




# 6 The impact of COVID-19 on domestic violence in South Africa

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## Abstract

COVID-19 and the resulting lockdown has had a negative impact on domestic violence in South Africa. It is known that pandemics increase violence against women. Some of the impacts that domestic violence has on family law is that a surge of domestic violence can lead to an increase in divorces; an increase in application for care and protection orders for children as well as removals of children from the home environment when it is in their best interests. This chapter explores this impact by examining the definitions of domestic violence and gender-based violence and the statistics available regarding domestic violence in South Africa. After that the provisions of the Domestic Violence Amendment Bill and other measures taken by the South African government to assist victims of domestic violence are discussed. The chapter also briefly examines the role that patriarchy plays in driving domestic violence in South Africa. From this study, it emerges that violence against women in South Africa is linked to various factors including patriarchy, economic dependency and expected roles of women. Here it is seen that women need to be empowered and we need to actively change society's beliefs surrounding the role of women. Additionally, there is an intersection between violence against women and violence against children. The conclusion is reached that the COVID-19 pandemic and the resulting lockdown has exacerbated pre-existing problems in South African society that cause domestic violence and that legislation alone is not sufficient to solve the problem of domestic violence in South Africa. We also cannot rely on statistics alone and need to look at the lived experiences of women in South Africa. Even in situations where gender-based violence or domestic violence is not yet present, there are systemic inequalities

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found in South Africa, often caused by patriarchy and these need to be redressed.

### 1 Introduction

The COVID-19 lockdown has had disproportionate effects on women<sup>1</sup>, children and the elderly in South Africa. Women had to bear a larger workload during lockdown as they are predominantly responsible for the running of the household, child-care and supervising the education of their children in addition to performing their duties as employees (where they had kept their employment during lockdown).<sup>2</sup> It became clear during the COVID-19 lockdown in South Africa that “[w]omen are more vulnerable to COVID-19-related economic effects because of existing gender inequalities”.<sup>3</sup> Added to this is the impact of increased domestic violence, predominantly affecting women, in South Africa. During lockdown, social media reported many instances of domestic violence perpetrated against women and the resulting crimes, such as murder, that occurred. Pandemics increase violence against women.<sup>4</sup>

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1 Azcona, Bhatt, Encarnacion *et al* “From insights to action: Gender equality in the wake of COVID-19” 2020 *United Nations Entity for Gender Equality and the Empowerment of Women* at [www.unwomen.org/en/digital-library/publications/2020/09/gender-equality-in-the-wake-of-covid-19](http://www.unwomen.org/en/digital-library/publications/2020/09/gender-equality-in-the-wake-of-covid-19) (20-09-2021). They make it clear that the effects of crises, including COVID-19 are never gender-neutral.

2 Income disparity makes it difficult for women to leave abusive relationships: Lockdown affected women more than men as women generally earn less than men, women more often work informally, women do not have as much access as men to social protection and are usually burdened with unpaid domestic work and caring for children and family. See UN Women “COVID-19 and its economic toll on women: The story behind the numbers” September 16 2020 at [www.unwomen.org/en/news/stories/2020/9/feature-covid-19-economic-impacts-on-women](http://www.unwomen.org/en/news/stories/2020/9/feature-covid-19-economic-impacts-on-women) (20-09-2021). See also Casale and Shepherd “The gendered effects of the COVID-19 crisis and ongoing lockdown in South Africa: Evidence from NIDS-CRAM waves 1–5” 8 July 2021 *National Income Dynamics Study (NIDS)—Coronavirus Rapid Mobile Survey (CRAM)* at [cramsurvey.org/wp-content/uploads/2021/07/3](http://cramsurvey.org/wp-content/uploads/2021/07/3) (13-05-2021). Disparate economic effects affected women more than men, including less income support for women.

3 Madgavkar, Krishnan, White, Mahajan and Azcue “COVID-19 and gender equality: countering the regressive effects” McKinsey Global Institute at [www.mckinsey.com/feature-insight/future-of-work/Covid-19](http://www.mckinsey.com/feature-insight/future-of-work/Covid-19) (20-09-2021).

4 Mittal and Singh “Gender-based violence during COVID-19 pandemic: A mini-review” 08 September 2020 *Front. Glob. Women’s Health* at <https://doi.org/10.3389/fgwh/2020/00004> (20-09-2021).

