/16401.html>
- Mabuse, N., ‘*South Africa fights rape crisis*’, CNN World, 30 June 2009, retrieved from: http://articles.cnn.com/2009-06-30/world/sa.rape.crisis_1_south-africa-raped-alexandra-township?_s=PM:WORLD
- Olifant, N. And Zulu, X., “*Rape Victim Thankful for ‘Vigilante Justice’*”, IOL News, 27 October 2006, retrieved from:
<http://www.iol.co.za/news/south-africa/rape-victim-thankful-for-vigilante-justice-1.300438>
- Phillips, B., ‘*Baby Rapes Shock South Africa*’, BBC World News: Africa, published: 11 December 2001, retrieved from:
<http://news.bbc.co.uk/2/hi/africa/1703595.stm>
- Smith, A. D., ‘*South Africa Shocked as six Charged with Raping Baby*’, The Independent – Africa, 13 November 2001, retrieved from:
<http://www.independent.co.uk/news/world/africa/south-africa-shocked-as-six-charged-with-raping-baby-girl-616747.html>
- Wines, M., ‘*A Highly Charged Rape Trial Tests South Africa’s Ideals*’, The New York Times, published 10 April 2006, retrieved from:
<http://www.nytimes.com/2006/04/10/world/africa/10africa.html?scp=1&sq=a%20highly%20charged%20rape%20trial%20tests%20south%20africa%20ideals&st=cse> accessed on 14/06/11

OTHER ONLINE RESOURCES:

- Annexe 2 – Platform for Action, Chapter 4, Sec. D, Para. 113, at p 48,9, United Nations report on the Fourth World Conference for Women, Beijing 4-15 September 1995, retrieved from
<http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>

- BBC, South Africa: The Constitution, retrieved from:
<http://www.bbc.co.uk/scotland/education/ms/southafrica/political/constitution/>
- Burton, P., Du Plessis, A., Leggett, T., Louw, A., Mistry, D., Van Vuuren, H., Appendix 2, Provincial Tables, National Victims of Crime Survey South Africa 2003, Institute for Security Studies Africa, retrieved from
<http://www.iss.co.za/pubs/monographs/No101/Append2.htm>
- Department of Justice National Guidelines for Prosecutors in Sexual Offence Cases, National Policy Guidelines for Victims of Sexual Offences, retrieved from:
http://www.justice.gov.za/policy/guide_sexoff/sex-guide01.html#Chap1
- Gender Statistics: South Africa, World Data Bank, retrieved from:
http://databank.worldbank.org/ddp/home.do?Step=2&id=4&hActiveDimensionId=GS_Series
- International Humanitarian Law – Treaties and Documents, International Committee of the Red Cross, retrieved from:
<http://www.icrc.org/ihl.nsf/WebART/380-600032?OpenDocument>
- Joint United Nations Programme on HIV/AIDS, Country Overview, South Africa, Retrieved from
<http://www.unaids.org/en/regionscountries/countries/southafrica/>
- Joint United Nations Programme on HIV/AIDS, Country Situation, South Africa July 2008, retrieved from:
http://data.unaids.org/pub/FactSheet/2008/sa08_soa_en.pdf
- Rape and Compelled Rape, Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, Date of commencement 16 December 2007, at p11, retrieved from:
<http://www.justice.gov.za/legislation/acts/2007-032.pdf>
- Nelson Mandela Foundation, 2011, “Madiba’s Many Names”, Retrieved from: <http://www.nelsonmandela.org/index.php/memory/views/names/>
- Rape Crisis Cape Town Trust, retrieved from:
<http://www.rapecrisis.org.za/>

