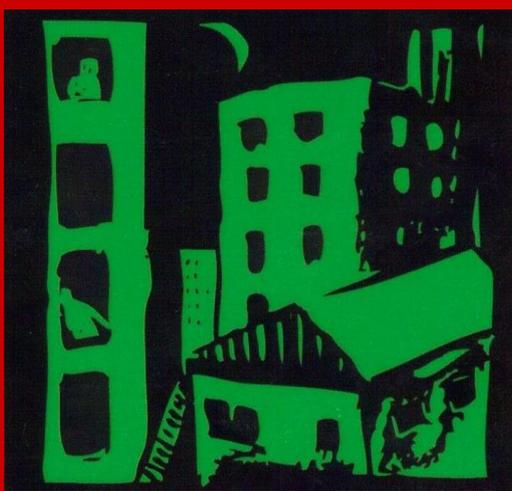


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A discourse on the plight of South African women in the face of abuse and neglect

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ABSTRACT

An upsurge in the rate of violence against women has an adverse effect on women in South Africa. Sadly, many South African women who are the victims of violent sexual conduct, such as, rape and other forms of violent sexual abuse, have in part contributed to the prevalence of HIV/AIDS infection among women. Of the 7,7 million South African living with HIV/AIDS in 2018, 4,7 million were women, while another 69 000 were among the new infections. They are more vulnerable to HIV infections with 21,17 percent of women living with the disease. Using personal conversations, literature searches and documents for primary and secondary data, this article argues that value orientation that ascribes

superiority to men has damaging consequences on the status of women. South African women are exposed to violent habitual actions of men that denigrate their womanhood. The article, therefore, submits that there is a need to reinforce civil society and strengthen the justice system for the protection and promotion of the rights and freedom of women. Aside from this, the government should increase its commitment to the enforcement of requisite legislative frameworks that safeguard the rights and freedom of women, and review punishments for any acts of violence against women.

Keywords: Discrimination, HIV/AIDS, corruption, gender, femicide, rape, South Africa.

1 INTRODUCTION

South African women are vulnerable to a number of societal vices. They are victims of violent relationships and degrading sexual misconduct, especially rape and femicide, which have exposed them to HIV/AIDS infections. In 2018, of the 7 700 000 South Africans living with HIV/AIDS, 4 700 000 (62,67 percent) were women, compared to men and children with 2 500 000 and 340 000, respectively.¹ South Africa has become the epicentre of the HIV/AIDS pandemic with a record of 4 500 infections per week.² Scholars have attributed this prevalence among women to gender and racial disparities.³ They are also vulnerable to physical and emotional abuse by their male counterparts. Yet, South Africa has requisite legislative frameworks capable of arresting this trend of gender-based violence (GBV).⁴ This article argues that the prevalence of value orientation that promotes subjugation of women in South Africa would remain a barrier to gender equity without deliberate punitive measures to curb GBV and other violent sexual conduct.

This is a qualitative article, developed, as independent research, through interactions and discussions with some women, who have either witnessed or experienced a measure of GBV, either in their relationships, society, or workplace. Excerpts of the conversations constitute part of the primary data. Other sources of primary data are official government publications, reports, and public documents. Secondary data is drawn from extant literature, such as journal articles, newspaper reports, books, and other printed materials.

1.1 Global movement against gender-based violence

Violence against women has dominated the international discourse on human rights for some time. Civil society groups, international governmental and non-governmental

¹ UNAIDS “South Africa” available at <https://www.unaids.org/en/regionscountries/countries/southafrica> (accessed 04 January 2021).

² Allinder SM & Fleischman J “The World’s Largest HIV Epidemic in Crisis: HIV in South Africa” 2 April 2019 *Centre for Strategic and International Studies* available at <https://www.csis.org/analysis/worlds-largest-hiv-epidemic-crisis-hiv-south-africa> (accessed 04 January 2021).

³ Mabaso M, Makola L, Naidoo I, Mlangeni LL, Jooste S & Simbayi L “HIV prevalence in South Africa through gender and racial lenses: results from the 2012 population-based national household survey” (2019) 16(167) *International Journal for Equity in Health* 1 at 1-11.

⁴ The Domestic Violence Act 116 of 1998 and the Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007 are, among others, two major statutes designed against GBV.

organisations have continued to champion the campaign against GBV. In her address at the United Nations Fourth World Conference on Women, held in Beijing on 4-15 September 1995, Hillary Clinton declared that women's rights are human rights.

“As long as discrimination and inequities remain so commonplace around the world -- as long as girls and women are valued less, fed less, fed last, overworked, underpaid, not schooled and subjected to violence in and out of their homes -the potential of the human family to create a peaceful, prosperous world will not be realized.”⁵

With a 38-point programme of action, the Beijing Declaration⁶ sought to advance the interest of women and accord them their due recognition in the interest of humanity. The Conference was in continuation of previous global activities to advance the goals of women. The significance of the Conference was the generated awareness of the promotion and protection of the rights and freedom of women, and reinforcement of the campaigns and advocacy activities on gender equity. Previous activities pre-1995 had generated global concern, and, consequently, the enactment of myriads of international instruments and protocols designed to prevent violence against women.

The United Nations' Universal Declaration of Human Rights of 1948 (UDHR) requires governmental actions for the protection of all forms of the rights of citizens. In 1979, the United Nations General Assembly adopted the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). The import of this instrument is the protection of women against any form of discrimination, including the gendered perception that subordinates women to men. Discrimination in the CEDAW connotes any form of distinction that excludes or restricts women or impairs them in the enjoyment of their fundamental rights and freedom by virtue of their sex.⁷ In further pursuit of the global effort against violence against women, the UN General Assembly adopted, in 1993, the Declaration on the Elimination of Violence against Women (DEVAW). Article 1 of DEVAW 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 such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.⁸

In realisation of women's vulnerability to trafficking, especially for sexual activities, the United Nations adopted the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (United Nations Trafficking Protocol) on November 15, 2000. The Protocol defines trafficking in persons, “to include a range of cases where human beings are exploited by organized

⁵ First Lady Hillary Rodham Clinton's remarks at the United Nations Fourth World Conference on Women, Beijing, China on 5 September 1995.