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Prior to lockdown, research had shown that South Africa had the highest amount of gender-based violence in the world.<sup>5</sup> On 26 August 2020, Carte Blanche reported<sup>6</sup> that protection orders do not seem to deter perpetrators of domestic violence and that the warrants for arrest that are issued with the domestic violence protection order are often not executed. It was also found that violence escalates after the serving of protection orders as the perpetrators feel that victims are now undermining their power and they then exert their power by being more violent. The report further indicated that the police services were allocated R50 million for the purpose of gender-based violence and that all police are now trained regarding gender-based violence and domestic violence. Solutions to domestic violence that were indicated in this media report were that the different stakeholders must hold each other accountable and that a centralised database may, in the future, overcome some of the problems victims experience when trying to obtain orders against perpetrators, especially where the perpetrators have connections in the courts and/or the police service.

Some of the impacts that domestic violence has on family law is that a surge of domestic violence can lead to an increase in divorces, an increase in application for care and protection orders for children as well as removals of children from the home environment when it is in their best interests. During lockdown, the closing of schools also affected the welfare and safety of some children.<sup>7</sup> COVID-19 and the resulting lockdowns had an impact on divorce and marriages worldwide, applications for marriage licenses declined in countries that require them, couples postponed marriages, spouses that were unhappy staying married were forced to stay together, and there were various barriers to obtaining a divorce such as earning less or no income due to lockdown and court delays or closed courts.<sup>8</sup> Prior to the COVID-19 lockdown, one in five marriages in South Africa ended in divorce. Although full statistics are not yet available, experts state

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5 Onyejekwe “The interrelationship between gender-based violence and HIV/AIDS in South Africa” 2004 *Journal of International Women’s Studies* 34.

6 Report on “A Protection Order or a Useless Document?” at [www.m-net.dstv.com/show/carte-blanche/news/undeterred-watch](http://www.m-net.dstv.com/show/carte-blanche/news/undeterred-watch) (20-09-2021).

7 UNESCO “Adverse consequences of school closures” at [en.unesco.org/Covid-19/educationresponse/consequences](http://en.unesco.org/Covid-19/educationresponse/consequences) (21-09-2021) indicates that the closure of schools leads to “increased exposure to violence and exploitation” of children.

8 Seifman “COVID-19 impacts on marriage and divorce” 17 September 2021 at [www.impakter.com/Covid-19-impacts-on-marriage-and-divorce/](http://www.impakter.com/Covid-19-impacts-on-marriage-and-divorce/) (22-09-2021).

that there has been an increase in divorce and applications for divorce since lockdown.<sup>9</sup> Daniel<sup>10</sup> indicates that there are large backlogs at the courts and that in Limpopo province alone, there were 11 788 divorces outstanding at the end of 2020. This is almost half of the number of divorces countrywide in 2018. An increase in divorce applications leads to an increase in applications at the family advocate's office for recommendations regarding guardianship, care and contact. Unstable home environments may also lead to an increase in the abandonment of children due to economic abuse (resulting in no or limited access to money or essentials), psychological abuse (the expectant mother does not feel safe or supported) and physical abuse (the expectant mother does not see that the child will be welcomed or cared for and does not want the child to live such a life) and the expectant mother feels that there is "nowhere to run". This chapter will concentrate on the effect that the COVID-19 lockdown had on domestic violence in South Africa.

### 2 Definition of gender-based violence and domestic violence

Gender-based violence is defined as "violence directed against women on the basis of gender"<sup>11</sup> and in particular "any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty"<sup>12</sup>, whether occurring in public or in private life".<sup>13</sup> Examples of gender-based violence include sexual harassment, female genital mutilation, forced marriage and violence.<sup>14</sup> Global conventions and agreements that deal with gender-based violence are the Convention on the Elimination of All Forms of Discrimination Against Women, the Security Council Resolution

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9 Parent 24 "Will a trust protect my assets during a divorce" 9 July 2021 at <https://www.news24.com/parent/family/relationships/will-a-trust-protect-my-assets-during-a-divorce-20210708> (22-09-2021).

10 Daniel "Divorce is surging in SA—and for many couples this holiday may be the last straw" *Business Insider* 23 December 2020 at [www.businessinsider.co.za/sas-divorce-rate-up-30-in-2020-heres-why-its-expected-to-get-even-worse-after-the-holidays-2020-12](http://www.businessinsider.co.za/sas-divorce-rate-up-30-in-2020-heres-why-its-expected-to-get-even-worse-after-the-holidays-2020-12) (22-09-2021).

11 Available at <https://archive.unescwa.org/our-work/gender-based-violence> (23-08-2021).

12 Full text of the convention available at <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> (30-09-2021).

13 a 1, Declaration on the Elimination of Violence Against Women 1993.

