




Chapter 2

Shaping State Accountability in South African Law

*Carmichele v Minister of Police*¹

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“Few things can be more important to women than freedom from the threat of sexual violence ... It is the single greatest threat to the self-determination of South African women” (*Carmichele* par 62).

Abstract

Carmichele v Minister of Police represents a watershed moment in South African constitutional jurisprudence, fundamentally altering the relationship between the state and its citizens regarding protection from harm. The case’s landmark status stems from its profound impact on several interconnected areas of law. First, it established a constitutional imperative for courts to develop the common law in accordance with the spirit, purport and objects of the Bill of Rights, particularly when existing legal frameworks fail to adequately protect constitutional values. Second, it revolutionised state accountability by recognising that the state bears positive duties to protect

citizens from foreseeable harm, especially in cases of gender-based violence (GBV). This recognition significantly expanded the scope of delictual liability to encompass state omissions where officials fail to take reasonable steps despite having knowledge of specific threats. Third, the judgment explicitly acknowledged the constitutional dimensions of gender-based violence, recognising it as “the single greatest threat to the self-determination of South African women” and highlighting the state’s special responsibility in addressing this societal ill. Fourth, it exemplified transformative constitutionalism by infusing private law remedies with constitutional values, thereby bridging the traditional divide between public and private law. The case’s lasting significance is evident in subsequent legal developments, including reformed bail procedures, enhanced state official training and improved inter-departmental coordination within the criminal justice system. By mandating that courts interpret legal duties through a constitutional lens that emphasises dignity, equality and freedom, *Carmichele* established a precedent that continues to shape South African jurisprudence, forcing state institutions to take their protective obligations seriously while providing victims with legal recourse when those obligations are neglected.

2.1 Introduction

Carmichele v Minister of Police was a landmark decision in South African law. It has immense implications for the recognition and protection of gender-based violence survivors’ rights. It also paved the way for establishing state liability principles in negligence cases. This chapter explores the important aspects of the case, delving into its background, its significance in South African legal history, and its far-reaching implications for gender justice and state accountability.

The case was heard in the Constitutional Court in 2001, and it involved an appeal by the applicant, Ms Carmichele, against a decision by the Supreme Court of Appeal. Ms Carmichele was a victim of a heinous rape and assault by a known criminal. This criminal had, on a previous occasion, harassed and threatened her. Despite her numerous attempts

to report to the police regarding the criminal behaviour of the accused, the police failed to take the necessary steps to protect her from harm. Subsequently, she sued the Minister of Safety and Security (now the Minister of Police) for damages. Ms Carmichele alleged negligence on the part of the police where they had failed in preventing the assault, as they were aware of the imminent danger.

The case stands as a turning point in South African legal history, especially in the law of delict. It demonstrated a significant departure from traditional approaches to the law of delict, especially in cases that resulted from gender-based violence. The case highlighted the state's responsibility to safeguard persons from harm. The responsibility was amplified in circumstances where the police had prior knowledge of the danger.² Moreover, this case signified the changing role of the judiciary in addressing failures of law officials. The judiciary vaguely holds these officials responsible for their negligence and/or omissions. In holding these officials accountable, one is promoting the principles of constitutionalism and the rule of law in post-apartheid South Africa.³ The case set key precedents in the sphere of gender-based violence and state liability. In addition, it placed emphasis on the intersectional nature of gender violence, whereby it was acknowledged that women, especially those from disadvantaged communities, are affected by such types of violence.

The decision to hold the state responsible for its failure to protect Ms Carmichele cemented the foundation for subsequent legal developments which focused on strengthening mechanisms for preventing and addressing gender-based violence. These mechanisms include legislative changes, policy initiatives, and judicial involvement.⁴ This chapter begins by providing an overview of the background of the *Carmichele* case. It then proceeds to examine the proceedings in the lower courts, before offering a detailed analysis of the judgment delivered by the Constitutional Court. The chapter concludes with a discussion of the significance and broader implications of the *Carmichele* case, focusing on its influence on subsequent legal cases, its contribution to state accountability, its impact

on the law of delict, and its role in advancing the principles of transformative constitutionalism.

