

**EVALUATING THE APPLICABILITY OF THE UK DOMESTIC
VIOLENCE DISCLOSURE SCHEME IN A SOUTH AFRICAN
CONTEXT: PRACTICALITIES AND CONSTITUTIONAL
IMPLICATIONS**

Mini-dissertation submitted by

Getsia Refilwe Zazo

in partial fulfilment of the requirements in respect of the Master's Degree /
Magister Legum (LLM)

at

The Faculty of Law

Department of Public Law

University of the Free State

Bloemfontein

January 2019

Supervisor: **Mr Errol Muller**

TABLE OF CONTENTS

Declaration	iv
Abstract	v
Dedication	vi
Acknowledgements	vii
List of Acronyms and Abbreviations	viii
Table of Legislation	ix
International Law Instruments	x
Table of Cases.....	x

Chapter 1 – INTRODUCTION

1.1 INTRODUCTORY REMARKS	1
1.2 SIGNIFICANCE OF STUDY	2
1.3 KEY RESEARCH QUESTIONS	3
1.4 RESEARCH METHODOLOGY	3
1.5 STRUCTURE OF MINI-DISSERTATION.....	5

Chapter 2 – DOMESTIC VIOLENCE AND FEMICIDE IN SOUTH AFRICA

2.1 INTRODUCTION.....	6
2.2 STATISTICS	8
2.3 ENDEAVOURS UNDERTAKEN TO ERADICATE DOMESTIC VIOLENCE	9
2.3.1 Efforts from non-government organizations	9
2.3.1.1 People Opposing Women Abuse (POWA).....	9
2.3.1.2 Sonke Gender Justice.....	10
2.3.2 Efforts from the State	11
2.3.2.1 16 Days of activism for no violence against women and children	11
2.3.2.2 The Kopanong Declaration	12

2.3.2.3	<i>National Action Plan to End Gender Violence</i>	12
2.3.2.4	<i>The establishment of Thuthuzela Care Centres (TCCs)</i>	13
2.4	THE DOMESTIC VIOLENCE ACT 116 of 1998 (DVA)	13
2.4.1	Brief overview	13
2.4.2	Strengths of the Act	14
2.4.3	Shortcomings of the Act.....	15
2.5	CONCLUSION	17
Chapter 3 – CLARE'S LAW: THE DOMESTIC VIOLENCE DISCLOSURE SCHEME		
3.1	THE ORIGIN OF CLARE'S LAW	19
3.1.1	The relationship – the beginning to the end	19
3.1.2	The campaign to introduce Clare's law	20
3.1.3	Legal implementation.....	20
3.2	THE RIGHT TO ASK	21
3.2.1	Application procedure	21
3.2.2	The State's discretion regarding disclosure	22
3.2.2.1	<i>General</i>	22
3.2.2.2	<i>High-risk cases: MARAC</i>	22
3.2.2.3	<i>Low-risk cases: Multi-agency body</i>	23
3.2.3	Procedure following decision not to disclose	23
3.2.4	Procedure following decision to disclose	24
3.3	THE RIGHT TO KNOW	25
3.4	ARGUMENTS IN SUPPORT OF THE DVDS	25
3.5	ARGUMENTS AGAINST THE DVDS	26
3.6	DOMESTIC VIOLENCE DISCLOSURE IN OTHER JURISDICTIONS	28
3.6.1	General overview	28
3.6.2	Scotland.....	29

3.6.3	New Zealand.....	29
3.6.4	Australia.....	30
3.6.5	Similarities and differences	30
3.7	CONCLUSION	31

Chapter 4 – CONSTITUTIONAL IMPLICATIONS

4.1	INTRODUCTION.....	33
4.2	THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT OF 1996.....	33
4.3	THE PROMOTION OF ACCESS TO INFORMATION ACT 2 of 2000.....	34
4.3.1	Brief description of the Act	34
4.4	THE PROTECTION OF PERSONAL INFORMATION ACT 4 of 2013.....	35
4.4.1	Brief description of the Act	35
4.4.2	Possible risks in disclosing information	36
4.5	INTERNATIONAL LAW	37
4.6	CONCLUSION.....	37

Chapter 5 – CONCLUSION

5.1	OVERVIEW.....	39
5.2	APPLICABILITY AND VIABILITY.....	40
5.2.1	Introduction	40
5.2.2	Personnel.....	40
5.2.3	Infrastructure.....	41
5.2.4	Overcoming distance challenges	41
5.3	LEGISLATIVE CONSIDERATIONS AND CONSTITUTIONAL IMPLICATIONS.....	42
5.3.1	Effects on constitutional rights	42
5.3.2	Recommended legislative amendments	43
	BIBLIOGRAPHY.....	46

DECLARATION

I, the undersigned, **GETSIA REFILWE ZAZO**, hereby declare that this mini-dissertation is my own work and it has not been submitted for any other degree at the University of Free State or any other university or similar institution, and that all the sources that I have used or quoted are indicated in the text or acknowledged in the list of references.

.....

Getsia Refilwe Zazo

.....

Date

ABSTRACT

Femicide and other domestic violence-related offences have reached disastrous proportions in South Africa, with the country having been reported as having five times more than the global rate of domestic violence incidences. As does the rest of the world, the United Kingdom also grapples with the scourge of domestic violence. This research is aimed at evaluating a law applied in the United Kingdom, termed the Domestic Violence Disclosure Scheme (DVDS), or “Clare’s law”. In terms of this law, potential victims of domestic violence are allowed to apply for disclosure of their partners’ previous records. This is meant to afford the applicant a chance to make a decision whether to remain in the relationship, seek help, or to leave the relationship. The study focuses on explaining how the DVDS originated, and what effect it has had in the United Kingdom as well as in other jurisdictions that have since adopted similar laws, such as Australia, Scotland, and New Zealand. Since in the South African setting the Constitution is the supreme law of the country, this study looks into the constitutional implications of introducing legislation similar to the DVDS in South Africa. Furthermore, the effect on the *Promotion of Access to Information Act* 02 of 2000 (PAIA), together with an applicant’s constitutional rights to life, dignity and access to information, are weighed against the requirements of the *Protection of Personal Information Act* 04 of 2013 (POPI) and the subject’s constitutional rights, such as the right to privacy, and to be presumed innocent until proven guilty. The research unpacks various efforts by both the State and Non-Governmental Organizations (NGOs) to eradicate domestic violence in South Africa. Endeavours such as 16 Days of Activism for No Violence against Women and Children, the Kopanong Declaration, National Action Plan to End Domestic Violence, and the Establishment of Thuthuzela Care Centres are likewise examined. The strengths and weaknesses of the *Domestic Violence Act* 116 of 1998 (DVA) and the viability of legislation similar to the DVDS are expounded by looking into factors such as personnel and infrastructure availability, and other factors that may affect the applicability of the law. The conclusion of the study recognises the need for the introduction of a law similar to the DVDS in South Africa. Legislative amendments to both the PAIA and the DVA are recommended to allow for disclosure of information about a person’s previous records in deserving cases.

Keywords: domestic violence, femicide, gender-based violence, Domestic Violence Disclosure Scheme, Clare’s law, disclosure of previous convictions or records.

DEDICATION

This research paper is dedicated to the lives and memories of every woman who has been killed by her partner, the women who are surviving abusive relationships, and most importantly, the strong and courageous women who are able to recognise when it is time to leave an abuser. Through the many months I spent researching the applicability of the UK Domestic Violence Disclosure Scheme, it was you who I had in mind.

ACKNOWLEDGEMENTS

Firstly, I give thanks to the *Almighty Father* for blessing me with everything and everyone I needed to go through this journey. Lord, I am nothing without you.

My husband, John Zazo – your constant love and unending support never cease to amaze me. The way you took care of our children when I was preoccupied with the research left me freshly smitten with you. You are my pillar. I love you, Lala.

My children, Oarabile, Tshiamo and Thato – I know that I sacrificed a lot of family time for my studies this year. One day you will understand why I had to do it. I hope that you will find inspiration in my work when you grow older. There is nothing you cannot do. Always remember that.

My mother, Maria Ratshefola – thank you for your prayers, Mommy. You taught me the importance of perseverance, faith and prayer. I will always make you proud.

My children's nanny, Makobedi Sekhonyana – from the bottom of my heart, thank you for mothering my children with such love and patience. You are an angel. I really appreciate having you as part of our family, Kobi.

My colleague, Mr Jacques Slabbert – I still remember the day you suggested this topic to me. I can never thank you enough for that. Domestic violence eradication is a topic very close to my heart. I appreciate the impact you have had in my life. You are awesome.

My Best Friend Forever, Dr Nothando Moyo-Mubayiwa – you inspire me to reach for the stars. Thank you for accepting the bet we made to register for our Master's degrees (or else...). The calls and messages of motivation, support and advice you gave me throughout the year have been incredible. *Mr Bruce Mubayiwa* – You always moved above and beyond to get me help when I needed it. Your encouraging words were always like fuel to me. Thank you, my friends.

My Supervisor, Mr Errol Muller – thank you for pushing me to do better with each submission. I noticed that each feedback I received from you led to a remarkable improvement and a deepened understanding of the concepts. You always made time to meet me. I appreciate that. You displayed a genuine interest in my topic, you were impressively swift in giving feedback each time. God bless you, Sir.

Mr. Stef Ferreira of Magic Camel Communications, I bless the day I was referred to you. Thank you for assisting with the language editing. I am impressed with your proficiency.

LIST OF ACRONYMS AND ABBREVIATIONS

CEDAW	: Convention on the Elimination of All Forms of Discrimination against Women
DSDAS	: Disclosure Scheme for Domestic Abuse Scotland
DVA	: <i>Domestic Violence Act</i> 116 of 1998
DVDS	: Domestic Violence Disclosure Scheme
FCS Unit	: Family Violence, Child Protection and Sexual Offences Unit
FVIDS	: Family Violence Information Disclosure Scheme
HRA	: <i>Human Rights Act of 1998</i>
IDVA	: Independent Domestic Violence Advisors
MARAC	: Multi-Agency Risk Assessment Conference
NGO	: Non-Governmental Organization
NPA	: National Prosecuting Authority
NSW	: New South Wales
PAIA	: <i>Promotion of Access to Information Act</i> 2 of 2000
POPI	: <i>Protection of Personal Information Act</i> 4 of 2013
POWA	: People Opposing Women Abuse
PR	: Public Relations
SADC	: Southern African Development Community
SAPS	: South African Police Services
STATS SA	: Statistics South Africa
TCC	: Thuthuzela Care Centre
UK	: United Kingdom
WHO	: World Health Organization

TABLE OF LEGISLATION

South Africa

Constitution of the Republic of South Africa Act of 1996

Domestic Violence Act 116 of 1998

Electronic Communication and Transactions Act 25 of 2002

Firearms Control Act 60 of 2000

Promotion of Access to Information Act 2 of 2000

Protection from Harassment Act 17 of 2011

Protection of Personal Information Act 4 of 2013

National Credit Act 34 of 2005

United Kingdom

Data Protection Act of 1998

Disclosure Scheme for Domestic Violence Scotland

Domestic Violence Disclosure Scheme

Freedom of Information Act of 2000

New South Wales (Australia)

Domestic Violence Disclosure Scheme

New Zealand

Family Violence Information Disclosure Scheme

INTERNATIONAL LAW INSTRUMENTS

1953 European Convention on Human Rights

1979 UN *Convention on the Elimination of All Forms of Discrimination against Women*

1993 UN *Declaration on the Elimination of All Forms of Violence against Women*

1998 Prevention and Eradication of Violence against Women and Children (Addendum to the SADC Declaration on Gender and Development of 1997)

TABLE OF CASES

South Africa

KS v AM 2018(1) SACR 240 (GJ)

Mudau v State (547/13) [2014] SASCA 43 (31 March 2014)

S v Baloyi CCT29/99 [1999] ZACC 19; 2000 (1) BCLR 86; 2000 (2) SA 425 (CC) (3 December 1999)

S v Kana (SS31/2013) [2013] SAWCHC 33 (29 October 2013)

S v Ngubeni (A459/2008) [2008] SAGRHC 178 (17 June 2008)

S v Pillay (CCD48/17) [2018] ZAKZDHC 11 (7 May 2018)

S v Pistorius (CC113/2013) [2014] ZAGPPHC 924 (21 October 2014); *S v Pistorius* (CC113/2013) [2016] ZAGPPHC 724 (06 July 2016); *S v Pistorius* (CC113/2013) [2014] ZAGPPHC 793 (12 September 2014)

S v Qhekisi (166/2015) [2015] ZAFSHC 182 (17 September 2015)

CHAPTER 1

INTRODUCTION

1.1 INTRODUCTORY REMARKS

Many South African women continue to suffer and die at the hands of their partners. Too many lives have already been lost to femicide in intimate relationships.¹ Domestic violence in all forms is increasingly prevalent in society, despite all the laws and endeavours by government to curtail it. The legislature, the courts, the police, and all other relevant departments have no real control over what happens in the privacy of victims' homes. The lack of control contributes to this scourge of domestic violence.