14 Available at <https://archive.unescwa.org/our-work/gender-based-violence> (23-08-2021).

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1325<sup>15</sup> and the Beijing Platform for Action. South Africa signed the Convention on the Elimination of All Forms of Discrimination Against Women in January 1993 and ratified the convention on 15 December 1995. South Africa also ratified the Beijing Platform for Action and has issued reports on its compliance.<sup>16</sup>

Domestic violence is defined<sup>17</sup> as any form of abuse. This includes not only physical abuse but also emotional, sexual, economic and psychological abuse. Domestic violence also includes stalking, damage to property, entering a person's property without consent and any abusive or controlling behaviour that causes (or may cause) harm to the person's health, well-being or safety. Gender-based violence, thus, falls within the ambit of "domestic violence" as far as it occurs to parties in a relationship or a previous perceived relationship or living in the same household. The Commission for Gender Equality (CGE) is an independent institution established in terms of section 187 of the Constitution of the Republic of South Africa. The CGE's mandate is to promote respect for gender equality and the protection, development and attainment of gender equality in South Africa. Part of its mandate is to monitor the implementation of the international and regional conventions, covenants and charters signed, or acceded to, and or ratified by South Africa, that impact directly or indirectly on gender equality. These instruments include the Beijing Declaration and Platform for Action<sup>18</sup> (BPA), the Convention on the Elimination of Violence Against Women (CEDAW), the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, and the Solemn Declaration on Gender Equality in Africa. The commission has the mandate to monitor compliance with these international instruments and to prepare and submit reports to parliament.<sup>19</sup> Already in 2010, it was reported by the Commission for Gender Equality that there was inadequate enforcement of domestic violence legislation

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15 South Africa reaffirmed its commitment to this resolution on 31 October 2020: Media Statement

31 October 2020 South Africa's Vote on Women Peace and Security Resolution at the United Nations Security Council at <http://www.dirco.gov.za/docs/2020/unsc1031.htm> (20-09-2021).

16 South Africa's report on the progress made on the implementation of the Beijing platform for action 2014-2019 at [https://static.pmg.org.za/190828National\\_Beijing\\_25\\_Report.pdf](https://static.pmg.org.za/190828National_Beijing_25_Report.pdf) (20-09-2021).

17 In the Domestic Violence Act 116 of 1998.

18 1995.

19 Commission for Gender Equality "South Africa's compliance with the Beijing Declaration and Platform for Action" March 2010 8.

by the police and the courts.<sup>20</sup> Support services must work together in order to combat gender-based violence.<sup>21</sup> In 2019, the Department of Women raised concerns in their report:

“There is, however, concern that the institutionalisation of the transformation agenda for women may have slowed down. Central to this concern are the continuing challenges and multiplicity of oppressions faced by South African women informed by their differently constructed subjective positions in relation to the political, economic, and social power structures. Although the agenda for gender equality and women’s empowerment in South Africa is advanced in comparison with many other countries, efforts to achieve gender equality and women’s empowerment through legislative and policy interventions have yet to substantially transform society and the economy.”<sup>22</sup>

Infrastructure and support systems are needed to support the legislation that aims to prevent violence against women.<sup>23</sup> A report compiled by the Western Cape police ombudsman shows that gender-based violence victims are still not being properly assisted in 2021.<sup>24</sup> The report stated that 80% of victims were not interviewed in private; 60% of the victims of gender-based violence were not provided with a chance to give information during the trial or investigation; 60% of the victims were not told about support services for victims of gender-based violence that are available in the community and none were told to apply for financial compensation in instances where they suffered damage or financial harm. Family Violence, Child Protection and Sexual Offences (FCS) units were formed by the police services but this

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20 Commission for Gender Equality (n 19) 21. For a discussion of challenges facing the police with regard to domestic violence, see Retief and Green “Some challenges in policing domestic violence” 2015 *Social Work (Stellenbosch Online)* 135-147 at <http://dx.doi.org/51-1-432> (20-09-2021).

21 Padayachee “A synchronized response to intimate partner violence” *News and Views for Magistrates* 2006 no. 7 at [www.journals.co.za/doi/abs/10.10520/EJC69306](http://www.journals.co.za/doi/abs/10.10520/EJC69306) (17-09-2021).

22 Department of Women “South Africa’s report on the progress made on the implementation of the Beijing Platform for Action 2014-2019 Final Draft” 2019 21.

23 Mogale, Burns and Richter “Violence against women in South Africa: Policy, position and recommendations” 2012 *Violence against Women* 580-594.