⁶ United Nations Report of the Fourth World Conference on Women Beijing, 4-15 September 1995. New York: United Nations.

⁷ Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

⁸ Declaration on the Elimination of Violence against Women Proclaimed by General Assembly Resolution 48/104 of 20 December 1993.

criminal groups, particularly where there is an element of duress involved and a transnational aspect, such as the movement of people across borders”.⁹

Aside from these specific legislative enactments, other international instruments complement the global campaign against GBV. Some of these include the Special Rapporteur on Violence against Women, Its Causes and Consequences, the Explanatory Report to the Council of Europe Convention on Action Against Trafficking in Human Beings, and the International Framework for Action to Prevent Trafficking in Persons Protocol. Others are Domestic Violence Legislation and its Implementation: An Analysis for ASEAN Countries Based on International Standards and Good Practices, UNFPA Strategy and Framework of Action to Addressing Gender-Based Violence 2008-2011, and International Violence Against Women: US Response and Policy Issues.

The promotion of these instruments and the commitment of various international bodies to their domestication by governments are indicative of the seriousness attached to the prevention of any form of violation of the fundamental rights and freedom of women across the globe. By the same token, respective governments in the global community are expected to demonstrate their commitments to the eradication of any act inimical to the wellbeing of women. Despite these recognised instruments, violence against women persists. This persistence is mostly associated with the value orientation of society.

In every society, women and men seek to pursue their interests to varying degrees, depending on the circumstances as well as identities, societal practices, and values.¹⁰ Such circumstances include marital status, family values, and orientations, among others. Even though these circumstances are mostly natural, by virtue of human identity, they often engender inequality between the male and the female gender. In some, they are mostly constructed “through gendered segregation between public and private worlds”, and as such, “it is in women’s interests to seek presence and power in public arenas of politics and economics”.¹¹ In other words, the public space with value orientation in favour of the male gender would continually subjugate women if there were no concerted effort to resist such masculine domination. The continuous vulnerability of women to GBV in South Africa, for instance, is a function of the attitudinal disposition of the public, especially the justice system, to its gravity. For example, there have been cases of intimidation and harassment of victims of GBV, by law enforcement agents and the courts.¹² In these two instances, the justice system was a disservice to the protection of women against violence.

⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

¹⁰ Goetz AM “Women in politics & gender equity in policy: South Africa & Uganda” (1998) 25(76) *Review of African Political Economy* 241 at 241-262.

¹¹ See Goetz (1998) at 242.

¹² See Mogale RS, Burns KK & Richter S “Violence against women in South Africa: policy position and recommendations” (2012) 18(5) *Violence Against Women* 580 at 580-594, on the experience of Buyisiwe in court in 2005. See also Mogoatlhe L “The South African Parliament Calls on police to be sensitive to survivors of rape” 7 September 2019 (2019) *Global Citizen* available at

By virtue of its membership of the United Nations and signatory to most of these international instruments, South Africa has ratified and domesticated some of them as part of statutory documents for its justice system. Invariably, South Africa should be at the forefront of the promotion of women's rights and freedom against any form of discrimination or hardship. It is appropriate here to look at these statutory instruments.

2 LEGAL INSTRUMENTS ON THE PROMOTION OF THE RIGHTS OF WOMEN IN SOUTH AFRICA

In January 1993, the South African government signed the CEDAW and ratified it on 15 December 1995.¹³ Thus, it became obligatory for the country to abide by the contents of its Articles, which stipulate measures to ensure the protection of the rights of women against any form of discrimination. Aside from CEDAW, South Africa has also signed and ratified other international statutes that seek to promote the rights of women.¹⁴ On 29 January 1993, South Africa signed the Convention on the Political Rights of Women (1952) and the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (1962). It also appended its signature to the Convention on the Nationality of Married Women (1957) and signed the SADC Declaration for the Prevention and Eradication of Violence Against Women and Children on 8 September 1997.

South Africa signed the Optional Protocol on Trafficking in Persons, especially Women and Children, to the UN Convention against Transnational Organized Crime on 15 December 2004, and ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 18 October 2005.¹⁵ South Africa has also signed and ratified the Maputo Declaration on Sexual and Reproductive Health and Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. In 1998, South Africa enacted the Domestic Violence Act 116 of 1998.¹⁶

All these instruments affirmed the readiness and commitment of the country to the protection and promotion of the various rights of women in terms of participation and freedom from any socio-cultural and political inhibitions. Domestically, the Constitution

<https://www.globalcitizen.org/en/content/south-africa-police-sensitive-rape-survivors/> on the case of a woman who was struggling to report the rape of her 3-year-old daughter to the police.

¹³ Department of International Relations and Cooperation (2004). Convention on the Elimination of All Forms of Discrimination Against Women.

¹⁴ Department of International Relations and Cooperation (2004). Convention on the Elimination of All Forms of Discrimination Against Women.

¹⁵ United Nations Human Rights (UNHR) "Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women" available at <http://indicators.ohchr.org/> (accessed 28 May 2018).

¹⁶ Abrahams N, Mathews S, Martin LJ, Lombard C & Jewkes R (2013) "Intimate partner femicide in South Africa in 1999 and 2009" *PLOS Medicine*, (2013), 10(4) available at <https://journals.plos.org/plosmedicine/article?id=10.1371/journal.pmed.1001412> (accessed 04 January 2021).

of the Republic of South Africa, 1996 (Constitution) contains a comprehensive Bill of Rights in Chapter 2, and it also outlaws any form of discrimination against citizens.¹⁷

In addition, South Africa has a number of proactive and preventive laws on women and children, in particular, the Domestic Violence Act 116 of 1998, the Children's Act, as amended by Act 38 of 2005, and the Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007. Despite these positive steps, South Africa remains a country, in which "to be a child ... is to walk a fragile path to adulthood"¹⁸, while women are poor, disempowered, and vulnerable to the appallingly high levels of sexual violence. Indeed, the gap between the principles espoused on paper and the reality on the ground is profound. The justice system is hostile to the realisation of the goals of these statutory obligations.