Although this research will mostly be focused on the United Kingdom (UK) and South Africa, it is acknowledged that domestic violence is a worldwide problem. Statistics by the World Health Organization (WHO) reveal that 30% of women worldwide have experienced some form of violence from their intimate partners, and 38% of murders of women are committed by a male partner.²

In 2002 the Bio-statistics Research Unit of the Medical Research Council concluded that various factors were playing a role in the rise of domestic violence in different South African households. These included geographical position, education, consumption of alcohol, occupation, experiencing or witnessing domestic violence in childhood, and cultural intolerance. It was further noted that domestic violence was experienced by many women in marital, co-habiting and dating relationships alike, with not much difference in mean age.³ However, the focus will not be on the causes of domestic violence but on determining whether legislation such as the *Domestic Violence Disclosure Scheme* (DVDS) introduced in the UK in 2014 could bring about any positive changes to the current state of affairs in South Africa with regard to domestic violence. The DVDS, also known as Clare's Law, has been described as a phenomenal public relations success for the police in England and Wales.⁴ It allows women who may be at risk of domestic violence to approach the police for information

¹ Femicide is defined as: "The act of killing a woman, as by a domestic partner or a member of a criminal enterprise..." – <http://www.dictionary.com> (accessed on 21/05/2018).

² <http://www.who.int/reproductivehealth/publications/violence/9789241564625/en/>. (accessed on 24/05/2018).

³ Jewkes *et al* 2002:1611.

⁴ Grace 2015:37.

on whether their partner has a history of violence.⁵ The main purpose of this law is to enable the person at risk to make an informed choice whether to continue with the relationship or to consider other options such as leaving the relationship or seeking help and support.⁶ This law will be discussed more expansively in Chapter 2 of this research paper.

The dynamics of relationships and the nature of domestic violence make it easier to leave a toxic relationship or abusive partner earlier in the relationship rather than later. Research shows that the more time a woman spends with an abusive partner, the harder it becomes for her to leave the relationship.⁷

1.2 SIGNIFICANCE OF STUDY

We regularly get to see on the news or hear from within the community how a woman has been gruesomely murdered by her partner in this country.⁸ According to a policy brief published by the Alan J Flisher Centre for Public Mental Health,⁹ South Africa has the highest rate *in the world* of women murdered by their partners. The statistics are petrifying. The Medical Research Council in 2012 found that every eight hours a woman is killed by her partner or former partner.¹⁰ The rate of femicide in South Africa is four times higher than the global average.¹¹ This is truly a burning issue and calls for immediate intervention. Clearly, more needs to be done to save women's lives. The

⁵ Wangmann 2016:230.

⁶ Queensland Law Reform Commission *Domestic Violence Disclosure Scheme Report*, Report No. 75. June 2017.

⁷ Pape KT & Arias I 2000:201-214.

⁸ See for example:

The Citizen "Woman allegedly mutilated and murdered by 'loving' boyfriend" – <https://www.citizen.co.za/news/south-africa/2012017/woman-allegedly-mutilated-and-murdered-by-loving-boyfriend/>;

Sunday Times "Soweto woman allegedly stabbed to death by her boyfriend" – <https://www.timeslive.co.za/news/south-africa/2018-10-16-soweto-woman-allegedly-stabbed-to-death-by-her-boyfriend/>;

News24 "Boyfriend arrested after woman's body found, police station torched" – <https://www.news24.com/SouthAfrica/News/boyfriend-arrested-after-womas-body-found-police-station-torched=20170513>; and

Sowetan Live "Woman shot dead by her VIP guard boyfriend" – <https://www.sowetanlive.co.za/news/south-africa/2018-07-30-woman---shot-dead--by-her-vip-guard-boyfriend/> (All accessed on 16/11/2018).

⁹ https://pmhp.za.org/wp-content/uploads/IPV_policybrief.pdf. (accessed on 16/11/2018).

¹⁰ This includes ex-boyfriends and ex-husbands – <http://mg.co.za/article/2017-05-22-government-action-on-femicide-goes-wrong-from-bottom-up> (accessed 26/05/2018).

¹¹ Estimates show that South Africa's rate for 2015 was 9.6 per 100 000 women while the global rate was 2.4 per 100 000 women. – <http://marieclaire.co.za/hot-topics/south-africa-femicide-stats-2018> (accessed 06/05/2018).

introduction of legislation similar to the DVDS in the UK in domestic South African law is by no means intended to be a blanket solution to domestic violence, but rather to advance an ideology or system that could make a difference to some women and save them from staying with their would-be killers.

Most of the published articles on this topic (Clare's Law), but certainly not all of them, are from the UK itself. The researcher has investigated a number of articles written on the topic but could not find any particular research undertaken in South Africa to evaluate whether it would have any impact on the incidences of domestic violence in this country.

The *Domestic Violence Act 112 of 1998* (DVA) defines 'domestic violence' as abusive conduct such as physical abuse, sexual abuse, harassment or any other controlling or abusive behaviour towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.¹²

In a nutshell, Clare's Law is a law that was introduced in 2014 in the United Kingdom in terms of which partners of former violence-related offenders are allowed to have such information disclosed to them by the police upon request.¹³

1.3 KEY RESEARCH QUESTIONS

The following key questions will be probed in this research:

- Can the UK Domestic Violence Disclosure Scheme be applied in South Africa?
- What would the practicalities be, or will it be feasible?
- What would the constitutional implications be?

1.4 RESEARCH METHODOLOGY

Most women would probably prefer to know whether their partner has a recorded history of violence. However, whether having such information at their disposal would encourage them to leave the relationship, is not certain. The determination would be

¹² s1 of the *Domestic Violence Act 112 of 1998*. Conduct referred to may also be in the form of emotional, verbal and psychological abuse, economic abuse, intimidation, stalking, damage to property, or entry into the complainant's residence, where the parties do not share the same residence.

¹³ Griffith 2016:298.

subjective, considering the complexity of relationships and the uniqueness of individuals.

The methodology to be applied in this research involves a scrutiny of the relevant provisions of the DVDS. Articles on the topic, both in support of and against, will be critically analyzed. Moreover, the State's international commitments, such as the 1979 *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) and the 1993 *Declaration on the Elimination of All Forms of Violence against Women*, as instruments used by the United Nations General Assembly to protect women's rights, are to be considered.

Regionally, the State is a signatory to the Southern African Development Community (SADC) *Declaration for the Prevention and Eradication of Violence against Women and Children*, which highlights a deep concern that levels of cases of the various forms of violence against women and children continue to increase.¹⁴ The SADC Declaration resolves that there be adoptions and monitored implementations of policies and programmes aimed at enhancing the security and empowerment of women.¹⁵

At domestic level, the Constitution as the supreme law of the country provides for various fundamental rights in the Bill of Rights, including the right to equality, human dignity, life, and freedom and security of the person. In its preamble the DVA highlights the purpose of this Act, namely to afford the victims of domestic violence maximum protection from domestic abuse. The Act provides for the issuing of protection orders to victims of domestic violence. Another relevant statute is the *Protection from Harassment Act 17* of 2011, which regulates cyber stalking by providing for the investigation and issuing of protection orders where the identity of the harasser is not known to the complainant.

¹⁴ Art. 6 of the Declaration for the Prevention and Eradication of Violence against Women and Children, 1998.

¹⁵ Art. 25 of the Declaration for the Prevention and Eradication of Violence against Women and Children, 1998.

1.5 STRUCTURE OF MINI-DISSERTATION

The layout of this research paper is as follows:

Chapter 1 is the introduction, briefly explaining basic concepts, the significance of the study, key research questions, and research methodology to be applied, and outlining the structure of the mini-dissertation.

Chapter 2 outlines the history of domestic violence and femicide in South Africa, and the State's endeavours to address the situation, including the introduction of the DVA. The effect and weaknesses of the DVA are also discussed.

Chapter 3 discusses how Clare's Law came into being, what it entails, as well as its merits and demerits, especially in the UK where it has first found application. Literature on this topic is reviewed and analysed in this chapter. The chapter also looks at how similar legislation has been incorporated and applied in Scotland, New Zealand, Wales and Australia.

Chapter 4 discusses the constitutional implications of introducing legislation similar to the DVDS in South Africa, and whether it would be practicable in our setting. This evaluation is imperative as the Constitution is the supreme law of the country. Section 2 declares that any law or conduct that is inconsistent with the Constitution is invalid.

Chapter 5 is the conclusion, which will be a synopsis of the research. It will also include a final determination on whether legislation similar to the UK DVDS could be viable in South Africa, as well as suggestions for the legislator to consider when adopting or developing this legislation. In essence, the conclusion will basically encapsulate the outcome of the research, in response to the Key Research Questions noted at 1.3 above.

CHAPTER 2

DOMESTIC VIOLENCE AND FEMICIDE IN SOUTH AFRICA

2.1 INTRODUCTION

The Supreme Court of Appeal highlighted the country's sad state of affairs in *Mudau v the State*¹⁶ as follows:

*Domestic violence has become a scourge in our society and should not be treated lightly, but deplored and also severely punished. Hardly a day passes without a report in the media of a woman or child being beaten, raped or even killed in this country. Many women and children live in constant fear.*¹⁷

There has indeed been a number of such cases that caught the media's attention over the past few years. In the 2013 case of *S v Kana*,¹⁸ 17-year-old Anene Booyesen was brutally raped and murdered by a man in her neighbourhood. Her throat was slit and a broken bottle lodged in her vagina. Her fingers and legs were broken, and 1,2 metres of her intestines were protruding through her badly damaged genitalia. The Western Cape High Court heard the matter and convicted the accused of rape and murder, sentencing him to two life sentences which are to run concurrently.

In the same year, model Reeva Steenkamp was murdered by her boyfriend Oscar Pistorius, a former Paralympic champion. The *S v Pistorius*¹⁹ trial sparked so much public interest that the proceedings were broadcast on television – the first broadcasted trial for the South African criminal justice system. After being convicted and exhausting all subsequent legal remedies available to him, Pistorius is currently serving a 13-year imprisonment term.

Another case that sent shockwaves through the country was the horrific murder of 22-year-old Karabo Mokoena by her boyfriend Sandile Mantsoe in 2017. He dumped her body in the veld and burnt it beyond recognition. There were allegations that the deceased had previously experienced repeated and violent abuse at the hands of Mantsoe, and that not long before her death she had opened a case of assault against

¹⁶ *Mudau v State* (547/13) [2014] SASCA 43 (31 March 2014).

¹⁷ *Mudau v State* (547/13) [2014] SASCA 43 (31 March 2014): par. 6.

¹⁸ *S v Kana* (SS31/2013) [2013] SAWCHC 33 (29 October 2013).

¹⁹ *S v Pistorius* (CC113/2013) [2014] ZAGPPHC 924 (21 October 2014); *S v Pistorius* (CC113/2013) [2016]. ZAGPPHC 724 (06 July 2016); *S v Pistorius* (CC113/2013) [2014] ZAGPPHC 793 (12 September 2014).

him.²⁰ The High Court sentenced Mantsoe to an effective 32 years in prison for murder, assault and defeating the ends of justice. The significance of Karabo Mokoena's death is that it gained momentum on social media platforms on Facebook and on Twitter with the hashtag *#MenAreTrash*. It allowed many women to share their own experiences of abuse by their male partners, and by males in general. The hashtag grew into a movement to challenge South Africans to speak out and act against domestic violence and femicide.²¹

This raised awareness about patriarchy as a social system that emphasizes male authority and control or domination over women. It stems from cultural and religious beliefs that men are the superior of the sexes and that women are perpetual minors. This ideology thrives in the dynamic relationship between control and fear. In terms of this system, men are expected to hold control over women. Violence is resultantly used as a means for men to obtain and maintain such control.²² *Mazibuko* discusses the tradition of *ilobolo* (bride-price) that is embedded in Southern African societies as linked to patriarchy and leading to the escalation of domestic violence.²³ This practice reinforces the misconception that a husband has 'purchased' his wife; therefore, he can do whatever he wants with her. This often leads to an abuse of culture as a means to justify violence against women. Even if an abusive marriage becomes unbearable for a woman for whom *ilobolo* has been paid, she is unable to leave the marriage unless her family is willing and able to return the paid amount.²⁴ According to Jewkes, children experiencing violence in the home can grow up to be males who perpetrate abuse, and women who accept abuse.²⁵ It becomes the norm or a system of life. When the Director of Public Prosecutions in *S v Ngubeni*²⁶ expressed the view that domestic violence perpetuates patriarchy within a society and leads children to believe that violence is an

²⁰ <https://www.enca.com/south-africa/mokoenas-body-burnt-beyond-recognition-constable> (accessed on 06/07/2018).

²¹ <https://www.twitter.com/hashtag/MenAreTrash>; <https://www.ewn.co.za/2017/05/12/why-the-hashtag-menaretrash-is-important> (both accessed on 06/07/2018).

²² Johnson A. 1997. *The gender knot: Unravelling our patriarchal legacy*. Philadelphia, PA: Temple University Press.

²³ *Mazibuko* 2016:7373-7378.

²⁴ *Mazibuko* 2016:7377.

²⁵ Jewkes 2002:1426.