24 Shange “Police Ombud Reveals Poor Treatment of GBV Victims in Western Cape” 18 August 2021 *Times Live* available at <https://www.timeslive.co.za/news/south-africa> (29-09-2021).

is not sufficient and clearly more needs to be done to combat gender-based violence, including domestic violence, in South Africa.<sup>25</sup> Men and boys can also be taught how to prevent gender-based violence.<sup>26</sup> Research has shown that violence against women is learned behaviour but that there is not a single factor that explains why there is such a high rate of gender-based violence in South Africa.<sup>27</sup> The statistics surrounding gender-based violence are shocking. One in three women worldwide experience physical or sexual violence in their lifetime<sup>28</sup> and 137 women are killed every day by their family members.<sup>29</sup> The global cost of gender-based violence was 1.5 trillion USD, 2% of GDP.<sup>30</sup> In South Africa, one woman is murdered every three hours; this is five times the global average.<sup>31</sup>

Not only women but also children were affected by the COVID-19 lockdown. There was, at first, a decrease in non-accidental injuries to children but then the cases climbed again.<sup>32</sup> The cases decreased during hard lockdown when there was an alcohol sale ban but it was difficult for women and children to access services during lockdown.<sup>33</sup> Violence against children is widespread in South Africa with one in three children reporting some form of maltreatment, yet the child protection

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25 Shange (n 24). See also Sibanda-Moyo, Khonje and Brobbey “Violence against women in South Africa: A country in crisis in 2017” CSVR (Centre for the study of violence and reconciliation) 2017. For a discussion of gender-based and sexual violence and HIV in South Africa see Artz, Klazinga and Müller “Sexual and gender-based violence and HIV in South Africa: an HIV facility-based study” 2020 *South African Medical Journal* 377–381.

26 Colpitts “Engaging men and boys to prevent gender-based violence in South Africa: Possibilities; tensions and debates” 2019 *Canadian Journal of Development Studies* 423.

27 Sibanda-Moyo, Khonje and Brobbey (n 25) 69.

28 World Health Organization “Devastatingly pervasive: 1 in 3 women globally experience violence” at <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence> (20-09-2021).

29 United Nations Office on Drugs and Crime “Global Study on Homicide: Gender-related killing of women and girls” 2018 10 at [https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18\\_Gender-related\\_killing\\_of\\_women\\_and\\_girls.pdf](https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf) (20-09-2021).

30 Dortnall “African Universities Gender Equality Forum Presentation” 12 August 2021.

31 Available at [www.itsnotok.africa](http://www.itsnotok.africa) (23-08-2021).

32 The Children’s Institute University of Cape Town Press Release “Children and COVID-19: It’s time to put children first—from response to recovery” 3 August 2021.

33 Ibid.

system is dysfunctional and very few children receive protection and therapeutic services.<sup>34</sup> Reform of child protection is affected by a lack of evidence about the specific services needed and how they best operate.<sup>35</sup> There is an intersection between violence against children and violence against women, although the fields of research into violence against women and violence against children have developed as two separate fields.<sup>36</sup> It was reported in 2021<sup>37</sup> that 35% of women worldwide have been subjected to physical or sexual violence from an intimate partner and one in two children<sup>38</sup> experienced violence in the last year. Exposure to violence as a child increases the possibility of males later being the perpetrators of violence themselves.<sup>39</sup>

According to Amnesty International, the “COVID-19 pandemic has prompted an escalation in gender-based violence against women and girls in South Africa”.<sup>40</sup> “Harmful gender stereotypes embedded in social and cultural norms ... have fuelled the rise in violence against women and girls in Madagascar; Mozambique; South Africa; Zambia and Zimbabwe”.<sup>41</sup> One activist stated, “girls are taught that husbands only beat their wives when they love them”.<sup>42</sup> Not only has the COVID-19 pandemic caused a rise in gender-based violence, “[i]t has also magnified existing structural problems such as poverty; inequality; crime; high unemployment and systematic criminal justice failures” and “[l]ockdown measures meant that women could not escape abusive

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34 Available at <http://www.ci.uct.ac.za/ci/projects/theme/violence-against-children> (23-08-2021).

35 Ibid.

36 Available at <http://www.ci.uct.ac.za/ci/intersections> (23-08-2021). See further Padayachee “Children: the secondary victims of domestic violence” 1994 *Acta Criminologica* 50; Office on Women’s Health “Effects of Domestic Violence on Children” 2019 at <https://www.womenshealth.gov/relationships-and-safety/domestic-violence/effects-domestic-violence-children> (20-09-2021).