In her statement at the 2019 International Day for the Elimination of Violence against Women, Phumzile Mlambo-Ngcuka, the Executive Director of UN Women, noted the damaging effect of rape. According to Mlambo-Ngcuka, "[r]ape isn't an isolated brief act. It damages flesh and reverberates in memory. It can have life-changing, unchosen results - a pregnancy or a transmitted disease. Its long-lasting, devastating effects reach others: family, friends, partners, and colleagues".¹⁹ The rape culture and other forms of sexual abuse have exposed South African women to the scourge of HIV/AIDS infection.

3 WOMEN AND THEIR VULNERABILITY TO THE HIV/AIDS PANDEMIC IN SOUTH AFRICA

There are studies on the vulnerability of South African women to HIV infections. Muula identifies poverty and low status of women, and biological susceptibilities, such as intergenerational sex and lack of male circumcision.²⁰ Other factors are violence against women, drug abuse, and alcohol, as well as other social factors. In their study, Johnson et al²¹ discover that HIV prevalence among educated women was lower than among those with little educational attainment. Dellar, Dlamini and Karim discover that South African young women and adolescents were uniquely vulnerable to HIV infections because of structural, social, and biological factors.²² Hargreaves, Davey, Fearon,

¹⁷ Section 9 of the Constitution.

¹⁸ UNICEF *Annual Report 2009* available at www.unicef.org/southafrica/SAF_resources_annual2009.pdf (accessed 3 January 2021).

¹⁹ UN Women Executive Director's Statement for the International Day for the Elimination of Violence against Women available at <https://www.unwomen.org/en/news/stories/2019/11/statement-ed-phumzile-day-for-the-elimination-of-violence-against-women> (accessed 25 November 2019).

²⁰ Muula AS "HIV infection and AIDS among young women in South Africa" (2008) 49(3) *Croatian Medical Journal* 423 at 423-435.

²¹ Johnson LF, Dorrington RE, Bradshaw D, Du Plessis H & Makubalo L "The effects of educational attainment and other factors on HIV risk in South Africa women: results from antenatal surveillance 2000-2005" (2009) 23(12) *AIDS* 1583 at 1583-1589.

²² Dellar RC, Dlamini S & Karim QA "Adolescent girls and young women: key populations for HIV epidemic control" (2015) 18(1) *Journal of the International AIDS Society* 64 at 64-70.

Hensen, and Krishnaratne locate the prevalence of HIV infection among South African women in the prevailing socio-economic inequality in society.²³

Women are more vulnerable because of their involvement in risky sexual activities, mostly because of the absence of their spouses occasioned by labour migration.²⁴ The ravaging socio-economic crisis, especially scarce employment opportunities, in the rural areas, engendered forced separation between spouses. Aside from this, Mngomezulu discovers that most black South African women could not negotiate safe sex due to gender and cultural factors, and limited knowledge of HIV infection.²⁵

Studies on the vulnerability of young South African women to HIV infection are fascinating. Despite all the public awareness and programmes, the number of people living with HIV infection in South Africa remains high. With an estimated population of 56 million in 2016, 7,03 million people were living with HIV.²⁶ This has increased to 7,52 million in 2018.²⁷ Of this, 18,9% fall within the age bracket of 15-49 years. Indeed, 30% of young women within the age bracket of 15-24 years, representing about 113 000 people, contribute yearly to the number of HIV patients.²⁸ This was an increase from 16,9% in 2005.²⁹

At the national and provincial levels, there are different policy measures to prevent the escalation of the disease. This is apart from other interventionist and awareness programmes by civil society groups as well as international donor agencies. From 4,72 million in 2002, the HIV population increased to 7,52 million in 2018, as shown in Table I.

²³ Hargreaves JR, Davey C, Fearon E, Hensen B & Krishnaratne S "Trends in socioeconomic inequalities in HIV prevalence among young people in seven countries in Eastern and Southern Africa" *PLOS ONE* (2015)10(3) available at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0121775> (5 January 2021).

²⁴ Mngomezulu TM *Sexual practices of married women in rural Kwazulu-Natal: implications for the women's vulnerability to HIV/Aids epidemic* (unpublished Master's thesis, the School of Nursing, University of Kwazulu-Natal, 2009).

²⁵ See generally Mngomezulu (2009).

²⁶ StatsSA available at <http://www.statssa.gov.za/publications/P0302/P03022017.pdf> (accessed 15 May 2019).

²⁷ Maromo J "Over 7 Million People Living With Hiv In Sa – Statssa" 23 July 2018 *Iol News* Available At <https://www.iol.co.za/news/south-africa/gauteng/over-7-million-people-living-with-hiv-in-sa-statssa-16193661> (Accessed 03 January 2021).

²⁸ See Dellar, Dlamini & Karim (2015) at 64-70.

²⁹ See Muula (2008) at 423-435.