- Rome Statute 1998 [enforced 2002], International Criminal Court,
Retrieved from: <http://www.icc-cpi.int/NR/rdonlyres/0D8024D3-87EA-4E6A-8A27-05B987C38689/0/RomeStatuteEng.pdf>
- South African Police Services (SAPS) Annual Performance Plan 2010/2011, retrieved from:
http://www.saps.gov.za/saps_profile/strategic_framework/strategic_plan/2010_2011/annual_perf_plan_2010_2011.pdf
- South African Police Services (SAPS) Support to Victims of Sexual Offences, National Policy Guidelines for Victims of Sexual Offences, retrieved from: http://www.justice.gov.za/policy/guide_sexoff/sex-guide01.html#Chap1
- Statement by the Minister of Justice, Dr A.M. Omar MP, on the launch of a Sexual Offences Court in Wynberg, Cape Town on 1 August 1997, South African Government Information, 31/07/97, retrieved from:
<http://www.info.gov.za/speeches/1997/08010X70797.htm>
- *What are the Millennium Development Goals?*, United Nations Development Program, Millennium Development Goals, Retrieved from:
<http://www.undp.org/mdg/basics.shtml>
- World Bank databases:
 - i. Data Profile, South Africa, retrieved from: http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=&REPORT_ID=9147&REQUEST_TYPE=VIEWADVANCED
 - ii. EdStats Country Profiles, retrieved from:
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTEDUCATION/EXTDATASTATISTICS/EXTEDSTATS/0,,contentMDK:22614780~menuPK:7196605~pagePK:64168445~piPK:64168309~theSitePK:3232764,00.html?ZAF,188>
 - iii. Health, Nutrition and Population (HNP) statistics at a glance, South Africa, retrieved from:
<http://ddp-ext.worldbank.org/ext/ddpreports/ViewSharedReport?&CF=1&RE>

[PORT_ID=10309&REQUEST_TYPE=VIEWADVANCED&HF=N](http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/SOUTHAFRICAEXTN/0,,print:Y~isCURL:Y~menuPK:368102~pagePK:141132~piPK:141109~theSitePK:368057,00.html)

- iv. South Africa: Quick Facts, retrieved from:

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/SOUTHAFRICAEXTN/0,,print:Y~isCURL:Y~menuPK:368102~pagePK:141132~piPK:141109~theSitePK:368057,00.html>

APPENDIX

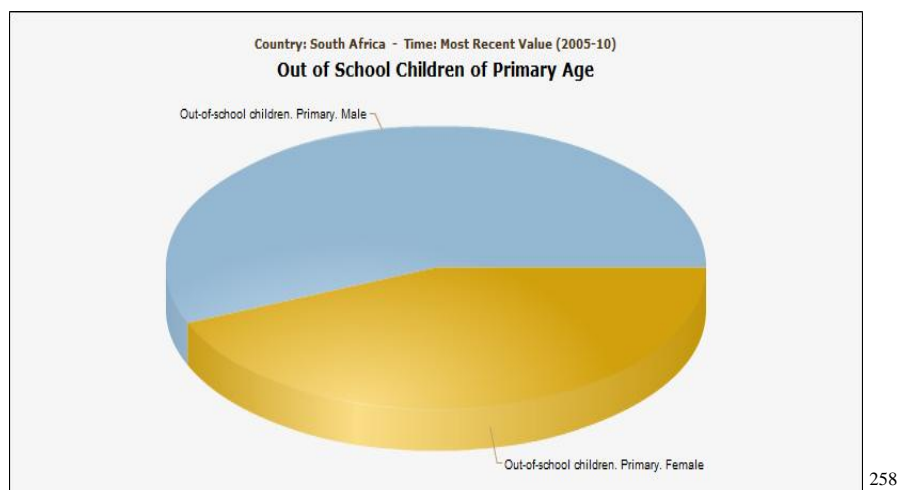
POPULATION DYNAMICS	FIG.	YEAR
Population (millions)	49.3	2009
Population growth, annually (percent)	1.1	2009
Life expectancy at birth (total years)	52	2009
Mortality rate under 5 (per1,000 of population)	62	2009
Population ages 15-64, total (millions)	32.1	2009
Population ages 15-64, female (millions)	16.2	2009
Population ages 15-64, male (millions)	15.9	2009
Population ages 65 and above, female (millions)	13.5	2009
Population ages 65 and above (% of total)	4.5	2009
Population, female (% of total)	50.7	2009
Age dependency ratio (% of working-age population)	53.9	2009
Literacy rate, adults (total % of population ages 15+)	89	2009
Literacy rate, youth (total % of population ages 15-24)	97.6	2007
Poverty headcount ratio at national poverty line	23.0	2005
Income share held by lowest 20%	3.1	2000