37 Ibid.

38 Age 2 to 17.

39 Available at <http://www.ci.uct.ac.za/ci/intersections> (23-08-2021). See also Mathews and Lehlogonolo “Connecting the Dots Deepening our Understanding of Violence Against Women and Children” at [http://www.ci.uct.ac.za/sites/default/files/image\\_tool/images/367/intersections/repository/Intersections\\_Research%20Brief\\_16\\_03.pdf](http://www.ci.uct.ac.za/sites/default/files/image_tool/images/367/intersections/repository/Intersections_Research%20Brief_16_03.pdf) (25-08-2021).

40 Amnesty International “Southern Africa: Homes Became Dangerous Place for Women and Girls During COVID-19 Lockdown” 9 February 2021 at <https://www.amnesty.org/en/latest/press-release/2021/02/southern-africa-homes-become-dangerous-place-for-women-and-girls-during-covid19-lockdown/> (20-09-2021).

41 Ibid.

42 Ibid.

partners or leave their homes to seek protection”.<sup>43</sup> What aggravated the domestic violence escalation during the COVID-19 lockdown was that the provision of support services for domestic violence during lockdown were not included in the measures to combat the spread of COVID-19. Already in the first week of lockdown, 2 300 calls were made to the South African police services asking for assistance with gender-based violence and by the middle of June 2020 “21 women and children had been killed by intimate partners in the country”.<sup>44</sup>

The South African government website<sup>45</sup> now provides details of services available to victims of domestic violence. These include an emergency telephone line, a please call me service, skype consults and a sms for help service. An explanation of how to obtain a protection order is also on the website. However, forms still need to be completed; these are accessible on the website, and the application currently has to be made at the magistrate’s court. The amendments have tried to address this shortcoming. The Domestic Violence Amendment Bill<sup>46</sup> has been approved by parliament<sup>47</sup> and has been signed by the President. The changes included in the Domestic Violence Amendment Bill are some changes to definitions.<sup>48</sup> The definition of “domestic relationship” has been amended to include “persons in a close relationship” that share or shared the same residence. The “domestic violence” definition now includes “sexual harassment; related person abuse; spiritual abuse; elder abuse; coercive behaviour; controlling behaviour [and to] to expose a child to domestic violence”. Domestic violence additionally includes entering the temporary or permanent residence or workplace of a person without their consent<sup>49</sup> as well as any other “behaviours of an intimidating, threatening, abusive, degrading, offensive or humiliating nature”.<sup>50</sup> The definition of domestic violence also now covers “where conduct harms or inspires the reasonable belief that harm may be caused to the complainant”.<sup>51</sup> The definition of “economic abuse” has been amended to include

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43 Muchena, Amnesty International’s Director of East and Southern Africa.

44 See n 40.

45 Available at [www.gov.za/about-government-domestic-violence](http://www.gov.za/about-government-domestic-violence) (17-08-2021).

46 B20 of 2020. These changes are now found in the Domestic Violence Amendment Act 14 of 2021.

47 On 10 September 2021.

48 “Harassment” is further defined; “sexual harassment” is defined further; “elder abuse” is included and defined.

49 “Where the parties do not share the same workplace or place of study”.

50 clause 1.

51 Ibid.

the deprivation of education expenses and accommodation.<sup>52</sup> The amendment bill defines “emotional, verbal or psychological abuse” as including “manipulating, threatening, offensive, intimidating conduct” that causes mental or psychological harm to a complainant<sup>53</sup> as well as “the wilful damaging or destruction of any property in close vicinity of a complainant” and harming or threatening to harm a household pet or other animal where the welfare of the animal affects the complainant’s well-being and the threat to commit self-harm or suicide.<sup>54</sup> The amendments also provide that “exposing a child to domestic violence” is included in “domestic violence”, this “means to intentionally cause a child to—(a) see or hear domestic violence; or (b) experience the effects of domestic violence”.<sup>55</sup> Previously such matters had to be dealt with separately. The definition of “physical abuse” now also comprises “threats of physical violence”.<sup>56</sup> “Related person abuse” is included now within the realms of domestic violence. Related person abuse includes threatening the complainant with causing physical violence to the related person or damaging or threatening to damage the property of the related person.<sup>57</sup> A “related person” is defined as “any member of the family or household of a complainant, or a person in a close relationship with the complainant”.<sup>58</sup> This definition clearly covers a wide variety of relationships and no marriage between the “related person” and the complainant is required. “Spiritual abuse” is defined as including “(a) advocating hatred against the complainant because of his or her religious or spiritual beliefs, that constitutes incitement to cause harm to the complainant; (b) preventing the complainant from exercising his or her constitutional right to freedom of conscience, religion, thought, belief and opinion, including to give external manifestation to his or her religious or spiritual convictions and beliefs; or (c) manipulating the complainant’s religious or spiritual convictions and beliefs to justify or rationalise abusing the complainant”.<sup>59</sup> A “third party actor” means a person “(a) who is not or has not been in a domestic relationship with a complainant; (b) who conspired with, was procured by, or used by, the respondent to commit an act of domestic violence against the complainant; and (c) who—(i)

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52 Ibid.