2.2 Background

On 6 August 1995, Ms Carmichele (the applicant or victim) was heinously attacked by Francois Coetzee (accused) at the residence of her friend, namely Julie Gosling. The accused had a disturbing history of raging sexual offences that commenced in his youth. At the time that he attacked the victim, he had already been convicted of several serious crimes and this included an attempt to murder another young female.⁵ Ms Carmichele often stayed at her friend's (Ms Gosling's) house. In 1995, towards the latter of June, the accused was seen loitering around Gosling's home, attempting to peep through windows and open them. The victim approached the accused and indicated that he was looking for her friend. Ms Carmichele was uncomfortable and sensed that the accused was not being truthful. She proceeded to call her friend. Julie confirmed that the accused was making an excuse, as he had probably seen her exiting her home earlier in the day.⁶ Nonetheless, Julie reported the matter to the police, raising the fact that the accused's conduct was suspicious. The police indicated that they could not assist as no crime was being committed.

On 6 August 1995, Ms Carmichele visited Julie at her residence, unaware that Julie was not home. She entered the house and was attacked by the accused, who had already broken in. The accused viciously assaulted the victim with a pick handle. Thereafter, he stabbed Ms Carmichele. As the accused proceeded with the attack, the victim managed to defend herself by kicking him, which caused him to lose his balance. At this point, Ms Carmichele escaped through an open door and sought the assistance of a passerby.⁷ The accused was later arrested and charged with multiple offences, including attempted murder.

This case demonstrates one of the failures of the criminal justice system in South Africa, whereby the police failed to respond timeously to the pleas of victims. In this case, it resulted in the accused being able to walk around freely and committing the heinous offences. It can be argued that the

attack on Ms Carmichele could have been prevented had the police heeded the concerns that she raised.

2.3 Proceedings in the lower courts

The applicant sought to rely on the common law duty of wrongfulness in terms of the law of delict. On this basis, the applicant instituted action against the two Ministers in the high court for the injuries that she had sustained from the attack.⁸ The applicant relied on the argument that the police officer's conduct and that of the public prosecutors took the form of an omission, in which they had a legal duty to act in order to prevent the accused from causing her harm.⁹ The applicant alleged a further omission by the prosecutors and police when they released the accused without bail. She relied on the duties imposed on the police by the Constitution; for example, in terms of section 205(3) and the State in terms of the Bill of Rights, chapter 2, which included various rights, such as the right to life and freedom and security of the person.¹⁰ The High Court did not agree and dismissed the applicant's claim. The court held that the applicant could not establish a legal duty of care that rested upon the police and prosecutor.¹¹ The applicant was met with the same fate when she appealed to the Supreme Court of Appeal.¹² The Supreme Court of Appeal endorsed the High Court's finding that the police and prosecution had no legal duty of care towards the applicant, hence no claim for damages to her. The applicant then sought a special appeal against the order of the Supreme Court of Appeal in the Constitutional Court.¹³

2.4 Constitutional court judgment

2.4.1 Overview

The Constitutional Court was tasked with considering two significant issues, amongst others, one of which being the development of the common law that promotes the spirit, purport and objects of the fundamental rights and the other being the duty of care owed and the liability of the state.¹⁴

2.4.2 Development of the common law

The Constitutional Court agreed that when it came to the reform of the law, the legislature was the main actor in effecting change. However, the court pointed out that the judiciary was also under a general duty to evolve the common law where it moved away from the spirit, purport and objects of the fundamental rights provisions. The court held that:

“In exercising their powers to develop the common law, judges should be mindful of the fact that the major engine for law reform should be the legislature and not the judiciary. In this regard it is worth repeating the dictum of Iacobucci J in *R v Salituro*, which was cited by Kentridge AJ in *Du Plessis v De Klerk*: ‘Judges can and should adapt the common law to reflect the changing social, moral and economic fabric of the country. Judges should not be quick to perpetuate rules whose social foundation has long since disappeared. Nonetheless there are significant constraints on the power of the judiciary to change the law . . . in a constitutional democracy such as ours it is the legislature and not the courts which has the major responsibility for law reform . . . The judiciary should confine itself to those incremental changes which are necessary to keep the common law in step with the dynamic and evolving fabric of our society’.”¹⁵