²⁶ *S v Ngubeni* (A459/2008) [2008] ZAGPHC 178 (17 June 2008).

acceptable manner of dealing with problems or gaining control over another person, the court accepted this as an appropriate concern to raise.²⁷

Recently, in May 2018, Zolile Khumalo, a quantity surveying student at Mangosuthu University, was allegedly killed by her ex-boyfriend, Thabani Mzolo, after he apparently refused to accept her rejection. It was reported that Mzolo shot Khumalo twice before proceeding to kick her as she lay bleeding on the floor. Her death saw the community coming to the court in numbers to protest against the accused being released on bail. That led to Mzolo abandoning his application for bail and the matter being postponed to 29 August 2018 for further investigations.²⁸ On 15 October 2018 Mzolo's initial legal representative withdrew as attorney of record as a result of not being properly placed in funds. He instructed another counsel and the trial is set to commence in March 2019.²⁹ However, to avoid further delays, the court remanded the matter to 31 January 2019 at the request of the state, in order to allow the accused's current legal representative to receive copies of the case docket and to be placed in funds ahead of the date of trial.³⁰

2.2 STATISTICS

The 2016 research report by the Commission for Gender Equality acknowledged that gender-based violence (GBV) generally affects more women than men. However, the report further criticized the South African Police Services (SAPS) for not recording GBV separately as a specific crime category.³¹ This has affected the collection of data, resulting in no accurate data being available to establish the real extent of this scourge. A murder by an intimate partner is simply recorded in the murder category. The same applies to assaults, sexual offences, and other forms of offences.

The *Key Indicator Report* published by Statistics South Africa (Stats SA) in 2016 revealed that one in five women had experienced physical violence by a partner, and

²⁷ *S v Ngubeni* (A459/2008) [2008] ZAGPHC 178 (17 June 2008): par. 14.

²⁸ <https://www.city-press.news24.com/News/court-hears-murder-accused-thabani-mzolo-has-a-previous-conviction>. (accessed on 06/07/2018).

²⁹ <https://www.timeslive.co.za/news/south-africa/2018-10-15-mut-murder-accused-changes-legal-representative-again/>. (accessed on 16/11/2018).

³⁰ <https://www.iol.co.za/news/south-africa/kwazulu-natal/state-wants-zolilekhumalo-accused-to-pay-lawyer-upfront-18099273>. (accessed on 15/11/2018).

³¹ Commission for Gender Equality. 2016. *Fighting fire with(out) fire: Assessing the work of Police Stations in combating violence against women*. Research Report 2016.

16 per cent of divorced or separated women had experienced sexual violence by a partner.³²

According to the *Victims of Crime survey* released by Stats SA in 2017, sexual victimization of women was more than twice the rate for men. Although no particular statistics on femicide are available, the report notes a decline in murder in general over the preceding four years, with the percentage of female-headed households falling victim to murder being more than twice the corresponding percentage of male-headed households.³³ The survey is based on matters reported to the SAPS. It depicts an abominable state of affairs as it is, but considering that domestic violence is believed to be underreported, it implies that the situation is worse than it appears to be. *Gracia* illustrates the underreporting of domestic violence by terming it ‘the iceberg of domestic violence’. This is derived from the inclination that reported cases represent only the tip of the iceberg.³⁴

2.3 ENDEAVOURS UNDERTAKEN TO ERADICATE DOMESTIC VIOLENCE

2.3.1 Efforts by non-governmental organizations

2.3.1.1 People Opposing Women Abuse (POWA)

POWA is an organization established in 1979 by a group of women volunteers with the objective of providing referral services and shelter to women who are experiencing domestic violence. The organization has seven offices in Gauteng where women can present themselves in person for counselling, legal support, and sheltering, which includes attending various programmes and skills training. POWA also offers telephonic counselling, advocacy and public awareness as mechanisms to reach out to more women nationwide.³⁵

The POWA Annual General Meeting Report of 2015/2016 notes that some of the challenges experienced by the organization are that some people book appointments but do not attend them. It also expresses the need for more funding for the organization to operate more efficiently and effectively.

³² Statistics South Africa (Stats SA) *South Africa Demographic and Health Survey – Key Indicator Report 2016*:54-57.

³³ Statistics South Africa (Stats SA) *Victims of crime survey 2016/2017*. Statistical Release P0341:40-41

³⁴ *Gracia* 2003:536.

³⁵ POWA Annual Report – 2014-2015.

Nevertheless, many women continue to seek different forms of assistance from POWA. Between April 2015 and March 2016 the Evaton office conducted 47 telephone counselling sessions; the Berea and Soweto offices gave 432 women face-to-face-counselling and telephonic counselling to 481 women; the Tembisa counsellors saw 878 survivors of sexual abuse; and the East Rand Shelter accommodated 51 women and 48 children, having also assisted a total of 664 women with either face-to-face, telephonic counselling, or even via email. The community outreach programme in Kathorus also yielded good results with 1 375 community members reached.³⁶

2.3.1.2 **Sonke Gender Justice**

Sonke Gender Justice is a South African-based non-profit organization that works throughout Africa, advocating gender justice, and resisting patriarchy or male domination. In partnership with the Women's Legal Centre, Gun-Free South Africa and Irish Aid, Sonke Gender Justice set up a campaign to educate communities on certain provisions of the DVA, the *Firearms Control Act* 60 of 2000, and the powers of the courts to remove dangerous weapons from homes and from the hands of abusive gun owners, as a way to prevent violence and save women's lives. This campaign was held in 2015, reportedly in response to a national study that revealed that more women (57 per cent) were murdered by their intimate partners than by strangers, with firearms being involved in 17 per cent of the cases.³⁷

Sonke Gender Justice has been very vocal in fighting for women's rights. It publicly condemned the decision of the National Prosecuting Authority (NPA) not to prosecute the Deputy Minister of Higher Education and Training, Mduzuzi Manana, for the alleged assault of his 53-year-old female domestic worker. Sonke Gender Justice had already filed a formal complaint with the Parliamentary Joint Committee of Ethics and Members Interests regarding the allegations against Manana.³⁸ Mduzuzi Manana announced his resignation from Parliament on 24 July 2018, on the eve of the day he was scheduled to appear

³⁶ People Opposing Women Abuse (POWA) AGM Report. April 2015 - March 2016.

³⁷ <https://www.genderjustice.org.za/project/domestic-violence-and-dangerous-weapons> (accessed on 05/07/2018).

³⁸ <https://www.genderjustice.org/news-item/sonke-gender-justice-condemns-mpa-s-decision-not-to-prosecute-mduduzi-manana-for-alleged-assault-of-domestic-worker>. (accessed on 26/07/2018).

before Parliament's Ethics Committee to answer questions relating to an incident that occurred at a night club in 2017. The incident led to his conviction for assaulting three women.³⁹ His resignation from Parliament, in accordance with the Parliamentary Code of Conduct, meant that he did not have to answer to the Ethics Committee on both reported incidents as the Committee does not have jurisdiction over members that are not currently serving in Parliament.⁴⁰

2.3.2 Efforts by the State

In his 2014 State of the Nation Address, former President Jacob Zuma stated that one of the key focus areas was to eradicate violence against women and children. This shows that the State was alert to the fact that the situation in this country needed urgent attention.

2.3.2.1 16 Days of activism for no violence against women and children

Also known as '16 Days of activism against gender-based violence', this worldwide campaign is held every year from 25 November, the international day for the Elimination of Violence against Women, to 10 December, international Human Rights day, to raise awareness of the adverse impact of violence and abuse against women and children on society and to eradicate it permanently.⁴¹ South Africa adopted this campaign in 1998, applying this intervention strategy for an effective 18 years thus far.⁴² This campaign has been criticized as being inadequate. Judge Poswa expressed in *S v Ngubeni*⁴³ that the once-a-year "six weeks of non-violence to woman" campaign is certainly not the sort of measure required to educate such a large section of our society on the need to abandon its traditional notions and practices and to accept the constitutional rights of women and children to be treated as equals.

³⁹ <https://afroworldview.com/anc-caucus-welcomes-mananas-resignation-from-parliament>. (accessed on 31/07/2018).

⁴⁰ The Code of Ethical Conduct of Disclosure of Members' Interest for Assembly and Permanent Council Members. "Member" is defined at para. 1 as a Member of the National Assembly or Permanent Council Member (not former-member).

⁴¹ <https://www.parliament.gov.za/press-releases/parliament-statement-16-days-activism-no-violence-against-women-and-children>. (accessed on 05/07/2018).

⁴² 16 Days Secretariat, Western Cape, 2008. *Concept document Campaign*.

⁴³ *S v Ngubeni (A459/2008) [2008] SAGRHC 178 (17 June 2008)*: par. 21.

2.3.2.2 The Kopanong Declaration

On 5 May 2006 the Kopanong Declaration was adopted by 260 representatives from all spheres of government, constitutional bodies, civil society, business, unions, faith-based organizations, traditional authorities, and international cooperating partners, including United Nations agencies, as a comprehensive approach to ending violence against women and children in South Africa. Representatives at the conference committed to finalizing a detailed action plan with a number of objectives, including ensuring men work together with women in eliminating patriarchy, and eradicating violence against women and children in a targeted and measured way over the coming decade.⁴⁴

2.3.2.3 National Action Plan to End Gender Violence

Following the Kopanong Declaration, the 365 Day National Action Plan to End Gender Violence was adopted on 08 March 2007 (International Women's Day). The mission of this plan was to devise a comprehensive and concerted plan to end gender violence with measurable targets and indicators to which South Africans from all walks of life, in all spheres of government, and at all levels of society can contribute.⁴⁵

The Plan is structured into four parts:

- PART 1 is the calendar of events planned to sustain the campaign throughout the year;
- PART 2 is the priorities identified by the Interdepartmental Management Team for ending gender violence;
- PART 3 is a comprehensive, three-year multi-sector action plan; and
- PART 4 concerns the institutional mechanisms for the implementation of the plan.

This Plan was a multi-sectoral framework and approach for ending gender violence over the period 2007-2009,⁴⁶ which meant that it had a three-year lifespan. A look at the recent statistics as discussed at paras 2.2 and 3.7 of this

⁴⁴ The Kopanong Declaration: 1.

⁴⁵ 365 Day National Action Plan to End Gender Violence. *8 March 2007*.

⁴⁶ 365 Day National Action Plan to End Gender Violence. *8 March 2007*: 5.

paper makes it evident that the Plan was not entirely successful. The scourge of domestic violence is still worsening.

2.3.2.4 The establishment of Thuthuzela Care Centres (TCCs)

Thuthuzela Care Centres have been established at some public hospitals to operate as one-stop facilities, allowing victims of domestic violence access to services of investigating officers, nurses, doctors, social workers, psychologists, and prosecutors.⁴⁷ TCCs have been praised for improving the process of reporting and prosecuting sexual offences and preventing secondary traumatization of victims by allowing the entire initial stage to take place under one roof, and in a dignified and friendly environment.⁴⁸

2.4 THE DOMESTIC VIOLENCE ACT 116 of 1998 (DVA)

2.4.1 Brief overview

The DVA was passed on 20 November 1998 in response to a high incidence of domestic violence, and came into operation on 15 December 1999. The Preamble of the Act describes and acknowledges domestic violence as a serious social evil. The main purpose of the Act is to afford the victims of domestic violence maximum protection from domestic violence that the law can provide, which includes the issuing of protection orders.⁴⁹

A complainant may approach the clerk of court and apply for a protection order in terms of the DVA if there is 'domestic relationship' between the parties. Domestic relationships are defined quite broadly in section 1 of the Act as including instances where parties are/were married to each other; live(d) together for some time; are family members; are of different or same-sex; are/were engaged; or share(d) a child or parental responsibility of a child.⁵⁰ The procedure is that the court may issue an interim

⁴⁷ Nduna & Nene 2014:21.

⁴⁸ The Centre for the Study of Violence and Reconciliation. *Mapping local gender-based violence prevention and response strategies in South Africa*. April 2016: 9.

⁴⁹ *Domestic Violence Act 116/1998*.

⁵⁰ According to s1 of the Act: 'domestic relationship' means a relationship between a complainant and a respondent in any of the following ways:

- (a) they are or were married to each other; including marriage according to any law, custom, or religion;
- (b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage; although they are not' or were not, married to each other, or are not able to be married to each other;
- (c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);

protection order, which has to be served on the respondents, calling upon them to show cause on the return date why the court should not make the interim order a final order.⁵¹ On the return date, the court will consider the application and the response if any, and either confirm the order as is or with amendments or dismiss the application. If there was proper service but the respondent does not attend court on the return date, the court, if satisfied that there is *prima facie* evidence, may issue a final order.⁵² Any of the parties may have their legal representative present.⁵³

A victim of domestic violence seeking a protection order can choose to lay criminal charges against the respondent for the same conduct complained of, or may pursue both remedies (opening a criminal case and applying for a protection order). However, the Act allows for the court to order the police to seize any firearm or dangerous weapon owned by or under the control of the respondent.⁵⁴

2.4.2 Strengths of the Act

(a) The DVA recognizes the urgency of applications for protection orders by allowing for the applications to be brought outside the ordinary court hours or on a day which is not an ordinary court day.⁵⁵ The only qualification is that the court must be satisfied that the applicant may suffer undue hardship if the application is not heard at the time.

(b) The *audi alteram partem* rule is applied, making the whole process fair as the court is open to hearing both sides. The interim protection order has a limited lifespan, to enable or afford the respondent a chance to come and present his side of the story to the court. This effectively means that should the respondent decide not to oppose the application, the interim order may be made a final order by the court.

(c) The issuing of an interim protection order and its service can in some cases, on its own, serve as a deterrent, discouraging the respondent from continuing with the domestic violence.

-
- (d) they are family members related by consanguinity, affinity or adoption;
 - (e) they are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or
 - (f) they share or recently shared the same residence.