HEALTH	2009
Fertility rate total (births per woman)	2.5
Adolescent fertility rate (births per 1,000 female ages 15-19)	56
Births attended by skilled health staff (% of total)	*91.2
Prevalence of HIV total (% of population ages 15-49)	17.8
Prevalence of HIV male (% of population ages 15-49)	4.5
Prevalence of HIV female (% of population ages 15-49)	13.6

* In the year 2003

EDUCATION	2009
Primary school completion rate total (% of relevant age group)	93*
Ratio of girls to boys in primary and secondary education (percent)	99
Ratio of female to male primary enrolment (%)	96.0
Ratio of female to male secondary enrolment (%)	104.9
Secondary education, pupils (% female)	51.0
Primary completion rate, female (% of relevant age group)	93.7
Primary completion rate, male (% of relevant age group)	92.6
Primary education, teachers (% female)	77.2
Secondary education, teachers (% female)	54.8
Children out of school, primary, total	<i>estimate: 715,593</i>

* An increase of 6% from the year 2000



EMPLOYMENT	FIG.	YEAR
Contributing family workers, female (% of females employed)	1.1	2003
Contributing family workers, male (% of males employed)	0.5	2003
Employers, total (% of employment)	15.1	2003
Employers, female (% of employment)	15.4	2003
Employers, male (% of employment)	14.8	2003
Labour force, total	18.9	2009
Labour force, female (% of total labour force)	43.7	2009
Labour force participation rate, female (% of female population ages 15-64)	50.8	2009
Labour force participation rate, male (% of male population ages 15-64)	66.6	2009
Self-employed, female (% of females employed)	17.7	2003
Self-employed, male (% of males employed)	17.1	2003
Unemployment with primary education, female (% of female unemployment)	47.5	2003
Unemployment with primary education, male (% of male unemployment)	53.1	2003
Unemployment with secondary education, female (% of female unemployment)	43.6	2003
Unemployment with secondary education, male (% of male unemployment)	38.7	2003
Unemployment with tertiary education, female (% of female unemployment)	5.7	2003
Unemployment with tertiary education, male (% of male unemployment)	4	2003
Unemployment, total (% of total labour force)	23.8	2009
Unemployment, female (% of female labour force)	25.9	2009
Unemployment, male (% of male labour force)	22	2009
Unemployment, youth female (% of female labour force ages 15-24)	52.5	2009
Unemployment, youth male (% of male labour force ages 15-24)	44.6	2009
Proportion of seats held by women in national parliaments (%)	44.5	2009

²⁵⁸ EdStats Country Profiles

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTEDUCATION/EXTDATASTATISTICS/EXTEDSTATS/0,,contentMDK:22614780~menuPK:7196605~pagePK:64168445~piPK:64168309~theSitePK:3232764,00.html?ZAF,188>

Table 3: The one type of crime that respondents were most afraid of in their area of residence (%)

	Eastern Cape	Free State	Gauteng	KZN	Limpopo	Mpumalanga	North West	Northern Cape	Western Cape	Total
Murder	31.1	26.1	23.4	23.4	18.0	22.1	32.0	30.2	26.4	25.1
Housebreaking	20.3	14.7	18.0	34.4	23.9	32.7	21.7	6.5	20.1	23.4
Rape	24.9	31.8	14.8	11.6	22.6	12.1	22.1	40.8	18.1	18.6
Robbery	9.9	6.6	23.6	11.6	4.7	16.5	9.9	9.1	13.7	13.4
Property theft*	1.7	10.8	5.8	4.3	14.8	8.8	8.5	2.5	5.0	6.5
Assault	6.1	7.5	1.7	3.8	7.1	3.0	2.0	8.4	13.2	6.0
Car hijacking	0.6	1.1	12.1	4.5	0.5	3.0	1.0	0.7	1.9	4.3
Stock theft**	5.5	0.9	0.0	3.9	6.7	0.5	1.9	0.5	0.0	2.5
Other	0.5	0.2	0.3	1.8	1.0	0.6	0.5	0.4	0.8	0.8
Vehicle theft	0.5	0.3	0.3	0.7	0.7	0.7	0.3	0.8	0.9	0.6