53 Ibid.

54 Ibid.

55 Ibid.

56 Ibid.

57 Ibid.

58 Ibid.

59 Ibid.

committed or allegedly committed an act of domestic violence against the complainant; or (ii) aided or allegedly aided the respondent in the commission of an act of domestic violence against the complainant”.<sup>60</sup> This definition is important as domestic violence does not always take place in isolation but can take place within families or extended families where there is a culture of gender-based violence.

An application for a protection order can now be made electronically.<sup>61</sup> The amendment bill also provides that the court can issue a “domestic violence safety monitoring notice”<sup>62</sup> together with the protection order and this will direct the police to contact the applicant regularly and visit their home and to use reasonable force to gain entry into the home if they are prevented from entering. The amendment bill also stipulates that the magistrate may appoint a social worker or family advocate to investigate the circumstances surrounding the application when a minor child is involved.<sup>63</sup> Provision is also made that an existing order must be recorded on the court file and that the complainant must be given a chance to apply for the amendment or variation or setting aside of any existing order and that the court may make an order for a limited period that contradicts any such existing order, if urgent relief is needed against domestic violence.<sup>64</sup> These amendments take into account the reality of the prevalence of domestic violence in South Africa and the forms that such domestic violence takes. Given the human rights violations caused towards women in South Africa due to failure by the police to enforce protection orders and low levels of convicting and prosecuting domestic violence offences<sup>65</sup> whether these amendments are sufficient and will be properly applied and enforced in practice remains to be seen.

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60 clause 1: “This Act does not prevent a complainant from applying for relief in terms of the Protection from Harassment Act, 2011 (Act No. 17 of 2011), where a third party actor committed an act, if committed by a respondent, would amount to domestic violence against the complainant, and which constitutes harassment in terms of that Act”.

61 clause 4(1)(a)(bb).

62 clause 4A.

63 clause 5(1).

64 clause 5(3).

65 Report by the Committee on the Elimination of Discrimination Against Women “Inquiry concerning South Africa under article 8 of the Optional Protocol to the convention on the Elimination of all Forms of discrimination Against Women” 14 May 2021 1.

### 3 Patriarchy

The high incidence of domestic violence in South Africa cannot be viewed in isolation as it occurs within South African society at large. Patriarchy and its influence on the South African family and the commission of domestic violence needs to be examined.

*“Patriarchy is a system of society or government in which the father or eldest male is head of the family and descent is reckoned through the male line hence, the system promotes male privilege. The attitudes and expectations organized on this basis rank men above women, providing a social structure that gives men uncontested authority. It is an obsession with control as a core value around which social life is organized. Men maintain their privilege by controlling women and anyone else who might threaten their positions. Women are subordinated and treated as inferior because they are culturally defined as inferior. Men however, do not suffer because femaleness is a devalued and oppressed phenomenon”.*<sup>66</sup>

Johnson<sup>67</sup> explains that patriarchy is “a kind of society” itself, that is “organized around certain kinds of social relationships and ideas ... our participation [in it] both shapes our lives and gives us the opportunity to be part of changing or perpetuating it”. The elements that define patriarchy are that it is “male-dominated; male-identified and [has] male centered (sic) character, [it is] a set of symbols and ideas that make up a culture”.<sup>68</sup> Mudau and Obadire<sup>69</sup> found that patriarchy suppresses women around the world and there are outdated practices in place that state that a women’s role in the family is below that of a man. The study even found that patriarchy was used to control women’s use of contraceptives<sup>70</sup> and it prevented women from

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66 Johnson and Leone, quoted in Mudau and Obadire “The role of patriarchy in family settings and its implications to girls and women in South Africa” 2017 *Journal of Human Ecology* 67–72. See also Kurk and Okazawa-Rey “Patriarchy, the system” 2004 *Women’s Lives Multicultural Perspectives* 25–32. For a discussion of patriarchy and the workplace see the classic, Witz *Professions and Patriarchy* (1992) and for a general discussion of the history of patriarchy, see Miller *Patriarchy* (2017).

67 Johnson “Patriarchy the system: An it, not a He, a them or an us” in Kirk and Okazawa-Rey *Women’s Lives: Multicultural Perspective* (2004) 26.