These constitutional issues had not been dealt with at the High Court or the Supreme Court of Appeal. This did not detract from the courts’ responsibility to develop the common law if the need arose in a particular case. The court emphasised and instructed that the common law be developed in circumstances that impose a duty of care on the state where it has knowledge of a specific threat and omits reasonable measures to prevent harm.¹⁶ Section 39(2) of the Constitution imposes a duty on courts to promote the spirit, purport, and objects of the Bill of Rights when developing the common law. The provision demonstrates the evolving nature of the Constitution, requesting courts to not

just apply existing law but also enhance it to reflect the values of the Constitution.¹⁷

Justice Ackermann illustrated that the Constitution is the supreme law, and all law, including the common law, must be developed in accordance with it.¹⁸ This included reassessing common law rules that were inconsistent with constitutional values from time to time. The court took a guarded yet strong stance when dealing with this issue.¹⁹ The Court did this by not forcefully imposing liability on the state in this instance but rather referred the case back to the High Court for it to reassess the matter, taking cognisance of the constitutional imperative to develop the common law.²⁰

The Constitutional Court held that the common law should be developed gradually, in accordance with the facts of each case that is presented to it. The aim is to advance common law by having regard to the values of the Constitution, particularly the rights to dignity, life, and security of the person.²¹ This required the lower courts to assess whether the common law adequately provided protection to those who were victims of heinous crimes. If the law did not provide this protection, it must be developed in this regard.

The court also evaluated the existing common law doctrine of wrongfulness. The court held that this doctrine assisted in determining whether a legal duty existed in cases of alleged negligence and it required reassessment.²² While appreciating the necessity for the common law to develop, the court also acknowledged the significance of legal certainty and continuity.²³ While developing the common law, one must be wary of not affecting abrupt or radical changes that could undermine the stability of the legal system.²⁴ Rather, the court requested a careful balance to be made between honouring established legal principles and making necessary changes to guarantee that the law remains fair and lawful in light of constitutional values.²⁵

Another significant aspect of the Constitutional Court decision was that it requested that our courts be amenable to considering developments in comparative and international law when advancing the common law. This is of importance

in instances when the common law of other jurisdictions provides insights into how similar issues have been dealt with in different legal contexts.²⁶ The court highlighted that such comparative insights can be monumental in the development of the common law in South Africa, especially in matters that involve human rights.²⁷

The court acknowledged that some judges may be conservative in their approach to developing common law. However, judicial innovation is required by the Constitution at times.²⁸ Such a type of innovation must be guided by constitutional values. This will guarantee that the law advances in a way that protects human rights and demonstrates the change in South African society.²⁹ However, the court acknowledged that with innovation comes respect for the broader legal framework.³⁰

2.4.3 Duty of care and state's liability

As discussed earlier in this chapter, the applicant alleged that the state, through its organs, the police and the prosecution, owed a duty of care to her to protect her from harm inflicted by the accused, who had a history of being violent.³¹ The court was tasked with determining whether such a duty of care existed under the common law and would result in the state being liable for the harm which she suffered. The court began by examining the common law concept of "duty of care". It involved establishing whether the law should acknowledge that a person (or entity) has a legal responsibility to prevent causing harm to another. With respect to state liability, this involved determining whether the state has an obligation to take reasonable steps to prevent foreseeable harm to individuals.³²

The court made note of the importance of the state's duty extending beyond refraining from causing harm. The duty must include reasonable steps that need to be taken to protect persons from harm by others.³³ The court also emphasised that the state is tasked by the Constitution and international law to prevent gender-based violence and ensure that women's right to dignity and freedom of security is protected. The court held that the police duties "is one of the primary agencies of

the State responsible for the protection of the public in general and women and children in particular against the invasion of their fundamental rights by perpetrators of violent crime”.³⁴ The court noted various important factors in establishing the duty of care. These are discussed in the paragraphs below.

2.4.3.1 Foreseeability of harm

The court acknowledged that the harm which the applicant experienced was foreseeable. This was evident as the police and prosecutors were aware of the accused’s history of violence and the multiple charges against him.³⁵ This knowledge on the part of the state was foundational in the anticipation that the accused was a threat to society and the victim.

2.4.3.2 Proximity and knowledge

The court examined the relationship between the state and the applicant and concluded that the state and its necessary organs were aware of the danger posed by the accused.³⁶ Given the fact that the proximity and knowledge were close, it increased the expectation that the state should take steps to protect potential victims from harm.