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Table 2: One type of crime that respondents thought occurred most in their area of residence (%)

	Eastern Cape	Free State	Gauteng	KZN	Limpopo	Mpumalanga	North West	Northern Cape	Western Cape	Total
Housebreaking	41.8	30.0	30.9	48.4	35.4	54.5	44.5	15.8	37.8	39.4
Property theft*	7.3	26.1	19.9	11.8	25.4	15.9	18.0	9.2	14.0	16.3
Robbery	11.5	10.2	24.0	11.8	3.3	12.9	9.7	12.4	16.4	14.0
Murder	6.0	6.0	6.6	10.6	3.6	8.2	5.5	8.9	9.0	7.3
Livestock theft**	20.0	5.5	0.3	5.8	12.9	2.0	11.1	8.4	1.9	6.9
Assault	7.5	11.5	2.8	2.3	8.2	1.5	4.5	27.6	11.6	5.9
Rape	4.3	8.8	3.0	1.7	8.3	2.6	5.4	14.6	3.0	4.2
Vehicle theft	1.5	1.8	3.9	2.6	2.0	1.9	0.9	2.5	4.8	2.7
Car hijacking	0.0	0.0	7.2	2.8	0.0	0.3	0.5	0.0	0.2	2.3
Other	0.2	0.0	1.6	2.1	0.8	0.3	0.0	0.6	1.3	1.1

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²⁵⁹ Burton, P., Du Plessis, A., *et al.* Table 3, Appendix 2, Provincial Tables, National Victims of Crime Survey South Africa 2003, Institute for Security Studies Africa, retrieved from:

<http://www.iss.co.za/pubs/monographs/No101/Append2.htm> accessed on 02/06/11

²⁶⁰ Burton, P., Du Plessis, A., *et al.* Table 2, Appendix 2, Provincial Tables, National Victims of Crime Survey South Africa 2003, Institute for Security Studies Africa, retrieved from:

<http://www.iss.co.za/pubs/monographs/No101/Append2.htm> accessed on 02/06/11

AGE AT TIME OF RAPE (YEARS)	No.	%
Under 11	54	9,8
12-14	49	8,9
15-18	103	18,8
19-24	148	27,0
25-30	72	13,1
31-40	76	13,8
41-50	31	5,6
51+	8	1,5
Unspecified	8	1,5
TOTAL	549	100,0
PLACE OF OCCURRENCE	No.	%
Victim's residence	80	14,5
Rapist's residence	170	30,9
Friend/family member's home	34	6,2
Place of entertainment	5	0,9
Street	23	4,2
Open space	149	27,0
Parking/taxi rank/bus stop	4	0,7
Other	57	10,3
Unspecified	29	5,3
TOTAL	*551	100,0
RACE OF VICTIM	*No.	%
African	478	87,0
Coloured	29	5,3
Indian	3	0,5
White	37	6,8
Unspecified	2	0,4
TOTAL	549	100,0
RELATIONSHIP TO OFFENDER	No.	%
Stranger	435	57,1
Acquaintance	177	23,2
Relative or intimate	61	8,0
Family friend/neighbour	59	7,7
Unspecified	23	3,0
Other	7	0,9
TOTAL	*762	100,0

*Some totals exceed the number of victims and suspects since more than one victim or suspect could have been involved in cases²⁶¹

²⁶¹ Quantitative research findings on Rape in South Africa, Statistics South Africa 2000, retrieved from <http://www.statssa.gov.za/publications/Rape/Rape.pdf> accessed on 25/05/11, at p25