⁵¹ *Domestic Violence Act 116/1998*:sec. 5.

⁵² *Domestic Violence Act*:sec. 6(1).

⁵³ *Domestic Violence Act*:sec. 14.

⁵⁴ *Domestic Violence Act*:sec. 9.

⁵⁵ *Domestic Violence Act*:sec. 4(5).

(d) The DVA is drafted and designed to be gender-neutral in its application, in line with the rights in the Bill of Rights as enshrined in the Constitution.⁵⁶

(e) The definition of a domestic relationship in the Act is so broad that it includes 'perceived romantic, intimate or sexual relationships' to include a relationship that exists in the mind of only one of the parties, in other words where one party thinks they are in a relationship but the other party does not see it that way.

2.4.3 Shortcomings of the Act

(a) The maximum sentence of five years direct imprisonment for a person convicted of contravening the DVA does not offer much deterrence and should be increased. It is only two years longer than the general penal jurisdiction of the district court. The seriousness and prevalence of domestic violence call for much harsher sentences to be imposed on those convicted of related offences. The risk of serving a five year imprisonment term is meant to discourage offenders from committing domestic violence after the issuing of a protection order. Judging by the statistics in paragraph 2.2 above, it is clear that it has not served its intended purpose. South Africa has become a haven for violence against women and children.

(b) The Act makes no provision for higher sentences for repeat offenders of domestic violence. A person who is convicted and sentenced for contravening the Act faces the same maximum sentence of five years imprisonment or a fine, even if they reoffend. However, if the court is satisfied that the accused habitually commits domestic violence offences and that it is necessary to protect the community against the accused, the court can refer the matter to the Regional Court for sentencing in terms of section 286(1) of the *Criminal Procedure Act* 51 of 1977. In terms of this provision, the accused will be declared a habitual criminal and be detained in prison for at least seven years before he is eligible for release on parole. The difficulty about this route, however, is that the Regional Court is tasked with sentencing an accused convicted by another court, There is, by law, no specific number of offences on which a person must have been convicted to be considered a habitual criminal. It may be the view of the lower

⁵⁶ Particularly the right to equality as provided for in s9 of the *Constitution of the Republic of South Africa* Act of 1996.

court that an accused should be declared a habitual criminal, but the Regional Court Magistrate may hold a different view in the particular matter.⁵⁷

(c) The Act does not specify a time-frame within which the interim order must be served on the respondent. Regulation 15 of the Act only requires service to be effected 'without delay'.⁵⁸ This causes uncertainty. A protection order is most useful if served immediately. If the respondent is not aware of the existence of the order, it remains a worthless piece of paper.

(d) Regulation 15 lists a number of ways in which service may be effected. Among them is a provision that allows for the clerk of the court to send a certified copy of the order to the respondent by registered mail.⁵⁹ This method may be problematic as there is no guarantee that the respondent will receive the documents. This may also be ineffective for a large number of complainants who reside in rural areas where postal delivery is impossible.

Furthermore, as mentioned in paragraph (c) above, if the respondent is not aware that the court has issued an order directing or prohibiting him from committing specified acts of domestic violence, and if he is not aware that he is expected to appear in court on a particular date and time, then the protection order cannot serve its purpose. The other methods of service provided for in this regulation, if applied correctly, are more suitable as they include proper service and the completion of a return of service. This refers to the clerk of the court handing over the court order to the respondent, served by the sheriff, as well as served by a peace officer.

(e) The Act does not specify who between the court (or Department of Justice and Constitutional Development) and the complainant must pay the sheriff's fees in instances where a sheriff is used to serve the interim order on the respondent. However, the court may conduct an investigation into whether a complainant would be able to afford the sheriff's fees. The problem arises where the sheriff issues a return of non-service and the complainant has to pay the sheriff to attempt service again. Where the sheriff, for whatever reason, does not serve the respondent timeously and the respondent does not attend court, the court may extend the interim order, in which case

⁵⁷ *Criminal Procedure Act 51/1977:sec. 286(1).*

⁵⁸ Regulations under the *Domestic Violence Act* (Act 116 of 1998). Published in Government Notice No. R.1311 (Government Notice 20601). 5 November 1999.

⁵⁹ Reg. 15(1)(a) of the Regulation under *the Domestic Violence Act*, Act 116 of 1998.

the sheriff must then be paid again to go to serve the respondent properly. This means that the sheriff provision is susceptible to abuse. While the sheriff goes back and forth, the complainant's life could be in grave danger.

(f) If the Applicant does not appear on the return date, the court will strike the matter off the roll. However, the nature of domestic violence might require that there be an enquiry or investigation into the reason(s) why the application did not attend court. As much as an order of court may deter a respondent from committing any further acts of domestic violence, it may also infuriate them further, placing the applicant's life in danger.

2.5 CONCLUSION

This chapter has shown that there have indeed been various endeavours by both government and non-governmental institutions to curb the rise of domestic violence incidences. The records of POWA, as noted in 2.3.1.1 above, although showing on a positive note that some women are receiving the required assistance, should not be celebrated as it also paints a gloomy picture of the numbers of women that experience some or other form of abuse in this country. Amid Sonke Gender Justice's very good track record, it appears that there is still much to be done in order to counter the upsurge of domestic violence. The two mentioned NGOs are not the only such organizations in South Africa. There are many others, but perhaps a sharper focus is required on preventing the problem rather than trying to cure it.

As Sachs J averred in *S v Baloyi*:⁶⁰

*All crime has harsh effects on society. What distinguishes domestic violence is its hidden, repetitive character and its immeasurable ripple effects on our society and, in particular, on family life. It cuts across race, culture and geography, and is all the more pernicious because it is often concealed and frequently goes unpunished.*⁶¹

With all the efforts from both government and civil society organizations, the scourge of domestic violence continues to grow. According to a 2013 auditing firm KPMG report titled "*Too costly to ignore – the economic impact of gender based violence in South Africa*", which is based on conservative estimates, gender-based violence costs South Africa between R28.4 billion and R42.4 billion per year. This denotes 0.9% to 1.3% of

⁶⁰ *S v Baloyi* CCT29/99 [1999] ZACC 19; 2000 (1) BCLR 86; 2000 (2) SA 425 (CC) (3 December 1999).

⁶¹ *S v Baloyi*:par. 11.

GDP annually. The executive summary of the report correctly describes gender-based violence as ‘a problem of great magnitude’, and gives a demonstration or breakdown of how violence drains resources from many sectors.⁶²

In the more recent case of *S v Pillay* decided on 07 May 2018, the Honourable Justice Henriques J began his judgment by stating that violence by men towards women was endemic in this country, and further referred in despondency to the fact that South Africa’s femicide rate was five times higher than the global average.⁶³

The high incidence of domestic violence in our country is truly unacceptable.⁶⁴ Clearly attempts currently applied to deal with this issue are not sufficient. Instead of diminishing, domestic violence remains prevalent and on the increase.⁶⁵

⁶² Cost to government (includes National Prosecuting Authority, Department of Justice and Constitutional Development, South African Police Services, Department of Social Development, Department of Health) – R513 551 244; Cost to civil society organizations – R885 585 832; Cost to business – R1 823 236 692; Cost to victims – R25 204 817 522. This shows how violence drains resources from many sectors.

⁶³ *S v Pillay* (CCD48/17) [2018] ZAKZDHC 11 (7 May 2018).

⁶⁴ *S v Qhekisi* (166/2015) [2015] ZAFSHC 182 (17 September 2015): par. 13.

⁶⁵ *S v Ngubeni* (A459/2008) [2008] ZAGPHC 178 (17 June 2008): par. 14.

CHAPTER 3

CLARE'S LAW – THE DOMESTIC VIOLENCE DISCLOSURE SCHEME

3.1 THE ORIGIN OF CLARE'S LAW

3.1.1 The relationship – the beginning to the end

In April 2007, in the UK a woman named Clare Wood met a man by the name of George Appleton on an internet dating site and the two commenced a relationship. By October 2008 Clare learnt that Appleton also had concurrent affairs with four other women he had also met on the internet, and so she ended her relationship with him. Five days later, the abuse started with him threatening to burn her house down and to kill her. The next day Clare made a call to the police reporting that Appleton was banging on her door. Appleton was arrested and released on bail. Whilst he was out on bail, Clare laid a complaint that he sexually assaulted her.

A few days later, she made another report that he 'poked' her on Facebook, and further sent her three automated messages on the same Facebook social site. Contacting her was a breach of his bail conditions. Appleton's bail was however not cancelled as the police believed that his breach of contacting her was minor in nature and did not qualify as a threat. On 2 February 2009 Appleton murdered Clare by strangling her and setting her body alight. To avoid taking responsibility for his action, he committed suicide on 6 February 2009 by hanging himself.⁶⁶

Throughout the relationship and whole ordeal, Clare had not been aware that Appleton had a history of violence against women. Her father, Michael Brown, learnt after her death that Appleton had actually been imprisoned for three years in 2002 for kidnapping a former girlfriend at knifepoint. He served another six months' prison sentence only a year before meeting Clare, for breaching a restraint order against another woman. Mr Brown described his daughter as "the most kind, gentle, generous person you could meet".⁶⁷

⁶⁶ <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/timeline-clare-wood-murder-884985>. (accessed on 07/08/2018).

⁶⁷ <https://www.bbc.com/news/uk-england-manchester-13506721>. (accessed on 07/08/2018).

3.1.2 The campaign to introduce Clare's law

This revelation about Appleton's criminal past led to Clare's father embarking on a nation-wide campaign to have the government introduce a law allowing women to find out if their boyfriends or husbands have a history of violence against women.⁶⁸ He was of the view that had his daughter known that Appleton had such a history, she would have been in a position to make an informed decision not to associate herself with him and would have immediately discontinued her involvement with him.⁶⁹ The basis of his contention was a strong belief that a law like this would have saved his daughter's life.

3.1.3 Legal implementation

Consultations on the introduction of the DVDS were held from 25 October 2011 to 13 January 2012. The consultation process was done electronically. Any person within the geographical areas of England and Wales could submit their responses online. Braille, large font and audio options could be provided on request. During that 12-week period a total of 259 responses were published, with a majority of 220 respondents expressing approval for a process of disclosing information (either through the 'right to ask' or 'the right to know') to be implemented.⁷⁰

Thereafter, the DVDS was piloted for a period of 14 months across the areas of Manchester, Gwent, Nottinghamshire and Wilshire. The pilot process took place in the Gwen and Wilshire areas from July 2012 to September 2013, and in the Greater Manchester and Nottinghamshire areas from September 2012 to September 2013. During this process, a total of 386 applications for disclosure were received, which included 231 "Right to Ask applications"⁷¹ and 155 "Right to know applications".⁷² Of the 386 applications that were received, only 194 were referred to the Local Decision Making Forum for consideration of disclosure. A total of 111 disclosures were made.⁷³

⁶⁸ <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/dad-of-salford-murder-victim-clare-682386>. (accessed on 07/08/2018).

⁶⁹ <https://www.theguardian.com/society/2013/apr/21/a-history-of-violence-clares-law>. (accessed on 07/08/2018).

⁷⁰ UK Home Office. *Domestic Violence Disclosure Scheme. A consultation*. Oct 2011.

⁷¹ Of the applications, 25 per cent were instituted by persons with concerns about their partner; 25 per cent from third parties.

⁷² 86 applications were initiated by statutory and voluntary services, and 67 applications by the police.

⁷³ UK Home Office. *Domestic Violence Disclosure Scheme (DVDS) Pilot Assessment Report*. p3.

The Home Office rolled out the DVDS nationally across England and Wales from March 2014.⁷⁴ By January 2015, the police in England and Wales had received over 3 760 requests that resulted in the revelation of 1 335 violent pasts.⁷⁵ In the first two years of coming into operation, 2 235 disclosures were made in response to 5 415 requests that were received during that period.⁷⁶

3.2 THE RIGHT TO ASK

3.2.1 Application procedure

One of the two procedures for disclosure of information relating to a history of violence is called ‘the right to ask’. The first stage involves the initial contact with the police by a member of the public (the partner at risk of harm “A” or a third party “C”) applying for a disclosure.⁷⁷ This may be done by calling the police station or applying personally at the police station. Within the next 24 hours, initial checks should be completed, which include assessing whether the application for disclosure should progress to the next stages, and most importantly, whether there is any immediate or imminent risk of harm to person A from person B (the subject in question / the person in respect of whom the disclosure is sought).⁷⁸ Within the next 10 days, A or C (as the case may be), will be called for the second stage. It involves a face-to-face meeting at which they would be required to provide proof of their identity. The applicant may not elect to remain anonymous. If the application is done by a third party, they would also be required to provide proof of their relationship with A.⁷⁹

According to the *UK Home Office Pilot Assessment Report*,⁸⁰ some of the common reasons for deciding that an application should not proceed to the second stage are:

- where the initial intelligence checks do not reveal a ‘pressing need’ to disclose information;
- where it is found that there is no information to disclose suggesting the presence of a risk of harm; and

⁷⁴ Strickland 2013:9.

⁷⁵ <http://www.theweek.co.uk/uk-news/56227/clare-s-law-be-extended-across-england-and-wales>. (accessed on 07/08/2018)

⁷⁶ Griffith 2017:636-637.

⁷⁷ Home Office, 2016. *Domestic Violence Disclosure Scheme (DVDS) Guidance*: par. 17.