THE PLIGHT OF SOUTH AFRICAN WOMEN

Table I: Estimate of HIV prevalence in South Africa, 2002-2018³⁰

	Prevalence %				Incidence rate % 15-49	HIV population (in millions)
	Women 15-49	Adults 15-49	Youth 15-24	Total population		
2002	19.6	17.1	7.6	10.3	1.77	4.72
2003	19.8	17.2	7.1	10.6	1.74	4.87
2004	19.9	17.3	6.6	10.7	1.76	5.00
2005	20.0	17.3	6.4	10.8	1.81	5.13
2006	20.1	17.4	6.3	11.0	1.83	5.26
2007	20.3	17.5	6.2	11.1	1.82	5.40
2008	20.5	17.6	6.2	11.3	1.77	5.56
2009	20.7	17.8	6.3	11.5	1.72	5.73
2010	20.9	17.9	6.4	11.6	1.65	5.89
2011	21.2	18.1	6.3	11.8	1.59	6.07
2012	21.5	18.3	6.2	12.0	1.50	6.27
2013	21.8	18.5	6.1	12.2	1.39	6.47
2014	22.0	18.7	5.9	12.4	1.34	6.67
2015	22.2	18.8	5.8	12.5	1.30	6.85
2016	22.3	18.9	5.6	12.7	1.27	7.03
2017	21.17	17.98	4.64	12.57	0.91	7.06
2018	22.32	18.99	5.49	13.06	1.21	7.52

As shown in Table I, the percentage of prevalence among women aged 15-49, rose from 19,6% in 2002 to 22,3% in 2016, declined to 21,17% in 2017, but rose again to 22,32% in 2018. The percentage of male adults aged 15-49 living with HIV rose from 17,1% in 2002 to 18,9% in 2016, declined to 17,98% in 2017, but rose again to 18,99% in 2018. However, there was a decline in the percentage of prevalence of HIV infection among the youth aged 15-24, from 7,6% in 2002 to 5,6% in 2016 and further to 4,64% in 2017 but increased to 5,49% in 2018. Of the South African women in their reproductive years, one-fifth were HIV positive.³¹ The level of vulnerability is a problem because, despite the efforts of the existing health programmes, especially the use of the antiretroviral treatment (ART) as well as available antiretrovirals (ARVs), in South African schools and communities, the percentage of women infected with HIV/AIDS is still increasing.

³⁰ StatsSA available at <http://www.statssa.gov.za/publications/P0302/P03022018.pdf> (accessed 15 May 2019).

³¹ See generally Maromo (2018).

The Joint United Nations Programme on HIV/AIDS (UNAIDS) found in its study that cultural norms and beliefs, such as rejection and community gossip, encouraged stigmatization of the victims.³² Further, the study also discovered that young women lacked the power to engage in safer sex. Campbell and McPhail³³ have argued that even though young people received much information from the government and social media, the percentage of those vulnerable to infection was still increasing because most of them were being forced into having unprotected sex.

A study by Sofika and Van de Riet advanced that there are more factors responsible for the high percentage of women's vulnerability.³⁴ These factors include unequal gender and cultural sexual practices, such as *Ukuotha*, in which young women hardly negotiate the use of a condom. This is one of the consequences of the patriarchal culture in South Africa. One respondent confirmed this practice, as one of the consequences of the patriarchal culture:

“There is too much authority given to men and that is why we have high rate of abusive men. Even, the high rate of HIV /AIDS in women is linked to men being trained to think that they can do as they please it is acceptable for men to have multiple relationships and we must submit and allow it to happen because we cannot compete with men.”³⁵

This discriminatory stereotype has exposed South African women to injustice and oppression. Quinn and Overbaugh state that there are social determinants that made women vulnerable to HIV/AIDS infection.³⁶ These include poverty, cultural and sexual norms, lack of education, and violence. Smith also argues that poverty and inequality increased the chances of women's vulnerability to HIV/AIDS infection.³⁷ To this, one respondent said:

“Women bare [sic] children and are forbidden to work; they are expected to stay at home and look after the children while men have the choice of being fathers or irresponsible fathers. This led to a huge struggle for women in raising their children alone and taking care of the house at the same time. Some men choose

³² UNAIDS “Expanding Global response to HIV & AIDS through focused action, reducing risk & vulnerability definitions rational & pathways, Geneva” 1998 available at https://www.unaids.org/en/resources/documents/1998/19980922_jc171-expglobresp_en.pdf [accessed 4 January 2021].

³³ MacPhail C & Campbell C “I think condoms are good but, aai, I hate those things’: condom use among adolescents and young people in a Southern African township” (2001) 52 *Social Science & Medicine* 1613.

³⁴ Sofika D & Van der Riet M “I can tell that he’s serious because *uyandichckha*: the production of sexual vulnerability through scripted practices, and culture” (2016) 19(3) *Culture, Health & Sexuality* 308 at 308-322.

³⁵ Personal Communication I, 12 January 2019.

³⁶ Quinn T C & Overbaugh J “HIV/AIDS in women: an expanding epidemic” (2005) 308(5728) *Science* 1582 at 1582-1583.

³⁷ Smith MK “Gender, poverty, and intergenerational vulnerability to HIV/AIDS” (2002) 10(3) *Gender & Development* 63 at 63-70.

to be polygamists; as a result, the first wife will suffer. The Zulu culture of forced marriages or arranged marriages for young girls adds to more young women being infected by HIV/AIDS and other diseases.”³⁸

The study by Jewkes, Dunkle, and Nduna showed that in the rural areas in South Africa, women who are victims of intimate partner violence and had extraordinary gender inequity in their relationships had a greater incidence of HIV infection.³⁹ Besides this, UNAIDS⁴⁰ discovered that the prevalence of intimate partner violence in South Africa, as well as other forms of violent sexual abuse, has increased the rate of HIV/AIDS infection among women.