2.4.3.3 Public policy and legal convictions

Traditionally, the determination of whether a duty of care exists in South African law involves considering public policy and the legal convictions of the community. The Constitutional Court emphasised that these considerations must be informed by constitutional values, particularly the protection of human rights. The court held that public policy, rooted in constitutional imperatives, supported the imposition of a duty of care on the state in this case.³⁷

In addition, the Constitutional Court took cognisance of the concept of wrongfulness as being a critical element in establishing liability. It refers to the breach of a legal duty not to cause harm.³⁸ The court needed to decide whether the failure of the police and prosecutors to take steps to prevent the accused’s release and, thus, the harm to the applicant could be considered wrongful.

The court reaffirmed that the common-law concept of wrongfulness is influenced by considerations of public policy, which are now shaped by constitutional values. Given the state's constitutional duty to protect the rights to life, dignity, and security of the person, the court concluded that the state's failure to act in this case was indeed wrongful.³⁹ The court linked the concept of wrongfulness directly to the state's obligations under the Constitution, particularly sections 10, 11, and 12, which guarantee the rights to dignity, life, and freedom and security of the person. The court stated that these rights impose positive duties on the state to protect individuals from harm, particularly when such harm is foreseeable.⁴⁰

The specific wrongful act identified by the court was the failure of the police and prosecutors to oppose the accused's bail. The court noted that the decision to release the accused on bail, despite the known risk, represented a failure by the state to fulfil its constitutional duties.⁴¹

The court held that where state officials, such as the police and prosecutors, fail to perform their duties in a manner that respects and protects these constitutional rights, their conduct can be considered wrongful under the law of delict. This wrongfulness forms the basis for holding the state liable for the harm caused by their omissions.⁴²

After establishing that the state's conduct was wrongful, the court turned to the issue of negligence.⁴³ In delict, negligence occurs when a party fails to take reasonable care to avoid causing harm to another. The court needed to decide whether the state, through the police and prosecutors, was negligent in its duty to protect the applicant.⁴⁴ The court examined whether the police and prosecutors had acted reasonably in their handling of the accused's case. Given the accused's violent history and the serious nature of the charges which he was facing, The court found that it would have been reasonable for the state to oppose his release on bail or to implement other protective measures.⁴⁵ The court concluded that the failure to take such reasonable steps constituted negligence.⁴⁶ The state's inaction in the face of a clear and present danger to the applicant was seen as a breach of the standard of care expected of the police and prosecutors.

Moreover, for delictual liability to be established, it must also be shown that negligent conduct caused the harm. The court considered whether the harm to the applicant would have occurred if the state had taken reasonable steps to prevent the accused's release.⁴⁷ The court found that the state's failure to act was a direct cause of the harm, establishing the necessary link between the state's negligence and the applicant's injuries.⁴⁸

An important observation by the court was the need to balance various interests when imposing liability on the state. There was a need to protect individuals' right to dignity and security on one end and on the other end of the spectrum. One needed to be cognisant of the practical challenges facing criminal justice, whereby these claims against the state would open up floodgates for similar matters.⁴⁹ However, the court concluded that the public interest in holding the state responsible for safeguarding individuals from foreseeable harm outweighed the concerns about possible burdens on the criminal justice system.⁵⁰ The court emphasised that the state's duty to uphold constitutional rights cannot be blurred by concerns about administrative efficiency or resource setbacks.⁵¹ The court reinforced that the Constitution mandates an elevated standard of care from state officials, especially in protecting individuals from harm. This standard must be adhered to despite the additional responsibilities of the state.⁵²

2.4.4 Remittal to the High Court

Having laid down the principles for determining state liability, the Constitutional Court referred the matter back to the high court. It requested and instructed the high court to apply these principles to the facts of the case and reconsider whether the state could be held liable in the circumstances, having regard for constitutional values.⁵³ The referral set a fresh understanding and start for the high court and allowed it to re-examine the facts, bearing in mind constitutional mandates. This also paved the way for the common law to evolve in a way that was consistent with the Constitution. This approach strengthened the Constitutional Court's function in directing the advancement of the common law, having regard for constitutional principles.

This decision set the benchmark for future cases involving state liability and infringements of constitutional rights.