⁷⁸ DVDS Guidance: par. 24(c).

⁷⁹ Required proof may also be in the form of text messages showing evidence of their relationship.

⁸⁰ UK Home Office. *Domestic Violence Disclosure Scheme (DVDS) Pilot Assessment Report*:3.

- where it is decided that the particular case does not meet the criteria for the scheme.

The third stage is termed the 'Full Risk Assessment'. It involves criminal records checking and checks with other agencies such as social services, probation services, the Multi-Agency Risk Assessment Conference (MARAC), local domestic violence services, and any other agency that can provide information to inform the risk assessment. Where it is established that there is imminent risk of harm to A, an appropriate safety plan for A has to be prepared. A safety plan is designed to tailor for the needs of A by identifying services and agencies that will be needed to give ongoing support to A. The safety plan may also involve steps to undertake to leave the relationship safely or without intensifying the risk of harm. What is appropriate in any case will depend on the particular circumstances of the specific case under consideration. Ideally, in 35 days, the entire enquiry process should be completed.⁸¹

3.2.2 The State's discretion regarding disclosure

3.2.2.1 *General*

After all the information regarding risk has been gathered and checked, the police will then refer the matter to the Local Multi-Agency Forum (the Forum), who will then discuss the particular matter and make a final decision on whether the police should make the disclosure or not.⁸² This means that a person cannot just walk into a police station and request to know if their partner has any records and have the police disclose the information to them right there and then. The process of disclosure is very complex and involves a number of legal and procedural checks and balances.

3.2.2.2 *High-risk cases: MARAC*

The Forum should ideally be the Multi-Agency Risk Assessment Conference (MARAC) in cases of high-risk assessments. In 2015, there were 250 MARACs operating in various locations across England and Wales. The following core agencies are required to attend all MARAC meetings: the police, probation services, Local Authority Housing, Children's Social Care, Adult Safeguarding, Primary Health Care, Mental Health, Substance Misuse Services, and

⁸¹ DVDS Guidance: par. 68(a).

⁸² DVDS Guidance: paras. 27 & 51.

Independent Domestic Violence Advisors (IDVA).⁸³ The primary role of each representative is to research and share relevant information regarding the alleged perpetrator, the victim, and children, if any. The body is strategically constituted so that action may be expeditiously taken by relevant agencies without having to waste any more time with a further referral. For example, if it turns out that either of the parties is in need of mental health assistance, the Mental Health Agency can act swiftly. If there are children involved who require urgent assistance, the Children's Social Care Agency takes it up immediately. Consequently, it is expected that each representative should be of a senior level, and be able to commit to actions needed on a case-to-case basis.

Other agencies such as Sexual Violence Services and maternity services may from time to time also be invited to attend the MARAC or to provide information where appropriate.

3.2.2.3 Low-risk cases: Multi-agency body

Cases or enquiries relating to low-risk or medium-risk assessments are referred to a multi-agency body for a decision on disclosure. The multi-agency body ideally consists of at least three of the following agencies: Police, Probation Service, Prison Service, Health, Housing, Education, Social Services and the IDVA. Representatives from women support services, victim support services, male support services, and perpetrator programmes must also be included in this Forum.⁸⁴

3.2.3 Procedure following decision not to disclose

If after receiving an enquiry in terms of the 'right to ask', the decision of the Forum is not to disclose any information, or if indeed B has no such/relevant records, the applicant must be so informed personally. If that is not possible, the decision may be communicated via a safe telephone number.⁸⁵ Although the Guidance does not explain what contacting on a safe telephone number entails, suitable examples may include contacting her on a friend's phone, at a pre-arranged time, or being subtle if they call on her phone or landline. The reason for this is that absence of criminal or other

⁸³ Solihull Metropolitan Borough Council. *MULTI-AGENCY RISK ASSESSMENT CONFERENCE (MARAC) Partnership Operating Protocol 2015:4-6.*

⁸⁴ DVDS Guidance: paras. 58-59.

⁸⁵ DVDS Guidance: par. 73(b)(i).

relevant records, such as previously issued protection orders and decisions of non-disclosure, does not necessarily mean there is no risk of harm. If the decision was made following a 'right to know' path, then such decision and reasons should be recorded for future reference.

3.2.4 Procedure following decision to disclose

The Forum will only make a decision for disclosure after applying what is termed "The three-stage disclosure test", which includes the following three determinations that must all be in the affirmative:⁸⁶

- whether it is reasonable to conclude that such disclosure is necessary to protect A from being a victim of crime;
- whether there is a pressing need for such disclosure; and
- lastly, whether there has also been a determination that the need to prevent crime in the particular circumstances outweighs B's rights to have information about their previous convictions kept confidential.⁸⁷

All decisions made following an application in terms of the DVDS must be recorded fully as they may be subjected to judicial review. The format of the recording must therefore be such that it would withstand scrutiny if subjected to judicial review.⁸⁸ This means that each of the answers to the above three questions or determinations made in terms of the three-stage disclosure test must be accompanied by full reasons.

The disclosure must be done by the police, but may also be in conjunction with any other relevant agency. It must also be made personally and not telephonically. The applicant must be consulted about a safe time and place to meet that will be best for the disclosure to be made. Disclosure is to be made verbally and not in writing. Home visits are possible but not recommended.⁸⁹ Applicants may also indicate that they prefer to meet at another venue. This will be decided according to the specific needs of A. Correspondence is not allowed at all since disclosure cannot be made in writing. Moreover, the correspondence could land in the wrong hands.

⁸⁶ DVDS Guidance: par. 62.

⁸⁷ *European Convention of Human Rights*:art. 8.

⁸⁸ DVDS Guidance: par. 78.

⁸⁹ DVDS Guidance: par. 73(b)(i).

Importantly, the person receiving the disclosure must be made to understand that the information is highly confidential and be made to sign a warning in that regard, so that if they later breach the confidentiality by disclosing the information they can be prosecuted.⁹⁰

3.3 THE RIGHT TO KNOW

The second procedure for disclosure, named ‘the right to know’, is the applicable route when the police receive information from other agencies or departments, or in the course of their own investigations. This procedure involves the possible disclosure of information to persons who themselves did not make an inquiry or requested such information. It is where the police, through their own investigations or after information is brought to them by any other agency, find that the potential victim could have a ‘right to know’ that they could be in danger or at the risk of harm. Basically the same principles and procedure relating to disclosure under the ‘right to ask’ apply. This means that there has to be checks with other agencies, an assessment of risk, determination of a safety plan where applicable, a decision whether to refer the matter to the Forum for discussion, and ultimately a decision whether disclosure should be made to the potential victim or another person who is in a better position to safeguard the potential victim from harm.⁹¹ The apparent difference is the fact that there is no need for confirmation of identity or relationship, as there is no applicant. All decisions regarding disclosure must be properly recorded for future reference, irrespective of the outcome.⁹² Another important fact is that referral to the Forum must take place within five working days from the police receiving the indirect information, after which the normal procedure as mentioned above follows.⁹³

3.4 ARGUMENTS IN SUPPORT OF THE DVDS

- (a) Domestic violence offenders often repeat their behaviour. As Chief Constable Carmel Narpier of the Association of Chief Police Officers in the United Kingdom stated:

“A national review of serial perpetrators of domestic violence estimated that around 25 000 offenders of domestic violence had abused two or more different victims with

⁹⁰ Breach of confidentiality is a contravention of s55 the *Data Protection Act* of 1998.

⁹¹ DVDS Guidance: paras. 45 & 46.

⁹² DVDS Guidance: paras. 76 & 77.

⁹³ DVDS Guidance: par. 56.

*violence or threats of violence in a three-year period. Of those, 2 500 had abused three or more victims, and one force had an offender who had committed violence against eight different victims. If we hold this information and determine there is a risk of harm then we have a duty of care to disclose and inform women from being victims in the first place”.*⁹⁴

Furthermore, the following research has also shown that domestic violence is rarely a once-off incident, but tends to be behaviour that is often repeated and may escalate over time:

- Between 2006 and 2009 there were 126 serial perpetrators identified in the Wiltshire Police Force area. From the 126, it was found that 115 had committed domestic violence against two different victims, 10 against three different victims, and one against four different victims.⁹⁵
 - In Australia it was found that 65.1 per cent of victims of domestic violence experienced violence committed by a current partner, and actually experienced more than one incident of violence from that particular partner.⁹⁶
- (b) In light of the above, the scheme is aimed at assisting people who may be at risk of domestic violence by affording them information to enable them to make informed decisions about their relationship.⁹⁷ This way, if they stay in the relationship, they would at least know with what or who exactly they are dealing. If they decide to leave the relationship, then they can do so sooner rather than later, thereby reducing the episodes of domestic violence, and potentially saving their lives.
- (c) The government will always be a few steps behind in the war against domestic violence if its actions are only reactive and not proactive. Some focus should also be directed at preventing domestic violence. The DVDS is a good example of a preventative system.

3.5 ARGUMENTS AGAINST THE DVDS

- (a) *Grace* highlighted that the scheme allows for disclosure of not only a person’s previous convictions (where the person’s guilt was indeed proven) but also where the person has never been proven guilty. It would entail any allegations

⁹⁴ <https://www.gov.uk/government/news/new-domestic-violence-disclosure-scheme-piloted-by-police>. (accessed on 10/08/2018).

⁹⁵ UK Consultation Paper 2011:5.

⁹⁶ NSW Discussion Paper 2015:2.

⁹⁷ Wangmann 2016:230.

made in applications for protection orders, arrests and charges, including those where the matter was for whatever reason later withdrawn, as well as all prosecutions, even where the person was acquitted after all evidence was heard.⁹⁸ It is therefore to a certain degree unfair towards persons whose history is disclosed, especially where they were indeed innocent of the unproven allegation. It interferes with the presumption of innocence until proven guilty. However, one of the reasons why the Guidance does not allow for disclosure to be done in writing or by correspondence, is that the meaning and significance of the various records that are disclosed can be properly explained to the applicant.

- (b) Another point raised by *Grace* is that the alleged offender may be left in the dark when the potential victim leaves the relationship as there is no requirement for them to be informed of the disclosure, and to be given an opportunity to respond to the previously recorded allegations against them.⁹⁹ The Forum has to consider whether the person in respect of whom the disclosure is made should be informed or not, which means that they may not be informed if the Forum so decided.

This is not a strong argument, as in terms of the DVDS Guidance the Forum has to give due consideration of whether the alleged offender should be told that a disclosure will be made to the applicant or potential victim. It is therefore not a rule of thumb that the alleged offender will never be informed. It is only in cases where, after due consideration, it has been determined that making the alleged offender aware of the disclosure to the potential victim would potentially put their life in greater risk of harm.

- (c) According to *Wangmann*, the DVDS option provides potential victims with a false sense of security if the results of their application for disclosure results in a non-disclosure.¹⁰⁰ It may make them think they have nothing to worry about, or that they are safe, when in fact they are not safe.

⁹⁸ Grace 2015:37.

⁹⁹ Grace 2015:43.

¹⁰⁰ Wangmann 2016:230.

However, the DVDS Guidance has already specifically made provision for this by requiring that the applicant be told at the meeting that although there is no information to disclose, it does not necessarily mean that the subject has never been involved in any previous acts of domestic violence, nor does it mean that there is no risk of harm. Furthermore, it is also possible that previous acts of domestic violence committed by the subject had not been reported. One of the reasons this result should be communicated in person is that the applicant can also be provided with information to keep them safe, and be informed of the available support services.

- (d) Looking at the UK Femicide Consensus, it appears that instead of saving a life, taking a decision to leave a violent or potentially violent partner may in fact do the opposite and put a woman's life at greater risk. The femicide consensus published in 2017 reveals that about 113 women were killed by men in England, Wales and Northern Ireland between 01 January 2016 and 31 December 2016. Of the 31 women who were killed by a former intimate partner after separation, 10 were killed within a month of separation and a total of 24 were killed within a year.¹⁰¹

This is further supported by the statistics in another jurisdiction: 37 per cent of women that were killed by their intimate partners in New South Wales between the years 2000 and 2002 were killed by a former partner. Forty-three per cent were killed by a current partner from whom they were planning or trying to separate.¹⁰² However, staying in such a relationship does not guarantee that they would not be killed by their partner.

3.6 DOMESTIC VIOLENCE DISCLOSURE IN OTHER JURISDICTIONS

3.6.1 General overview

Having been termed a public relations success for the police in England and Wales, the DVDS model has been proposed and adopted in other jurisdictions as well.¹⁰³ The name may be different, but the idea is the same. These jurisdictions are briefly discussed below in order to evaluate how the law is received in those jurisdictions. It is

¹⁰¹ The Femicide Consensus: 2016 Findings. *Annual Report on cases of Femicide in 2016*. 2017.

¹⁰² Wangmann 2016:232.

¹⁰³ Grace 2015:37.

relevant since the applicability of this law in the South African context will also be discussed in the next Chapter.