4 THE HIGH RATE OF VIOLENCE AGAINST WOMEN AND FEMICIDE IN SOUTH AFRICA

Intimate partner violence (IPV) is not peculiar to South Africa. Indeed, the World Health Organisation (WHO)⁴¹ declared IPV as a global epidemic that required prompt action. According to the WHO, 35% of women across the globe had suffered from sexual assault, 38% experienced IPV and other related sexual abuse, 30% of those in a “relationship experienced physical and/or sexual violence by their intimate partner”, while as many as 38% were murdered by their intimate partner.⁴²

Indeed, writers have labelled South Africa as the “rape capital” of the world.⁴³ In 2016/2017, there were 39 828 reported cases of rape, which translated to an average of 109 cases of reported rape incidents daily, and 49 660 other sexual offences.⁴⁴ This figure did not include several unreported cases. Victims of IPV are mostly women. Scholars have termed this “femicide”: the death of women because of any form of abuse by men.⁴⁵

³⁸ Personal Communication II, 13 January 2019.

³⁹ Jewkes RK, Dunkle K, Nduna M & Shai N “Intimate partner violence, relationship power inequity, and incidence of HIV infection in young women in South Africa: a cohort study” (2010) 376(9734) *The Lancet* 41 at 41-48.

⁴⁰ UNAIDS AIDS info (2019) available at <http://aidsinfo.unaids.org/> (accessed 3 January 2021).

⁴¹ World Health Organisation “Global And Regional Estimates Of Violence Against Women: Prevalence And Health Effects Of Intimate Partner Violence And Non-Partner Sexual Violence” (2013) Available At Http://Apps.Who.Int/Iris/Bitstream/Handle/10665/85239/9789241564625_Eng.Pdf;jsessionid=B049440ac01d454d4ad8ce9050a128db?Sequence=1 (Accessed On May 12, 2019).

⁴² See generally World Health Organisation (2013).

⁴³ HuffPost “The horrific reality of South Africa's rape problem will shock you” 1 September 2017 available at https://www.huffingtonpost.co.za/2017/08/31/the-horrific-reality-of-south-africas-rape-problem-will-shock-you_a_23192126/ (accessed 12 April 2018).

⁴⁴ Gqirana T “Crime Stats: Sa's Murder And Rape Situation Unpacked” 3 March 2017 *News24* Available At <Https://Www.News24.Com/Southafrica/News/Crime-Stats-Sas-Murder-And-Rape-Situation-Unpacked-20170303> (Accessed On May 10, 2018).

⁴⁵ Menjivar C & Walsh SD “The architecture of femicide: the state, inequalities, and everyday gender violence in Honduras” (2017) 52(2) *Latin American Research Review* 221 at 221–240.

Femicide is rampant because of the prevalence of impunity. According to Menjívar and Walsh,⁴⁶ killings of women embodied the role of the State where individuals act with impunity. Thus, the State becomes culpable “through its unwillingness or inability to provide prevention and response mechanisms”.⁴⁷ States that condone coercion of women into silence in the face of a harsh political order or as an expression of patriarchal culture are directly supporting violence against women.

South African women are victims of this systemic disorder.⁴⁸ There is a high rate of violence against women in South Africa, especially killings by their partners, rape, and abuse. Indeed, the rate was alarming and that citizens “must be extremely worried”,⁴⁹ while government officials admitted that the “South Africa femicide rate is 5 times more than the global rate...at least half of these women die at the hands of their intimate partners”⁵⁰. In 2017, the Court sentenced Christopher Panayiotou to life imprisonment for killing his wife on 25 April 2015.⁵¹ Sandile Mantsoe killed her girlfriend, Karabo Mokoena, in a gruesome manner on 28 April 2017.⁵² The Court found him guilty and sentenced him to 32 years imprisonment.⁵³ On 1 May 2018, Thabani Mzolo allegedly killed his girlfriend, Zolile Khumalo.⁵⁴

On 14 February 2013, South African Paralympic champion, Pistorius Oscar, killed his girlfriend, Reeva Steenkamp, and was sentenced by the Court.⁵⁵ In May 2017, the Court sentenced Patrick Wisani, a former African National Congress Youth League regional leader, to 20 years imprisonment for killing his girlfriend, Nosipho Mandleleni,

⁴⁶ See Menjívar & Walsh (2017) at 221-240.

⁴⁷ See Menjívar & Walsh (2017) at 222.

⁴⁸ Lince-Deroche V, Shochet T, Sibeko J, Mdlopane L, Pato S, Makhubele Qs & Bessenaar T “You Can Talk About Condoms [With Younger Men] While Older Men ... Beat You For That: Young Women’s Perceptions Of Gender-Based Violence Within Intergenerational Relationships In South Africa” (2018) 108(8) *Samj Research* 682 At 682-686.

⁴⁹ Makou G “Femicide In South Africa: 3 Numbers About The Murdering Of Women Investigated” 7 February 2018 *Check Africa* Available At <https://Africacheck.Org/Reports/Femicide-Sa-3-Numbers-Murdering-Women-Investigated/> (Accessed 12 May 2018).

⁵⁰ See generally Makou (2018).

⁵¹ TimesLive “10 murder cases that gripped SA in 2017” 28 December 2017 available at <https://www.timeslive.co.za/news/south-africa/2017-12-28-10-murder-cases-that-gripped-sa-in-2017/> (accessed 12 April 2018).

⁵² CHABALALA J “STATE CLOSES ITS CASE IN KARABO MOKOENA MURDER TRIAL” 26 APRIL 2018 *NEWS24* AVAILABLE AT [HTTPS://WWW.NEWS24.COM/SOUTHAFRICA/NEWS/STATE-CLOSES-ITS-CASE-IN-KARABO-MOKOENA-MURDER-TRIAL-20180426](https://www.news24.com/southafrica/news/state-closes-its-case-in-karabo-mokoena-murder-trial-20180426) (ACCESSED 29 APRIL 2018).

⁵³ Shange N “32 years behind bars for Karabo Mokoena's killer Sandile Mantsoe” 3 May 2018 available at <https://www.sowetanlive.co.za/news/south-africa/2018-05-03-breaking-32-years-behind-bars-for-karabo-mokoenas-killer/> (accessed 12 April 2019).