2.5 The significance and impact of the Carmichele case

As discussed earlier in the chapter, the *Carmichele* judgment strengthened the principle that the state must be held accountable in cases where they failed to protect individuals from harm. This accountability extended to instances where the state and its organs had specific knowledge of specific threats as well. The decision also aligned with the law of delict and social values that ensure that victims of state negligence have recourse in law and that the state is incentivised to fulfil its protective obligations.⁵⁴ The judgment also paved the way for increased state liability in cases where the state fails to protect individuals from foreseeable harm. This decision has consequences for the state's approach to risk assessment and the distribution of resources. The implication of liability has resulted in a more cautious and proactive stance taken by state and law enforcement officials, particularly in cases where there is a known risk to public security.⁵⁵

The decision has also encouraged persons to apply for legal redress when their rights have been violated because of state negligence.⁵⁶ This has positively impacted the development of a culture of accountability, in which we see the state being held accountable to a higher standard of care in its engagements with people.⁵⁷

Moreover, the judgment has had a significant impact on subsequent cases coming before our courts. The case has provided guidance to our courts in cases involving state liability and the development of the common law regarding constitutional values. Our courts have seen cases that followed *Carmichele*, such as *K v Minister of Safety and Security*⁵⁸ and *Van Eeden v Minister of Safety and Security*,⁵⁹ reinforced and built on the foundations laid by *Carmichele*. These subsequent cases further confirmed the state's duty to protect individuals and expand the scope of delictual liability.

As a result of the judgment and subsequent decisions mentioned, there were changes made within the criminal justice system. There was an emphasis placed on scrutinising bail and arrest conditions and assessing risk to public safety. The Domestic Violence Act⁶⁰ and the Criminal Procedure Act⁶¹ mandate stricter bail and arrest conditions.⁶² The Criminal Procedure Act further regulates the granting and cancellation of bail, emphasising the need to protect victims of GBV.⁶³ Guidelines were devised to improve communication and coordination between the different state officials. The National Prosecuting Authority (NPA) introduced measures to assist prosecutors in recognising and replying to potential risks presented by accused persons, with greater emphasis on cases involving gender-based violence.⁶⁴

The drive for coordinated training, focuses mainly on enhancing the collaboration between police, prosecutors, and the Department of Justice. This emphasised the importance of joint responsibility and communication in dealing with cases where individuals' safety was at risk. By advancing collaboration, it would guarantee that all relevant state organs could effectively work together to protect public security. The NPA focuses on a victim-centric approach in GBV cases. This ensures that the rights and safety of victims are of utmost priority in the criminal justice process.⁶⁵ Victims are consulted during bail proceedings and their concerns are addressed.⁶⁶ The *Carmichele* decision has also had an impact regarding the training that state officials receive in respect of their constitutional obligations.

Another area of focus is the training of police officers and their duty to protect individuals in instances where public safety was in danger.⁶⁷ GBV has become a significant reform area. The South African Police Service (SAPS) began organising community outreach programmes which sought to create awareness about GBV. This initiative encouraged reporting of GBV crimes.⁶⁸ These initiatives also assisted officers in responding to cases involving violence against women and children, an important issue emphasised by the court in *Carmichele*.

It can be stated that *Carmichele* has had an immense effect on the development of the law of delict. It emphasised that the

common law must be interpreted in a manner that promotes constitutional values. By establishing delictual liability in principles such as dignity, equality, and freedom, the judgment has set a benchmark for broadening the scope of state liability. Courts, as mentioned, have since applied this reasoning to hold state actors accountable in contexts that extend beyond traditional delictual frameworks. This has resulted in private law addressing not only civil wrongs but also the broader social justice goals enshrined in the Constitution.

2.6 Conclusion

The *Carmichele* judgment is one of the most significant landmark cases in South Africa's legal history. It encompasses the transformative ambitions of the Constitution. Its practical consequences are wide, especially in emphasising state accountability, modelling procedural reforms and steering the interpretation of common law, all of which should align with the constitutional values. By explicitly asserting that public policy considerations must be grounded in constitutional values, the judgment defined the important relationship between private law and the broader social justice goals contained in the Constitution.⁶⁹

The judgment's focus on the duty of state officials to act carefully in protecting the rights to life, dignity, and security resulted in a profound effect on the criminal justice system. It has triggered reforms in bail procedures, and improved collaboration between state officials and agencies. The introduction of training initiatives to ensure compliance with constitutional obligations demonstrates the case's continuing significance regarding ongoing challenges such as GBV and systemic inadequacies within state bodies.⁷⁰ The judgment continues to influence legal debates and embraces the potential to mould future law. It has provided a strong framework for integrating constitutional principles into the common law. It guarantees that the law adapts to meet the demands of a just and equitable society.