3.6.2 Scotland

The Scottish equivalent of the DVDS is called the **Disclosure Scheme for Domestic Abuse Scotland** (DSDAS). It started with a six-month trial period in Ayrshire and Aberdeen and was later rolled out across Scotland on 01 October 2015. By 01 October 2017, the police in Scotland had received 2 144 applications for disclosure, of which 927 pertained to people who had to be informed that their partner had a history of abusive behaviour.¹⁰⁴ Application can be made in four possible ways, namely visiting a police station, dialling the police phone number for non-emergencies (101), visiting the Scotland Police website, or speaking to a police officer on the street. The DSDAS includes the *Police power to tell* (known as the *Right to know* in the DVDS) by which a person may receive a disclosure without having applied for one. A further similarity with the DVDS is that this decision must first be made by the multi-agency meeting.¹⁰⁵

It was reported that the number of domestic violence incidences reported to the police had increased by 3 982 cases during the period 2008/2009, with an increase of 4 149 cases during 2011/2012, and an increase of only 706 cases in 2016/2017. This illustrates that the introduction of the DSDAS had an undeniably positive impact on the incidences of domestic violence in Scotland over the years.

3.6.3 New Zealand

New Zealand introduced a similar scheme in December 2016 and named it the **Family Violence Information Disclosure Scheme** (FVIDS). The pilot period ended in April 2018.¹⁰⁶ The scheme is mainly based on the UK version and is quite similar. In terms of time-frames, the FVIDS requires disclosure to be done within 20 days. However, in cases where there is a serious threat of harm, urgent disclosure must be communicated within 24 hours of the application. This scheme allows for requests to be made via telephone, via email or directly at the police station.¹⁰⁷

¹⁰⁴ <https://www.bbc.com/news/uk-scotland-34403806>. (accessed on 07/08/2018).

¹⁰⁵ Scotland Police. *Disclosure for Domestic Violence Abuse Scotland* leaflet.

¹⁰⁶ Queensland Law Reform Commission. 2016. *Review about whether the Domestic Violence Disclosure Scheme should be introduced in Queensland*. Consultation paper. WP No 75.p1.

¹⁰⁷ <https://nzfvc.org/news/police-introduce-family-violence-disclosure-scheme>. (accessed on 10/08/2018).

With regard to the resultant effect that the introduction of the FVIDS has had on the rate of domestic violence in New Zealand, there is no clear data available as in the majority of cases the data collecting system applied does not record the victim's relationship to the offender.¹⁰⁸ This means that the precise number of domestic violence cases each year cannot be deduced from the available data.

3.6.4 Australia

The **DVDS** was introduced in New South Wales (NSW) in April 2016 as a two-year pilot programme. The four NSW areas in which the scheme was piloted are Oxley, Shoalhaven, Sutherland, and St. George. The procedure is largely the same as that of the UK DVDS. The exception is that disclosure does not include offences committed outside the NSW jurisdiction, offences where the person has not been found guilty by the court (convicted), and domestic violence orders where the person has never been arrested for contravention.¹⁰⁹

An Issue Paper released by the NSW Bureau of Crime Statistics and Research in May 2018 shows a decline in the prevalence of domestic and family violence in NSW. The rate of domestic violence involving grievous bodily harm decreased from 5.8 per 100 000 to 4.9 per 100 000.¹¹⁰

3.6.5 Similarities and differences

There is a number of similarities between the DVDS versions of England, Wales, Scotland, New Zealand and Australia. These include the fact that the police have to conduct checks and risk assessments,¹¹¹ the application for disclosure may be made either by a person at risk or a concerned third party,¹¹² and that should the decision be that disclosure be made, such disclosure has to be made orally and face-to-face.¹¹³

On the other hand, the NSW DVDS entails only the 'right to ask' pathway and does not include the 'right to know' pathway that the UK (England and Wales) DVDS includes.¹¹⁴

¹⁰⁸ <https://nzfvc.org.nz/news/nzfvc-data-summaries-2017-family-violence-reports-reach-record-high>. (accessed on 17/11/2018).

¹⁰⁹ New South Wales *Domestic Violence Disclosure Scheme* Factsheet. Oct 2015.

¹¹⁰ NSW Bureau of Crime Statistics and Research. Issue paper no. 134. May 2018. p5. Available at <https://www.bocsar.nsw.gov.au/Documents/BB/2018-Report-Is-domestic-violence-in-NSW-decreasing-BB134.pdf>. (accessed on 17/11/2018).

¹¹¹ Queensland Law Reform Commission DVDS Report 2017: par.34.

¹¹² Queensland Law Reform Commission DVDS Report 2017: par.67.

¹¹³ Queensland Law Reform Commission DVDS Report 2017: par.74.

¹¹⁴ Queensland Law Reform Commission DVDS Report 2017: par.34.

Another difference noted is that in terms of the Scottish DSDAS, a decision-making forum makes only a 'recommendation' to the police on whether there should be a disclosure. It is the Scottish police that will make the final decision whether or not to disclose.¹¹⁵ This is different to the UK DVDS in terms of which the decision-making forum makes the decision regarding disclosure, and the police are bound by the decision of the forum.

The above comparisons show that jurisdictions that also adopted legislation similar to the DVDS did not necessarily adopt it in its original form, but applied it in their own contexts to address their particular needs.

3.7 CONCLUSION

The DVDS was not introduced as new legislation. It is a mechanism used to regulate the common law authority the police in the UK already have to disclose information where it is necessary to prevent crime and to save lives.

The pros and cons relating to the DVDS have been highlighted. Notably, conflicting rights need to be properly evaluated, i.e. the potential victim's right to protection (including the right to life, the right to dignity and the right to freedom from inhuman or degrading treatment), and the suspect's rights to privacy and to be deemed innocent until proven guilty. As discussed in para. 4.2 above, all these rights are entrenched in the *Constitution of the Republic of South Africa*.¹¹⁶ In the UK, the law protecting human rights is the *Human Rights Act of 1998 (HRA)*, which includes the right to life,¹¹⁷ as well as the prohibition of torture¹¹⁸, stipulating that no one shall be subjected to torture or to inhuman or degrading treatment or punishment.. The right to dignity is not specifically provided for in the HRA. In fact, the word 'dignity' is not even once mentioned throughout the entire legislation. However, it may be accepted that the rights sought to be protected by the HRA are based on human dignity as a basic principle or value.

Adopting legislation similar to the DVDS does not necessarily mean adopting it in its original form. It may be formulated and contextualized as needs be.¹¹⁹

¹¹⁵ Queensland Law Reform Commission DVDS Report 2017: par.34.

¹¹⁶ *Constitution of the Republic of South Africa Act of 1996*.

¹¹⁷ *Human Rights Act 1998*:art. 2.

¹¹⁸ *Human Rights Act 1998*:art. 3.

¹¹⁹ See para. 3.6.5 above.

Generally, domestic violence has already reached dangerous proportions, with statistics showing that it is on the rise both nationally and internationally. Locally, Statistics South Africa (STATS SA) reported that the murder rate for women increased drastically by 117 per cent between 2015 and 2016/17. Furthermore, the number of women who experienced sexual offences increased by 53 per cent from 31 665 in 2015/16 to 70 813 in 2016/17.¹²⁰ As mentioned in para. 1.1 above, the World Health Organization (WHO) reported in 2013 that 30 per cent of women worldwide had experienced some form of violence from their intimate partner, and 38 per cent of femicide cases were committed by a male partner.

Many of the available ways to fight this scourge focus on assisting the victims of domestic violence 'after' often repeated victimization. This has proven to be highly ineffective as the incidences continue to soar. The DVDS model brings a fresh perspective to the war against domestic violence by empowering women to attack the problem at the initial stages before serious damage is done, and before lives are lost.

The number of reported domestic violence incidents in the UK decreased from 390 in 2012/2013 to 246 in 2016/2017.¹²¹ The DVDS model has already proven to have a positive impact in the UK and Australia.¹²² As discussed in Chapter 2, domestic violence and femicide in South Africa have reached an alarming rate amid all the systems that are in place to fight this scourge. It is time for the government to re-evaluate its stance on this issue. The next chapter will assess the viability of similar legislation in South Africa by investigating constitutional considerations involved.

¹²⁰ Stats SA *“Crime Against Women in South Africa: An in-depth analysis of the Victims of Crime Survey data 2018.” Report 03-40-05.*

¹²¹ <https://www.statistica.com/statistics/288325/domestic-violence-in-england-and-wales-y-on-y/>. (accessed on 17/11/2018).

¹²² <https://www.statistica.com/statistics/288325/domestic-violence-in-england-and-wales-y-on-y/>. (accessed on 17/11/2018). See paras. 362 and 364 above for the Scottish and Australian statistics, which both show a decline in domestic violence.

CHAPTER 4

CONSTITUTIONAL IMPLICATIONS

4.1 INTRODUCTION

Having discussed the application of the Domestic Violence Disclosure Scheme in the United Kingdom and other jurisdictions in the preceding Chapter, the focus is now on the constitutional implications of introducing similar legislation in the South African context. From its inception the DVDS has had its own set of challenges, criticisms and aspects that needed to be dealt with, such as how it affects the right to privacy of the person whose information may be disclosed, as well as how this is balanced with their human rights. The right to privacy is a universal human right but there is an array of other local statutory provisions that need to be considered in this respect. These include the *Constitution of the Republic of South Africa* of 1996 as the supreme law of the country, which provides for the right to privacy, the *Promotion of Access to Information Act* 2 of 2000, which regulates the right of access to information that is held by the state or any other person for the exercise or protection of any rights, and the *Protection of Personal Information Act* 4 of 2013, which regulates the processing of personal information by public and private bodies.

4.2 THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA ACT OF 1996

Section 14 of the Constitution provides that everyone has the right to privacy, which includes the right to protection against unlawful collection, retention, dissemination and use of personal information. However this right, along with the other rights contained in the Bill of Rights, may be limited to the extent that the limitation is reasonable and justifiable.¹²³

The Constitution further guarantees everyone the right to human dignity,¹²⁴ life,¹²⁵ freedom and security of the person (which includes the right to be free from all forms of violence from either public or private sources; and the right to bodily and psychological integrity),¹²⁶ as well as the right to freedom of association. The

¹²³ *Constitution of the Republic of South Africa Act* of 1996:sec. 36.

¹²⁴ *Constitution of the Republic of South Africa*:sec. 10.

¹²⁵ *Constitution of the Republic of South Africa*:sec. 11.

¹²⁶ *Constitution of the Republic of South Africa*:sec. 12.

introduction of legislation similar to the DVDS will certainly affect a citizen's right to privacy. On the other hand, domestic violence infringes on all the other mentioned rights of the victims of this crime. These are two competing interests. The rights of the domestic violence perpetrators to keep their criminal history private should not override the rights and plights of women in this country who continue to be victims of domestic violence. This situation warrants the application of section 36 of the Constitution (also known as "the limitation clause").¹²⁷ The right to privacy of perpetrators cannot outweigh the rights of the victims.

4.3 THE PROMOTION OF ACCESS TO INFORMATION ACT 2 of 2000

4.3.1 Brief description of the Act

Also known as 'PAIA', this Act was introduced in 2000 to give effect to section 32(2) of the Constitution. Section 32 expressly calls for legislation to be enacted to give effect to the right of access to any information that is held by the state or by any other person and that is required for the exercise or protection of any rights. Section 9(a) of PAIA conveys this as one of the five objects of the Act, resonating section 32 of the Constitution verbatim.¹²⁸ Another object is to establish voluntary and mandatory mechanisms or procedures to give effect to that right in a manner which enables persons to obtain access to records of public or private bodies as swiftly, inexpensively and effortlessly as is reasonably possible.¹²⁹

PAIA allows for mandatory disclosure in the public interest where the disclosure of the record would reveal evidence of an imminent and serious public safety or

¹²⁷ s36 of the Constitution provides:

"The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-

- (a) the nature of the right;*
- (b) the importance of the purpose of the limitation;*
- (c) the nature and extent of the limitation;*
- (d) the relation between the limitation and its purpose;*
- (e) less restrictive means to achieve the purpose.*

¹²⁸ s9(a) of the PAIA captures the object of the Act as to give effect to give effect to the constitutional right of access to any information that is held by another person and that is required for the exercise or protection of any right.

¹²⁹ *Promotion of Access to Information Act:sec. 9(d).*

environmental risk,¹³⁰ and the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question.¹³¹

The DVDS exists as it does because the UK has laws that allow for access to information that is held by the state.¹³² The only difference is that, unlike South Africa, the UK does not take account of or include information held by private bodies.¹³³

4.4 THE PROTECTION OF PERSONAL INFORMATION ACT 4 of 2013

4.4.1 Brief description of the Act

The Preamble to the *Protection of Personal Information Act* (hereafter referred to as 'POPI') states its aim as regulating the processing of personal information by public and private bodies in a manner that gives effect to the right to privacy, subject to justifiable limitations that are aimed at protecting other rights and important interests. The definition of 'personal information' includes information relating to the criminal history of a person.¹³⁴

The public body (for example the SAPS with regard to information concerning arrests, prosecutions and convictions; and the courts in relation to information regarding Protection Orders and Harassment Orders) must ensure that all personal information in its possession is kept confidential. In order to comply with this, the public body has to take appropriate, reasonable, technical and organizational steps to prevent the unlawful access to or processing of personal information.¹³⁵

In order to give effect to this requirement, a public body is expected to take reasonable measures to identify all reasonably foreseeable internal and external risks to personal information in its possession or under its control, as well as to establish and maintain appropriate safeguards against the risks identified.

Before the Act came into operation, Roos¹³⁶ had argued that South Africa did not have adequate data protection laws in place. By then the only data protection provisions that

¹³⁰ *Promotion of Access to Information Act*:sec. 46(a)(ii).