68 Johnson (n 67) 29.

69 Johnson (n 67) 29.

70 Men believed that it would make them (the men) sick when they had sexual intercourse with them.

obtaining educational advancement.<sup>71</sup> Johnson<sup>72</sup> opines that in order for patriarchy to be present, men do not need to have “oppressive personalities” or be conspiring together to defend their male privilege. We do not need to prove that women are victims and men are villains in order to demonstrate that patriarchy exists in a society, if the “society is oppressive” then those who live in that society will see that oppression as a normal part of everyday life and will participate in it.<sup>73</sup>

Dortnall<sup>74</sup> states that patriarchal privilege drives gender-based violence and that we must address unequal power relations, we need to empower women and transform attitudes, beliefs and norms. Hunnicutt<sup>75</sup> opines that a study of patriarchy should not only focus on individual attributes but on social conditions that lead to violence against women. In South Africa, the department of women, youth and persons with disabilities has the mission to “accelerate socio-economic transformation and implementation of the empowerment and participation of women, youth and persons with disabilities through oversight, monitoring, evaluation and influencing policy”.<sup>76</sup> The department monitors gender equality and “the impact of seemingly neutral decisions, plans, laws, policies and practices on them through capacity building and responsive budgeting; and facilitating and monitoring capacity building and skills development for them to participate meaningfully in all areas of the economy and the workplace”.<sup>77</sup> The fact that the department exists acknowledges the influence of patriarchy in South Africa.

Patriarchy influences the way a society functions, even when considering whether legislation is discriminatory, we cannot disregard patriarchy:

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71 See also Coetzee “South African education and the ideology of patriarchy” 2001 *South African Journal of Education* 21.

72 Johnson (n 67) 26.

73 Johnson (n 67) 26.

74 African Universities Gender Equality Forum Presentation 12 August 2021.

75 Hunnicutt “Varieties of patriarchy and violence against women: Resurrecting patriarchy as a theoretical tool” 2009 *Violence against Women* 553–573.

76 Department of Women at <https://nationalgovernment.co.za/units/view/31/departement-of-women-youth-and-persons-with-disabilities-dwypd> (23-08-2021). See also World Health Organization *Violence Prevention: The Evidence. Preventing Violence by Developing Life Skills in Children and Adolescents*, Geneva, 2009.

77 Department of Women (n 76).

## The Impact of Covid-19 on the Future of Law

*“The South African labour market is generally more favourable to men than it is to women and men are more likely to be in paid employment than women, regardless of race in general, but with particular significance for African women in the main. Significant numbers of women, mainly black African women, remain in low-productivity jobs, often in informal sector enterprises whose access to technology is poor”.<sup>78</sup>*

Women are also more likely than men to be involved in unpaid work. About 55.2% of those involved in non-market activities were women as measured in the second quarter of 2018. Women’s unequal share of unpaid care and domestic work is an important barrier to their economic empowerment and well-being. This reflects not only the time-intensive nature of some tasks performed around the home, such as caring for other household members, but also the uneven distribution of caring activities between household members, which reflect social norms and practices and intra-household decision-making. In 2010, the Time-Use Survey conducted by Stats SA showed that women between the ages of 20 and 29 years were estimated to have spent 2.3 hours per day in market production activities, and 4.7 hours in household production activities. While men spent more time in market production than women, the opposite is true for household production. Men outnumber women amongst the employed by more than two million. There are around one-quarter more women than men amongst the non-searching unemployed. “Men have better labour market outcomes (employment as opposed to unemployment) and women dominate amongst those with worse labour market outcomes (non-searching unemployment as opposed to narrow unemployment)”.<sup>79</sup> This unequal labour leads to women being economically dependent on men and less able to leave the household when domestic violence takes place. A study has previously shown that the economic and social empowerment of women reduces violence against women by their intimate partners.<sup>80</sup> It is important to note that violence against women does not take place in isolation from other factors, instead it is “closely interlinked with relations of power

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78 Report of the UN Secretary General, E/CN.6/2017/3, to the 61st Session of the Commission on the Status of Women, 2016 26.