⁵⁴ Wicks J “Mut Murder Accused Confidently Grinning From Prisoner Dock” 3 May 2018 *Timeslive* At <https://www.timeslive.co.za/news/south-africa/2018-05-03-mut-murder-accused-confidently-grinning-from-prisoner-dock/> (Accessed 25 May 2019).

⁵⁵ Jordan N “Oscar Pistorius’s sentence increased to more than 13 years” 24 November 2017 *TimesLive*, available at <https://www.timeslive.co.za/news/south-africa/2017-11-24-oscar-pistoriuss-sentence-increased-to-13-years/> (accessed 10 May 2019).

in September 2015.⁵⁶ The Court also found Donald Sebolai guilty of killing his girlfriend, Dolly Tshabalala, on 29 June 2014.⁵⁷

The South African Police Service (SAPS) recorded 14 333 cases of murder between April and December 2016, of which 1 713 were of women, besides cases of femicide.⁵⁸ This means that an average of one woman was murdered every eight hours. The SAPS did not have statistical records of femicide because, “the crime registrar office of the South African Police Service does not keep intimate-partner-violence statistics, as this is not a legally defined crime”.⁵⁹ Of an estimated 2 363 cases of killing of women between 1999 and 2009, the police could only identify 1 792 perpetrators, 51,1 percent of whom were intimate partners.⁶⁰

The justice system, as well as the entrenched mentality of male dominance, has bolstered this series of violence against women in South Africa.⁶¹ Victims of unreported abusive relationships have also attributed the high rate of femicide in South Africa to lawlessness, easy access to guns, and a feeling of inferiority complex.⁶² The law has not shown any indication of serving as deterrence against further violence, as culprits often exploit the lenient punishment of a jail term, rather than death, associated with the crime of murder.⁶³ The South African Medical Research Council (SAMRC) found that courts convicted only eight percent of rapists, out of the 3 952 cases of rapists studied by the SAMRC; and only 340 received guilty verdicts and convictions.⁶⁴ An analyst, Siyabulela Monnakali, said that while there were laws to safeguard women in South Africa, the implementation is weak.

“For too often a perpetrator will abuse a woman, get arrested for the crime a week later the perpetrator is out roaming the street and committing the exact same crime they were arrested for in the first place. In South Africa, we have

⁵⁶ Chabalala J “Ex-ANCYL regional leader sentenced to 20 years for murdering girlfriend” 11 May 2017 *News24* at <https://www.news24.com/SouthAfrica/News/ex-ancyl-regional-leader-sentenced-to-20-years-for-murdering-girlfriend-20170511> (accessed 10 April 2019).

⁵⁷ Shange N “DJ Donald Sebolai jailed for 20 years” 4 March 2016 *News24* available at <https://www.news24.com/SouthAfrica/News/dj-sebolai-jailed-for-20-years-20160304> (accessed 12 May 2018).

⁵⁸ See generally Makou (2018).

⁵⁹ See generally Makou (2018).

⁶⁰ See generally Abrahams, Mathews, Martin, Lombard & Jewkes (2013).

⁶¹ See Lince-Deroche, Shochet, Sibeko, Mdlopane, Pato, Makhubele & Bessenaar (2018).

⁶² Masweneng K “Femicide in South Africa: why men kill women” 29 May 2018 *TimesLive* available at <https://www.timeslive.co.za/news/south-africa/2018-05-29-femicide-in-south-africa-why-men-kill-women/> (accessed 29 May 2019).

⁶³ Rama K “South Africa: The Justice System Is Failing Women” 30 November 2015 *Gender Links* Available At <Http://Genderlinks.Org.Za/Programme-Web-Menu/South-Africa-The-Justice-System-Is-Failing-Women-2015-11-30/> (Accessed 9 April 2019).

⁶⁴ South African Medical Research Council (SAMRC) “Rape Justice in South Africa: a retrospective study of the investigation, prosecution and adjudication of reported rape cases from 2012” (2017) available at <http://www.mrc.ac.za/sites/default/files/files/2017-10-30/RAPSSAreport.pdf> (accessed 28 May 2019).

laws in place to protect women; however, the problem lies in the implementation of these laws.”⁶⁵

This weakness goes beyond the institutions of security; it is rooted in the patriarchal system.⁶⁶ According to an analyst: “They [men] fail to understand they must let go when love is no longer there. They think they own women, so the issue of power relations and entitlement plays a great role in why they don’t let go.”⁶⁷ Aside from this, other men “share a set of beliefs regarding their ‘right’ to be the dominant partner in a relationship and the view about women that they are subservient and possessions”.⁶⁸ A participant described it thus:

“The major factor emanates from our cultural values and beliefs. Women are regarded as trophies while men are always superior and powerful. At an early stage, women were taught to obey men and always regard them as heads of the family. Also, women were considered as housewives and they were told that they were good for nothing but to bare [sic] children and to do house chores”.⁶⁹

The law allows anyone under a threat to apply for protection orders against the suspects. Nevertheless, with a pervasive culture of impunity, such protection orders are ineffective, as perpetrators would continue to harass and terrorise the victims with physical assault since there is no deterrence. This boldness has weakened the ability of women to report cases of initial abuses and threats to lives until the perpetrators harm them. The fear of death has kept most women in perpetual abuse by their partners because of the lack-lustre attitude of society towards the plight of women. This is to indicate the dilemma of an average South African woman, seeking to protect her life in the face of an endangered relationship. Hopkins corroborates this assertion, noting that “the most dangerous moment for a woman trapped in a violent relationship is when she leaves the partner”.⁷⁰

Another form of injustice against the female gender in South Africa is the case of fathers and relatives that sexually molest their female children.⁷¹ Masilo and Davhana-

⁶⁵ See generally Masweneng (2018).