¹³¹ *Promotion of Access to Information Act*:sec. 46(b).

¹³² *The UK Freedom of Information Act, 2000.*

¹³³ Chauban 2018:209.

¹³⁴ *Protection of Personal Information Act*:sec. 1.

¹³⁵ *Protection of Personal Information Act*:sec. 19(1)(b).

¹³⁶ Roos 2008:92-94.

existed were to a limited extent in PAIA, the *Electronic Communication and Transactions Act*,¹³⁷ and the *National Credit Act*.¹³⁸

4.4.2 Possible risks in disclosing information

Risks involved in availing information relating to a person's criminal history to a potential victim of domestic violence may be the following:

- (a) The person to whom the disclosure is made may decide not to treat the information as confidential and decide to spread the 'personal' information about the subject to others.
 - In order to diminish the risk of this occurring, it is recommended that the officer entrusted with administering the disclosure must properly explain the fact that the information is strictly confidential and should under no circumstances be disclosed to a third party. Disclosure should not be made in writing so as to prevent it from landing in the wrong hands. Persons to whom disclosure is made should be required to sign an acknowledgement of confidentiality, which will make them liable to prosecution should they be in breach of it. This appears to be how the DVDS in its original form addressed this particular aspect or concern.
- (b) Having the information of the partner's violent criminal history may compel the potential victim to leave the relationship, which may infuriate the partner and put the victim's life in greater danger. For example, the "If I can't have you, no one else will" mentality contributes to the alarmingly high rate of femicide.
 - This is why it is important for a proper, full risk assessment to be done, and in cases of high risk, the establishment of an appropriate safety plan.
- (c) The disclosure of information relating to cases that were withdrawn after arrest, struck off the roll, or where the subject was acquitted by the court, may still affect the subject adversely and seen as an infringement of his or her right to be presumed innocent until proven guilty.
 - Not every piece of information has to be disclosed to the applicant. The Forum will discuss the particular case before it and decide on what information warrants disclosure. Again, if it is decided to disclose this particular information, the officer

¹³⁷ Act 25 of 2002.

¹³⁸ Act 34 of 2005.

making the disclosure remains entrusted with the responsibility of explaining all of this to the person to whom the disclosure is made.

It is important to note that POPI is still fairly new legislation and will most likely undergo changes in future.¹³⁹

4.5 INTERNATIONAL LAW

Article 19 of the 1948 *Declaration of Human Rights*, and Article 9(2) of the *International Covenant on Civil and Political Rights*, both recognize the right to freedom of information as a right that deserves protection. This is precisely what the DVDS sets out to do: to provide information for the protection of other human rights. Therefore, South Africa is also bound by these international legal instruments.

4.6 CONCLUSION

In evaluating the applicability of the DVDS in the South African setting it must be kept in mind that the Constitution is the supreme law of the country. Any law inconsistent with it is invalid. It is accepted that the right to privacy is a constitutional right. However, it cannot be overlooked that the rate of domestic violence, and particularly femicide, has reached alarming proportions in South Africa and that the strategies in place to fight this scourge do not seem to be making much of a difference. In fact, the situation continues to spiral out of control. Why not give women a right to know with exactly whom they are involved, so that they can make a decision about the relationship before they die at the hands of an abuser? This calls for a balance between different and equally acknowledged constitutional rights: the right to privacy of criminal history (which is subject to the limitation clause), and the right to life (which is absolute and not subject to limitation). The right to life should obviously take precedence. An act allowing for disclosure, in approved circumstances, of a partner's relevant criminal history should and can make a difference, and can potentially save lives.

The fact that it has never been done before in South Africa does not mean it should not be done. The law is a phenomenon that evolves over time according to the needs of society at a particular time. The courts and the legislature should not be narrow-minded in dealing with the issue of domestic violence. The court in *KS v AM*¹⁴⁰ accepted that through bestowing discretionary powers on the court in terms of section

¹³⁹ Luck 2014:84.

¹⁴⁰ 2018(1) SACR 240 (GJ).

7(2) of the DVA, the legislature had sought to provide an adequate legal system to address the unacceptably high incidence of domestic violence. It was on this basis that the court in this case issued a relief that was not specifically provided for in the *Domestic Violence Act*,¹⁴¹ and that had never been issued before, in order to adequately address the main problem as identified by the court. The court made a landmark decision in compelling the respondent to hand over to the sheriff all his digital devices for forensic examination to ensure that all explicit video footage and photographs of the applicant, with whom he previously had a relationship, are permanently removed.¹⁴² This decision was made to prevent him from furthering or repeating his previous act of opening a fake Facebook account and posting the offending material there for the appellant's friends and family to see, effectively trampling on the appellant's rights to privacy as well as bodily and psychological integrity.

The time for being reactive has passed. Too many lives have already been lost. Legislation similar to the DVDS would mark a fresh approach to proactively combatting femicide, and domestic violence in general. The Constitution clearly makes it the responsibility of the State to respect, protect and fulfil the rights in the Bill of Rights.¹⁴³ The intention of the legislature in drafting this type of legislation should be women's rights to life, and to bodily and psychological integrity. These rights cannot be subjected to any limitation. They deserve the utmost protection.

¹⁴¹ *Domestic Violence Act 116/1998.*

¹⁴² *KS v AM:252 par.58.*

¹⁴³ *Constitution of the Republic of South Africa:sec. 7(2).*

CHAPTER 5

CONCLUSION

5.1 OVERVIEW

Chapter 1 laid the foundation for the topic by highlighting the extent of domestic violence in South Africa, as well as how it continues to rise.

In Chapter 2, the statistics were outlined with a view to emphasizing the urgent need to act against the scourge of domestic violence in South Africa. The various endeavours undertaken by both government and non-government organizations are proof that a lot has been done, but the statistics suggest that still more needs to be done. The situation has not become any better. Currently, the most relied upon weapon against domestic violence is the *Domestic Violence Act*.¹⁴⁴ However, 20 years since its introduction, it has not been able to make a noteworthy impact on the fight against the abuse and killing of women in this country. It is accepted that the DVA does have its strengths, but after two decades it should not be having the highlighted shortcomings unattended to, and with no prospects of consideration in the near future. To reiterate, the high incidences of domestic violence in our country is indeed truly unacceptable.

The UK's DVDS, also known as Clare's law, is unpacked in Chapter 3. Its constituents – the right to know, the right to ask, and the applicable procedures in respect of both – are explicated. As with any ground-breaking law, it does not go without any criticism. The criticisms, together with the commendations, are cognitively deliberated in the Chapter. A comparison of the two shows that when it comes to a law such as the DVDS, the potential pros outweigh the potential cons – by far.

Chapter 4 looks into the constitutional provisions relevant to this discussion, as well as brief descriptions of the *Promotion of Access to Information Act* of 2000, and the more recent *Protection of Personal Information Act* promulgated in 2013. The relationship between these legislations is discussed further in para. 5.3 below.

¹⁴⁴ *Domestic Violence Act* 116/1998.

5.2 APPLICABILITY AND VIABILITY

5.2.1 Introduction

According to the South African Police Services (SAPS) Annual Report 2017/2018, there are 1 146 police stations with 150 791 police officers servicing a national population of approximately 56 521 948. This boils down to a police/population ratio of 1:375. However, this does not mean that on a daily basis each police officer has to attend to 375 people.¹⁴⁵

The SAPS Annual Performance Plan 2017/2018 revealed its intention to shed 3 000 jobs over three years.¹⁴⁶ Although this has not occurred yet, the expressed goal shows that the SAPS does not consider itself lacking in terms of personnel. It may be argued that the police already have their hands full with the current high rate of crime, but this is precisely why there is an urgent need for innovative ways of preventing crime before it occurs, instead of having to attend to a murder scene. Once a crime has been committed, the police have to start a full investigation, taking down witness statements, collecting evidence, tracing further witnesses for statements, taking photographs, attending post-mortems, obtaining bail information, opposing bail application, subpoenaing witnesses, attending court, and following all other requisite steps. Preventing the crime from occurring in the first place will save the police a lot of time and resources.

5.2.2 Personnel

As it stands, each SAPS cluster has an established Family Violence, Child Protection and Sexual Offences Unit (FCS Unit) that is responsible for attending to, amongst others, cases involving domestic violence. Instead of training all police officials to attend to applications for disclosures, the training may be focused on the FCS Unit members. Alternatively, all police officers may have to be given basic training so that they are aware of the law if it is so introduced. FCS members should receive more intensive and comprehensive training to enable them to properly attend to the applications. Moreover, there would have to be training for social workers and all other

¹⁴⁵ SAPS Annual Report 2017/2018:11.

¹⁴⁶ SAPS Annual Performance Plan 2017/2018.

agencies that would be involved in the process, through partaking in forums similar to the UK MARAC,¹⁴⁷ or in any other way.

5.2.3 Infrastructure

Infrastructure and the number of police stations in the country would not necessarily have to increase solely by reason of the introduction of this proposed legislative amendment. Applicants should be able to make use of the same police stations available in their jurisdictions. Each police station would have to make an office available where applicants can be assisted privately when they make their applications, attend face-to-face meetings, or come for the results of their applications for disclosure. Where there is a shortage of facilities, it could be the same office that FCS members use to attend to or interview sexual offence victims. This should obviously be done in private and not at the Community Service Centre.

5.2.4 Overcoming distance challenges

In a province such as the Northern Cape, where there are a lot of remote villages and lack of transportation, it may be a challenge for applicants to travel to a police station to submit an application for disclosure. An example is the police station in Mothibistad which serves about 168 broadly scattered villages. The FCS Unit is based in Kuruman, which is a further 10 kilometres from Mothibistad.

The suggestion is for technology to be used to overcome distance as a barrier against access to this potential service. Research by *Fatih and Bakir* reveals how useful technology may become if used by the police in the fight against crime, and in increasing the effectiveness and efficiency of policing. They conclude by advocating for the effective use of information technology by the police.¹⁴⁸ There has been other similar research on this topic, with the same outcome or recommendation for technology to be seen as a viable option in policing.¹⁴⁹

Should a law similar to the DVDS be introduced in South Africa, the question arises how it could best be applied, especially in this era of ever-evolving technological aids. The rise of social media has led to the majority of people owning smart phones and

¹⁴⁷ See para. 3.2.2.2 above.

¹⁴⁸ Fatih T & Bekir C. 2015:294-295.

¹⁴⁹ Also see Nuth M.S. 2008. Taking advantage of new technologies: For and against crime. *Computer Law & Security Review*. Vol. 24(5). 437-446.

having access to the internet. Many people have downloaded applications such as *Skype* and *WhatsApp*, which can be used as cheaper alternatives to making voice and video calls. This technology may be considered for applicants who would not be in a position to travel to a police station, whether because of lack of transport, or fear of being seen entering a police station by their partner who may in some cases also be stalking them. This form of technology may be used to allow applicants to provide proof of their identity in the video call, to have it confirmed, and to submit their application and be interviewed in the same way. For safety reasons, applicants may still be required to present themselves at the police station in person for a disclosure outcome to be effectively communicated, and for them to sign an undertaking not to disclose the information to a third party.

5.3 LEGISLATIVE CONSIDERATIONS AND CONSTITUTIONAL IMPLICATIONS

5.3.1 Effects on constitutional rights

The Constitution is the supreme law of the country. Any law or conduct inconsistent with it is invalid.¹⁵⁰ This means that any legislation or amendments similar to the DVDS can never see the light of day in South Africa if it is not in line with the Constitution, in other words, if it infringes on any of the rights in the Bill of Rights without a valid justification. Rights such as the right to privacy are subject to the limitation clause in terms of which the rights in the Bill of Rights can be limited where such limitation is reasonable and justifiable.¹⁵¹ This raises the following questions: Would it be reasonable to infringe a potential offender's right to keep his criminal records private? Can it be justified? The answer to both questions is in the affirmative. An endeavour to balance the right to privacy of a potential offender and the right to life of a potential victim (which is so important that it cannot be limited in terms of the limitation clause) has the scales of justice weighing more heavily in favour of the victim. This is understandable. There is no return from losing a life.

It is a constitutional right to have access to information held by the State, which is required for the protection of any rights.¹⁵² The relevant rights sought to be protected

¹⁵⁰ *Constitution of the Republic of South Africa:sec. 2.*

¹⁵¹ *Constitution of the Republic of South Africa:sec. s36.*

¹⁵² *Constitution of the Republic of South Africa:sec. 32(1).*

by the proposed introduction of an amendment to legislation similar to the DVDS are the rights to life, to freedom of association, and to freedom and security of the person.

5.3.2 Recommended legislative amendments

Section 46(a)(i) of the *Promotion of Access to Information Act* (PAIA) provides for mandatory disclosure ‘in public interest’ where the disclosure of the record would reveal evidence of an imminent and serious public safety risk, and where the disclosure of the record clearly outweighs the possible harm. Accordingly, it would not be necessary to draft entirely new legislation in South Africa to cater for disclosure in terms of the DVDS as is applied in the UK. The PAIA can be amended to include cases where such imminent and serious safety risks exist, but to a particular person and not necessarily the public at large. What has driven the femicide and domestic violence rates so high in this country is not the mass killing of women, but the individual killing of women. Women’s safety must thus be treated on an individual, case-by-case basis.