As depicted, its principles influenced cases that followed involving state liability, where courts increasingly struggle

with balancing individual rights, public safety, and the state's obligations under the Constitution. *Carmichele* remains a cornerstone for arguments promoting for the alliance of private law principles with constitutional obligations.⁷¹ However, there are challenges in fully implementing the principles established in *Carmichele*. Some of these challenges include inconsistent application by courts, resource constraints, and systemic ineffectiveness within law enforcement agencies. These challenges continue to weaken its transformative ability.

To address these challenges, it requires persistent efforts to advance institutional competence, advance accountability procedures, and ensure that the judiciary and state officials are sufficiently prepared to maintain constitutional principles.⁷² From a holistic perspective, *Carmichele* personifies the importance of transformative constitutionalism in South Africa. It demonstrates how the Constitution can serve as a mechanism for creating legal frameworks that promote equality, dignity, and freedom.⁷³ The judgment underlines the significance of going beyond a merely remedial approach to one that is preventive. This would address structural wrongs and foster a legal system that is alert to the lived realities of vulnerable members of society.⁷⁴ As South Africa continues to traverse intricate legal and social challenges, *Carmichele* is an important reminder of the judiciary's role in guaranteeing that the law functions not only as a tool for redress but as a mechanism for significant change. Its heritage lies in its firm dedication to connecting the gap between legal principles and social justice, which solidifies its standing as a basis of South Africa's constitutional democracy.

Endnotes

- 1 *Carmichele v Minister of Safety and Security* 2001 10 BCLR 995 (CC).
- 2 Combrinck “Access to housing for women who are victims of gender-based violence” 2020 SAJHR 123-145.
- 3 Fagan “Reconsidering *Carmichele*” 2008 SALJ 659-673.
- 4 Deane “Judicial responses to gender-based violence and femicide” in Deane *Gender-Based Violence and Femicide in South Africa* (2024) 167-194.
- 5 *Carmichele* (n 1) par 5.
- 6 *Carmichele* (n 1) par 21.
- 7 *Carmichele* (n 1) par 23.
- 8 *Carmichele* (n 1) par 21.
- 9 *Carmichele* (n 1) par 21.
- 10 *Carmichele* (n 1) par 23.
- 11 *Carmichele* (n 1) par 21.
- 12 *Carmichele* (n 1) par 21.
- 13 *Carmichele* (n 1) par 23.
- 14 *Carmichele* (n 1) par 27 and 33.
- 15 *Carmichele* (n 1) par 36.
- 16 *Carmichele* (n 1) par 34 and 39; McQuoid-Mason “Invasion of privacy: Common law v constitutional delict – Does it make a difference?” 2000 *Acta Juridica* 227 259-261.
- 17 *Carmichele* (n 1) par 33; McQuoid-Mason (n 16) 259-261.
- 18 *Carmichele* (n 1) par 33.
- 19 *Carmichele* (n 1) par 50.
- 20 *Carmichele* (n 1) par 82 and 83; McQuoid-Mason (n 16) 259-261.
- 21 *Carmichele* (n 1) par 29 and 44.
- 22 *Carmichele* (n 1) par 58.
- 23 *Carmichele* (n 1) par 36, 39 and 40; McQuoid-Mason (n 16) 259-261.
- 24 *Carmichele* (n 1) par 36, 39 and 40.
- 25 *Carmichele* (n 1) par 36, 39 and 40.
- 26 *Carmichele* (n 1) par 54 and 55.
- 27 *Carmichele* (n 1) par 54 and 55.
- 28 *Carmichele* (n 1) par 36, 39 and 40.
- 29 *Carmichele* (n 1) par 36, 39 and 40; McQuoid-Mason (n 16) 259-261.
- 30 *Carmichele* (n 1) par 36, 39 and 40; Du Bois “State liability in South Africa: A constitutional remix” 2010 *Tulane European & Civil Law Forum* 139 139-145.
- 31 *Carmichele* (n 1) par 43, 44 and 49; Du Bois (n 30) 139-145.
- 32 *Carmichele* (n 1) par 43, 44 and 49; Fagan (n 3) 659-663.
- 33 *Carmichele* (n 1) par 43, 44 and 49; Du Bois (n 30) 139-143.
- 34 *Carmichele* (n 1) par 62.
- 35 *Carmichele* (n 1) par 62-67; Fagan (n 3) 659-663.
- 36 *Carmichele* (n 1) par 68-73.
- 37 *Carmichele* (n 1) par 56-57; Fagan (n 3) 659-673.
- 38 *Carmichele* (n 1) par 36-44.
- 39 *Carmichele* (n 1) par 40.
- 40 *Carmichele* (n 1) par 36-44.
- 41 *Carmichele* (n 1) par 72-74.
- 42 *Carmichele* (n 1) par 72-74; Du Bois (n 30) 139-143.