⁶⁶ Kunene N & Mtolo V “Alarming rise in femicide” 21 May 2018 *Weekend Witness* available at <https://www.news24.com/SouthAfrica/News/alarming-rise-in-femicide-20180521-2> (accessed 04 January 2021). See also Lince-Deroche, Shochet, Sibeko, Mdlopane, Pato, Makhubele & Bessenaar (2018).

⁶⁷ See generally Masweneng (2018).

⁶⁸ See generally Kunene & Mtolo (2018).

⁶⁹ Personal Communication III, 3 March 2019.

⁷⁰ Hopkins R “Government Action On Femicide Goes Wrong From The Bottom Up” 22 May 2017 *Mail & Guardian* Available At <https://Mg.Co.Za/Article/2017-05-22-00-Government-Action-On-Femicide-Goes-Wrong-From-The-Bottom-Up> (Accessed 10 May 2018).

⁷¹ “Child Sex Abuse By Parents On Rise” *Iol News* 20 December 2012 Available At <https://Www.Iol.Co.Za/Pretoria-News/Child-Sex-Abuse-By-Parents-On-Rise-1443787> (Accessed 12 May 2019).

Maselesele,⁷² in their study of the North-West Province, discovered the experience and trauma of mothers of victims of sexual abuse. They noted that neglect and inaction by stakeholders compounded their stress and heartbreak. This experience is associated with the mythical conception that sex with minors is curative,⁷³ a practice described as shameful. They report that:

“Shamefully, South Africa is known for having one of the highest cases of ‘infant rape’ in the world. It is understood that this atrocious scourge is driven by the ‘Virgin Cure’ myth, which is a belief that sex with a virgin girl cures HIV/AIDS and other sexually transmitted diseases. Being the country with the highest HIV/AIDS population in the world and a poor level of education, it is understandable how this myth can be so widely accepted.”⁷⁴

Society and families do not help matters either. The perception that “women are not good enough and they need men to prosper; women cannot make it without men” has been entrenched and made to be a norm that must be enforced.⁷⁵ Family influences, as the SAMRC noted, compound the issue of sexual violence against women and children. The SAMRC in its report found that the influence of family often encourages sexual violence against women. In one of the cases reported, the SAMRC reported a conversation thus:

“The defence puts to the court that ‘We had a very long conversation regarding how the accused was feeling remorse about the issue whereby the parties as well agreed that the parties (sic) were of the opinion that they withdraw the charges against the accused for the sake of the wellbeing of the family. The mother of the accused when asked by the court what type of sentence she would like for the Court to consider she states, ‘I am asking the Court to give him a suspended sentence so that he can go back to school’.”⁷⁶

A victim of this incident narrated her experience, stating that aside from the trauma of continuous sexual abuse by her father, she suffered rejection by the other members of the family who castigated her for speaking out about her ordeal.

“Everyone abandoned me, each time I speak to the elders about it; they would scold me and asked me not to destroy the family. I became rejected and abandoned. I was left to suck in my agony and shame of being a sexual instrument to my own biological father.”⁷⁷

⁷² Masilo GM & Davhana-Maselesele M “Experiences of mothers of sexually abused children in North-West province: post disclosure” (2016) 39(1) *Curationis* 1 at 1-9.

⁷³ Moul K & Muller A “Navigating conflicting laws in sexual and reproductive health service provision for teenagers” (2016) 39(1) *Curationis* 1 at 1-7.

⁷⁴ News24 “The rape capital of the world” 21 August 2014 available at <https://www.news24.com/MyNews24/The-Rape-Capital-of-the-World-20140821> (accessed 12 May 2018).

⁷⁵ Personal Communication V, 10 May 2018.

⁷⁶ See South African Medical Research Council (SAMRC) (2017) at 105.

⁷⁷ Personal Communication VI, 12 May 2019.

Victims often suffer from the weak justice system and some harmful societal practices. This myth of a “Virgin Cure”, for instance, has become an acceptable rationale for incest and rape of minors, which has formed part of the general violence against women.⁷⁸ Others even see this as an extension of the patriarchy mentality.⁷⁹ Despite the existence of laws against sexual abuse and violence against women, patriarchy has its cultural strength entrenched in the behavioural attitudes of the people, especially parents and family members. This mentality has been entrenched in the psyche of an average black South African man and woman, especially the uneducated in the rural areas,⁸⁰ that women are objects of subjugation and servitude. Another woman described this as an inherited perception:

“Our parents were brought up like that. They do not see a successful woman in the boardrooms/ parliament taking decisions that will change people's lives but sees a women success in getting married to the highest bidders. Ours dreams are not considered. This big-headed man will think they have paid *lobola* then they own [yo]u. With no education you are stuck with someone you do not even love, who will not allow you to go to school because they want to control you as you depend on them.”⁸¹

A fundamental cultural norm of *lobola* seems to have defined women as articles that men could buy as personal commodities. The Recognition of Customary Marriages Act of 1998 defined *lobola* as

“... the property in cash or in kind, whether known as *lobolo*, *bogadi*, *bohali*, *xuma*, *lumalo*, *thaka*, *ikhazi*, *magadi*, *emabheka* or by any other name, which a prospective husband or the head of his family undertakes to give to the head of the prospective wife's family in consideration of a customary marriage”⁸².

As one of the cultural imperatives for customary marriages, *lobolo*, by virtue of the provisions of the Act, is just one of the requirements for the validity of customary marriages. Nevertheless, it is not a requirement. The South African Department of Justice and Constitutional Development, in its explanations of the Act, stated: “Lobola is not a necessary requirement for the validity of the customary marriage, however, if it is paid, it proves that the marriage was negotiated in accordance to custom.”⁸³

South African society recognises traditions and customs of the indigenous customary rules in marriage. Even though the Act defines *lobolo*, as a cultural practice, it

⁷⁸ Vorster RW “The deadly power of patriarchy” 27 February 2017 *Daily Maverick* available at <https://www.dailymaverick.co.za/opinionista/2017-02-27-the-deadly-power-of-patriarchy/#.WyATx0iFOUk> (accessed 12 April 2019).