Furthermore, it is suggested that the DVA also be amended in order to be in line with the PAIA. The aim would be to allow for disclosures in deserving applications where there is a domestic relationship as defined in the DVA between the person in respect of whom the information is sought and the potential victim or applicant (where the application is made by a third party seeking to protect the potential victim).

5.4 RECOMMENDATIONS

It is unfortunate that Clare Woods had to die first for this law to come into being in the UK. Nevertheless, once other jurisdictions such as Scotland, New Zealand and Australia became aware of this mechanism, they studied it and adopted a version suitable to their own contexts. With domestic violence incidences in South Africa being five times higher than the global average rate, such a mechanism should definitely be introduced in this country. It may have been too late for Clare Wood to leave the relationship alive by the time she learnt the truth about George Appleton. However, it is possible that had she known this information beforehand, she would still be alive today. The same goes for the South African, Karabo Mokoena. This consideration is what goes to the heart of this research.

The first Prime Minister of India, Pandit Jawahar Lal Nehru, once stated:

“Legislation cannot by itself normally solve deep-rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential so that it may

*give that punch and have that educative factor as well as legal sanctions behind it which helps public opinion to be given a certain shape.*¹⁵³

It is recommended that legislation similar to the DVDS be introduced as a legislative amendment to both the PAIA and the DVA. In this way, concerns such as what will happen if anyone discloses information about a person's records to a third party will be addressed by criminalizing such conduct in one of the two acts. The normal procedures of public consultation can be followed so that the people's views are taken into account.

Domestic violence is a complex and multifaceted problem.¹⁵⁴ It is on this basis that it was previously indicated that this is not meant to be a blanket solution to domestic violence incidences. In order to address the complexity of domestic violence, there must be diverse methods to attack it from all sides, including from the preceding stages. This may be the only way for women to protect themselves *before* the abuse starts. At this moment, there is a woman out there going about her life, totally oblivious to the fact that every night she falls asleep next to her future killer. She may see small signs that her partner is potentially or indeed abusive, but she has no way of knowing the danger in which she really is *unless* the DVDS or a similar legislation is made law. Only then will she be able to either save herself from the trap of an abusive relationship, or seek psychological or even psychiatric help for herself and/or her partner.

Another argument is that ordinarily, the courts hear and convict accused persons in open court.¹⁵⁵ Why then should an accused person's criminal record be considered 'private', bearing in mind that the proposed DVDS does not call for a person's records to be disclosed publicly and to all and sundry? It will only be the case where there has been an established need for such a disclosure to be made to a specific person.

With regard to information held by the SAPS relating to arrests and failed prosecutions, as well as information concerning Protection Orders and Harassment Orders held by the courts, the *Protection of Personal Information Act*¹⁵⁶ (POPI) prohibits disclosure. In terms of section 19(1)(b) of POPI, the SAPS must take steps to prevent 'unlawful' access to or processing of such information. From this it can be deduced that once the

¹⁵³ Misra 2006:266.

¹⁵⁴ Misra 2006:265.

¹⁵⁵ Except in cases involving minors where the court has to sit *in camera*.

¹⁵⁶ *Protection of Personal Information Act 4/2013*.

DVDS is made law in South Africa, the disclosures will be 'lawful' and accordingly not prohibited in terms of POPI. Besides, the Preamble to this Act, whilst endorsing its aim of regulating the processing of personal information by public and private bodies, accepts that the right to privacy is subject to justifiable limitations.

It must be kept in mind that not every application for disclosure will be successful and that applications cannot be made anonymously. In the UK, the DVDS requires a face-to-face consultation. However, it has been suggested in paragraph 5.2.4 above that this may either be made personally or by way of video call, both of which would still allow for proof of identity and proof of the relationship to be provided. Thereafter a full risk assessment is to be conducted. It is only once the Forum has decided that disclosure is warranted in the particular case that the relevant information would be disclosed.

Subjecting disclosure decisions to judicial review will ensure that the requirement that they be properly and fully recorded is based on the principle of fairness. This should suffice to ensure that the system is not susceptible to abuse.

BIBLIOGRAPHY

Alan J Fisher Centre for Public Mental Health “Policy Brief – Intimate Partner Violence (IPV) in South Africa: How to break the vicious cycle”. Available at https://pmhp.za.org/wp-content/uploads/IPV_policybrief.pdf. (accessed on 16/11/2018)

BBC News “Clare’s law’ domestic abuse scheme rolled out in Scotland”. <https://www.bbc.com/news/uk-scotland-34403806>. (accessed on 07/08/2018)

BBC News “Salford murder victim Clare Wood ‘was not protected’”. <https://www.bbc.com/news/uk-england-manchester-13506721>. (accessed on 07/08/2018)

CHAUBAN R

2018. The statutory and constitutional obligations of private companies regarding requests for access to information. *Journal of South African Law*. 209-210

City Press “Court hears murder accused Thabani Mzolo has a previous conviction”. <https://www.city-press.news24.com/News/court-hears-murder-accused>. (accessed on 06/07/2018)

eNCA “Mokoena’s body burnt beyond recognition: constable”. <https://www.enca.com/south-africa/mokoenas-body-burnt-beyond-recognition-constable>. (accessed on 06/07/2018)

Eyewitness News “Why the hashtag #MenAreTrash is important”. <https://www.ew.co.za/2017/05/12/why-the-hashtag-menaretrash-is-important>. (accessed on 06/07/2018)

FATIH T & BEKIR C

2015. Police Use of Technology to Fight against Crime. *European Scientific Journal*. Vol. 11(10). 286-296

GOV.UK “New domestic violence disclosure scheme piloted by police”. <https://www.gov.uk/government/news/new-domestic-violence-disclosure-scheme-piloted-by-police>. (accessed on 10/08/2018)

GRACE J

2015. Clare's Law, or the National Domestic Violence Disclosure Scheme: the contested legalities of criminal information sharing. *The Journal of Criminal Law*. Vol. 79(1). 36-45

GRACIA E

2003. Unreported cases of domestic violence against women: towards the epidemiology of social silence, tolerance, and inhibition. *Journal of Epidemiology and Community Health*. Vol. 58(7). 536-537

GRIFFITH R

2016. Understanding the Domestic Violence Disclosure Scheme. *British Journal of Midwifery*. Vol. 24(4). 298

2017. A disclosure scheme for protecting the victims of domestic violence. *British Journal of Nursing*. Vol 26(11). 636-637

IOL "State wants #ZolileKhumalo accused to pay lawyer upfront". <https://www.iol.co.za/news/south-africa/kwazuluni-natal/state-wants-zolilekhumalo-accused-to-pay-lawyer-upfront-18099273>. (accessed on 16/11/2018)

JEWKES R, LEVIN J & PENN-KEKANA L

2002. Risk factors for domestic violence: findings from a South African cross-sectional study. *Social Science & Medicine*. Vol. 55. 1603-1617

JEWKES R

2002. Intimate partner violence: causes and prevention. *The Lancet*. Vol. 359. 1423-1429

LUCK R

2014. POPI – Is South Africa keeping up with the international? *De Rebus*. Vol. 44.84

Mail & Guardian "Government action goes wrong from the bottom up". <http://mg.co.za/article/2017-05-22-government-action-on-femicide-goes-wrong-from-bottom-up>. (accessed on 26/05/2018).

Manchester Evening News “Dad of Salford murder victim Clare Wood takes his campaign for new law on domestic abuse to Downing Street”. <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/dad-of-salford-murder-victim-clare-682386>. (accessed on 07/08/2018)

Manchester Evening News “Timeline: Clare Wood murder”. <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/timeline-clare-wood-murder-884985>. (accessed on 07/08/2018)

Marie Claire “South Africa’s femicide stats prove that women are an endangered demographic”. <http://www.marieclaire.co.za/hot-topics/south-africa-femicide-stats-2018>. (accessed on 06/05/2018).

MAZIBUKO N C

2016. Ilobolo, the bride price that comes ‘at a price’ and the narratives of gender violence in Mamelodi, a South African township. *Gender and Behaviour Journal*. Vol. 14(2). 7373-7378

MISRA P

2006. Domestic Violence Against Women – Legal control and judicial response. *Deep & Deep Publications Pvt. Ltd.* 265

NDUNA M & NENE N

2014. Review and Analysis of South Africa’s Implementation of 365 Days National Action Plan. *Johannesburg: Department of Psychology, University of the Witwatersrand & Ifalezwe Learning Express*. 1-92.

New Zealand Family Violence Clearinghouse “Police introduce family violence disclosure scheme”. <https://nzfvc.org.nz/news/police-introduce-family-violence-disclosure-scheme>. (accessed on 10/08/2018)

New Zealand Family Violence Clearinghouse “NZFVC Data Summaries 2017: Family Violence Reports reach record high”. <https://nzfvc.org.nz/news/nzfvc-data-summaries-2017-family-violence-reports-reach-record-high>. (accessed on 17/11/2018)

News24 “Boyfriend arrested after woman’s body found, police station torched” – <https://www.news24.com/SouthAfrica/News/boyfriend-arrested-after-womans-body-found-police-station-torched=20170513>. (accessed on 16/11/2018)

NUTH M S

2008. Taking advantage of new technologies: For and against crime. *Computer Law & Security Review*. Vol. 24(5). 437-446

PAPE KT & ARIAS I

2000. The role of perceptions and attributions in battered women's intentions to permanently end their violent relationships. *Cognitive Therapy and Research*. Vol. 24(2). 201-214

Parliament of the Republic of South Africa "Parliament statement on 16 days of activism for no violence against women and children". <https://www.parliament.gov.za/press-releases/parliament-statement-16-days-activism-no-violence-against-women-and-children>. (accessed on 05/07/2018)

ROOS A

2008. Personal Data Protection in New Zealand: Lessons for South Africa? *Potchefstroom Electronic Law Journal*. Vol. 11(4). 61-109

Sonke Gender Justice "Sonke Gender Justice condemns National Prosecuting Authority decision not to prosecute Mduzuzi Manana for alleged assault of domestic worker". <http://genderjustice.org.za/news-item/sonke-gender-justice-condemns-national-prosecuting-authority-decision-not-to-prosecute-mduduzi-manana-for-alleged-assault-of-domestic-worker>. (accessed on 26/07/2018)

Sowetan Live "Woman shot dead by her VIP guard boyfriend" – <https://www.sowetanlive.co.za/news/south-africa/2018-07-30-woman---shot-dead--by-her-vip-guard-boyfriend/> (accessed on 16/11/2018)

STRICKLAND P

2013. "Clare's law": the Domestic Violence Disclosure Scheme. House of Commons, Home Affairs section. 4-9.

Sunday Times "MUT murder accused changes legal representative again". <https://www.timeslive.co.za/news/south-africa/2018-10-15-mut-murder-accused-changes-legal-representative-again/>. (accessed on 16/11/2018).

Sunday Times “Soweto woman allegedly stabbed to death by her boyfriend” – <https://www.timeslive.co.za/news/south-africa/2018-10-16-soweto-woman-allegedly-stabbed-to-death-by-her-boyfriend/>. (accessed on 16/11/2018)

The Citizen “Woman allegedly mutilated and murdered by ‘loving’ boyfriend” – <https://www.citizen.co.za/news/south-africa/2012017/woman-allegedly-mutilated-and-murdered-by-loving-boyfriend/>. (accessed on 16/11/2018)

The Guardian “A history of violence: Is Clare’s law working?” <https://www.theguardian.com/society/2013/apr/21/a-history-of-violence-clares-law>. (accessed on 07/08/2018)

The Week “Clare’s law: how the Domestic Violence Disclosure Scheme works”. <http://www.theweek.co.uk/uk-news/56227/clare-s-law-be-extended-across-england-and-wales>. (accessed on 07/08/2018)

Twitter “#MenAreTrash”. <https://www.twitter.com/hashtag/MenAreTrash>. (accessed on 06/07/2018)

WANGMANN J

2016. Has he been violent before? Domestic Violence Disclosure Schemes. *Alternative Law Journal*. Vol. 41(4). 230-234

Reports and Papers

NSW Bureau of Crime Statistics and Research. Issue paper no. 134. May 2018. p5. (Available at <https://www.bocsar.nsw.gov.au/Documents/BB/2018-Report-Is-domestic-violence-in-NSW-decreasing-BB134.pdf>.)

Parliament of South Africa – Code of Conduct (available at: <https://www.parliament.gov.za/code-conduct>)

People Opposing Women Abuse (POWA) Annual Report. 2014-2015

People Opposing Women Abuse (POWA) AGM Report. April 2015 - March 2016

Queensland Law Reform Commission *Domestic Violence Disclosure Scheme Report*, Report No. 75. June 2017

Queensland Law Reform Commission. 2016. *Review about whether the Domestic Violence Disclosure*

SAPS Annual Report 2017/2018

SAPS Annual Performance Plan 2017/2018

Scheme should be introduced in Queensland. Consultation paper. WP No. 75

Scotland Police. *Disclosure for Domestic Violence Abuse Scotland* leaflet

Solihull Metropolitan Borough Council. *MULTI-AGENCY RISK ASSESSMENT CONFERENCE (MARAC) Partnership Operating Protocol.* 2015

STATS SA. *Crime against Women in South Africa: An in-depth analysis of the Victims of Crime Survey data 2018.* Report 03-40-05

UK Home Office. *Domestic Violence Disclosure Scheme. A consultation.* Oct 2011

Western Cape Government, 2008. *16 days of activism: Concept document Campaign*