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- 43 *Carmichele* (n 1) par 45-49; Du Bois (n 30) 139-145.
- 44 *Carmichele* (n 1) par 45-49; see Chirwa “The doctrine of state responsibility as a potential means of making private actors accountable for human rights” 2004 *Melbourne Journal of International Law* 1.
- 45 *Carmichele* (n 1) par 62-66; 72-74; Chirwa (n 44) 1.
- 46 *Carmichele* (n 1) par 62-66; 72-74; Chirwa (n 44) 44-46.
- 47 *Carmichele* (n 1) par 62-66; 72-74; Chirwa (n 44) 44-46.
- 48 *Carmichele* (n 1) par 76-77; Chirwa (n 44) 22.
- 49 *Carmichele* (n 1) par 53-58; Chirwa (n 44) 22.
- 50 *Carmichele* (n 1) par 59- 63; Chirwa (n 44) 44-46.
- 51 *Carmichele* (n 1) par 59-63; Chirwa (n 44) 22.
- 52 *Carmichele* (n 1) par 59-63.
- 53 *Carmichele* (n 1) par 78-80; Fagan (n 3) 659-663.
- 54 *Carmichele* (n 1) par 65-77; Fagan (n 3) 659-663.
- 55 *Carmichele* (n 1) par 65-77.
- 56 *Carmichele* (n 1) par 65-77.
- 57 *Carmichele* (n 1) par 65-77; Deane (n 4) 167-177.
- 58 2005 6 SA 419 (CC).
- 59 2003 1 SA 389 (SCA).
- 60 Domestic Violence Act 116 of 1998.
- 61 Criminal Procedure Act 51 of 1977.
- 62 s 8 and 18 of the Criminal Procedure Act.
- 63 Currie-Gamwo “The NPA’s Sexual Offences and Community Affairs Unit welcomes the three pieces of legislation that seeks to amend crucial provisions in the fight against gender-based violence” at <https://www.npa.gov.za/index.php/media/npas-sexual-offences-and-community-affairs-unit-welcomes-three-pieces-legislation-seeks-amend> (28-11-2024).
- 64 Currie-Gamwo (n 63).
- 65 Currie-Gamwo (n 63).
- 66 Currie-Gamwo (n 63).
- 67 Currie-Gamwo (n 63).
- 68 Securitywomen “South African women’s group trains police to respond to gender-based violence” at <https://www.securitywomen.org/post/south-african-womens-group-trains-police-to-respond-to-gender-based-violence> (24-11-2024).
- 69 Liebenberg “The value of human dignity in interpreting socio-economic rights” 2005 *South African Journal on Human Rights* 1 5-15.
- 70 South African Law Reform Commission (SALRC) (2015). Project 94: Crime – The Role of the Police and Justice in Gender-Based Violence Cases; Parliament of South Africa. (2020). Gender-Based Violence: Progress Report on Legislative and Policy Interventions.
- 71 The South African Law Reform Commission “Removing barriers to accessing the criminal justice system” *Domestic Violence: The Criminal Law Response Paper* 161, Project 100 (2023) 89-126.
- 72 Van der Walt “Transformative constitutionalism and the development of South African property law” 2005 *Tydskrif vir die Suid-Afrikaanse Reg* 655 666.
- 73 Van der Walt (n 72) 666.
- 74 Liebenberg (n 69) 5-15.