⁷⁹ See generally Vorster (2017).

⁸⁰ See generally Hopkins (2017).

⁸¹ Personal Communication IV, 10 February 2019.

⁸² Section 1(iv), The Recognition of Customary Marriages Act 120 of 1998.

⁸³ Department of Justice and Constitutional Development “Getting Married under Customary Law” available at <http://www.justice.gov.za/services/getting-married-cusmar-law.html> (accessed 21 May 2018).

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is not included directly in the requirements. Nevertheless, black South African parents see this as a practice that should continue, while they have no regard for the plight of their female children.

“Our parents are eager to send us to the marriage institution early. Once you turn 13, you must get married to the richest family around to secure the future of your family financially. No education, your dreams are shattered, and you depend on this old man that you got married to... Yes, lobola is part of our African culture but maybe it must be formally legalised. I feel women are robbed of their dreams just because parents/family must benefit and one loses their sense purpose/existence.”⁸⁴

This situation endangers the lives of the women who are stuck in a relationship characterised by uncertainty and abuse. One of the problems associated with the plight of women in South Africa is the entitlement mentality. A respondent said:

“Our cultures and society have made us believe that women are not good enough and that the place of a woman is in the kitchen; baby machine, sex toy, and taking care of a man. From an early age, male children are made to believe they have more power, than women; man are allowed to have five 5 girlfriends, men do not do cooking because it is a woman’s job, men are given more authority and less accountability.”⁸⁵

This mentality is the bedrock of the major problem confronting women in South Africa. The entitlement syndrome has placed men far above women in all considerations, and society has supported this injustice of segregation and discriminatory attitude as part of the societal norms. As an attitude nurtured from childhood:

“[U]nfortunately, by the time they [men] grow, they are well trained, and they think women must just submit blindly. They come up silly excuses like “because I am a man” and they think they are entitled to exercise absolute control over women.”⁸⁶

The prevalence of cultural practices and norms, as an inhibition of the rights of women, is a violation of Article 5 of CEDAW. Article 5(1) states that State Parties that have signed and ratified the Convention should take all proper measures -

“To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”⁸⁷

Unfortunately, however, the lack of education and poverty are two major factors that inhibit women from their liberation from the stranglehold of male domination. Poverty

⁸⁴ Personal Communication V, 10 February 2019.

⁸⁵ Personal Communication V, 10 February 2019.

⁸⁶ Personal Communication V, 10 February 2019.

⁸⁷ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

and illiteracy combined to give effect to this mentality and practices. As Hopkins has noted, people “in lower-income families, are at the greatest risk of falling victim to intimate partner violence” as well as other degradation of women.⁸⁸ According to one respondent, men often abuse uneducated women because of their financial dependence:

“The uneducated women will stay in a relationship where the man continually abuses and disrespects them because they depend on the very same man to buy groceries and cosmetics for them. You know your man is sleeping around but you still allow him to have unprotected sex with you because you are afraid to speak your mind. Moreover, that gives the man more power; that is why they are happy to have housewives who are uneducated whom they can remote control anytime.”⁸⁹

5 CONCLUSIONS

A number of factors, such as violent sexual habits and behaviour, and the prevalence of HIV/AIDS and poverty, discussed in this article, have been unkind to South African women and ravaged their pride of place as fundamental stakeholders in the State. Injustices, occasioned by unequal and unfair treatment, have subjected them to be objects of oppression by their men counterparts. The submission of this article, therefore, is that there is the need to reinforce civil society for the promotion of the interests of women through constant engagement with citizens and the government. There is the need to liberate women from the stranglehold and domination of their male counterparts, through a deliberate process to ensure the enforcement of requisite laws that guarantee their rights and freedom.

While the government is making great strides in its commitment to tackling the HIV/AIDS epidemic, it should extend such energy to curbing the scourge of GBV. In recent times, the rate of GBV has been alarming. A strengthened justice system incorporating the prescription of maximum penalties and punishments for culprits of GBV would serve as deterrents to future occurrences. There are extant laws that protect the rights of women in South Africa, but these statutes seem not to be effective. Stakeholders in the South African justice system should consider any form of violence against women as a crime against humanity, and thus to be accorded the necessary urgency in apprehending and prosecuting offenders.

Judging by the rate of violence against women, South African women have to brace themselves to confront the challenge in a bid to set the precedent for future generations. It is imperative that South African society should transit from the value orientation that degrades women in society.

In view of the absence of the avenues to ensure the change of the entitlement mentality, this kind of initiative is necessary in order to change the narrative of the gender gap in the socio-economic and political spheres in South Africa. Although women are working hard to change the societal norms, there is still so much to do. The power

⁸⁸ See generally Hopkins (2017).

⁸⁹ Personal Communication VII, 11 February 2019.

structure that has excluded women needs to be refined and reformed with a view to recognizing the importance of women in society beyond the kitchens and the bedrooms.

Women in positions of authority should enjoy every institutional support to exercise power in a way that would meet the expectations of the offices they occupy. Apart from this, they should resist every form of patriarchal bargaining and strive to assert the equality of rights as contained in different statutes of the country. In 2017, resistance against women abuse forced the Deputy Minister of Basic Education, Mduduzi Manana, to resign his appointment over his violent acts against women.⁹⁰ This kind of resistance would go a long way and enforce societal recognition of women as equal partners with their male counterparts in the task of nation-building. This is an antidote to lead to the eradication of the constant violence against women.

A vital complement of this proposal is the continuing education of the girl-child. The idea of forced marriage⁹¹ should be discouraged, and the education of girl-children should be made a priority in a manner that would allow them to explore their potential.

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⁹¹ Mtshali V "Forced child marriage practiced under the pretext of customary marriage in South Africa" (2014) 15(2) *Child Abuse Research in South Africa* 51 at 51–61.

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