79 Department of Women (n 76) 25.

80 Kim *et al* “Understanding the impact of a microfinance-based intervention on women’s empowerment and the reduction of intimate partner violence in South Africa” 2007 *American Journal of Public Health* 794–802.

and feeds on and induces multiple vulnerabilities, including disability, economic dependence, identity-based inequalities, and the personal circumstances of women's and children's lives".<sup>81</sup>

In South Africa, one in three men believe that women should not have equal rights.<sup>82</sup> Many women give up their careers to perform unpaid care of the children and the household or help with their husband's business or career and, thus, their husband's estate is advantaged. South Africa needs to "overcome the structural barriers that prevent the participation of women as equal players in the economy and society in general".<sup>83</sup> Based on the statistics on gender-based violence and the clear influence of patriarchy in South Africa, is there even equal bargaining power between spouses before they enter into marriage? Women may not be as free to negotiate regarding the antenuptial contract as they may be economically dependent on men. Women often have unequal bargaining power compared to men and as a result may enter into antenuptial contracts that are detrimental to them. The World Health Organization<sup>84</sup> already stated more than a decade ago that "promoting gender equality is a critical part of violence prevention" as gender equality makes the risk of violence against women higher. The World Health Organization recommended that the initiatives that can be used to improve gender equality include school programmes to deal with gender attitudes, and community intervention programmes, including micro-finance schemes for women as well as media interventions to change the perceptions of women's right and gender norms.<sup>85</sup> The World Health Organization recommends that programmes must include both men and women in order to prevent conflict between men and women.<sup>86</sup> Wall<sup>87</sup> opines that

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81 Sibanda-Moyo, Khonje and Brobbey (n 25) 70.

82 Statistics South Africa 2018 at [www.itsnotok.africa](http://www.itsnotok.africa) (23-08-2021).

83 Sibanda-Moyo, Khonje and Brobbey (n 25) 70.

84 "Violence prevention the evidence: promoting gender equality to prevent violence against women, series of briefings on violence prevention" 2009 3 at [https://www.who.int/violence\\_injury\\_prevention/violence/gender.pdf](https://www.who.int/violence_injury_prevention/violence/gender.pdf) (30-09-2021).

85 World Health Organization 2009 3.

86 Ibid.

87 "Gender inequality and violence against women: What's the connection" June 2014 *ACCSA Research Summary* Australian Centre for the Study of Sexual Assault 1. Biroli "Violence against women and reactions to gender equality in politics" 2018 *Politics and Gender* 681 also states that violence is perpetrated against women "just because they are women" but that their experiences are also formed by "race, class, sexuality, generation and nationality".

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a multi-dimensional perspective is needed in order to understand the link between violence against women and gender equality and states that research on gender inequality also needs to consider factors other than just gender, such as class and race.

The Promotion of Equality and Prevention of Unfair Discrimination proposed amendment bill<sup>88</sup> would change the definition of “discrimination” to mean:

“any act or omission, including a policy, law, rule, practice, condition or situation which, whether intentionally or not, directly or indirectly—

(a) imposes burdens, obligations or disadvantage on;[or]

(b) withholds benefits, opportunities or advantages from[,];

(c) causes prejudice to; or

(d) otherwise undermines the dignity of, any person [on] related to one or more of the prohibited grounds[;],irrespective of whether or not the discrimination on a particular ground was the sole or dominant reason for the discriminatory act or omission”.

The definition of “equality” would include:

“(a) the full and equal enjoyment of rights and freedoms as contemplated in the Constitution;

(b) equal right and access to resources, opportunities, benefits and advantages;

(c) [and includes] *de jure* and *de facto* equality;

(d) [and also] equality in terms of impact and outcomes; and

(e) substantive equality”.

The bill would also provide, a bit more clearly, that the state has a “general responsibility to promote equality:

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88 B 20 of 2021. For a discussion of the proposed bill see De Vos “Proposed amendments to the Promotion of Equality and Prevention of Unfair Discrimination Act the bill have been heavily criticised by various right-wing religious, conservative and ‘classic’ liberal groups. While the bill is not perfect, much of the criticism is based on a misrepresentation (or misunderstanding) of the amendments, and driven by an ideological antipathy towards the eradication of systemic inequality, especially in the ‘private’ sphere” *Daily Maverick* 23-06-2021 at <https://bit.ly/3PdEJko> (26-08-2021).

## 6 *The impact of COVID-19 on domestic violence*

24. (1) The State and public bodies have a duty and responsibility to eliminate discrimination and to promote and achieve equality.
- (2) All persons have a duty and responsibility to eliminate discrimination and to promote equality.
- (3) The State, public bodies and all persons have a duty and responsibility in particular to—
- (a) eliminate discrimination on the grounds of race, gender and disability;
- and
- (b) promote equality in respect of race, gender and disability.
- (4) The State, public bodies and the organisations and institutions referred to in section 28(1) must take reasonable measures, within available resources, to make provision in their budgets for funds to implement measures aimed at eliminating discrimination and promoting equality referred to in this Chapter”.

Additionally, the bill provides that the state has to amend existing legislation or enact further legislation in order to achieve the abovementioned aims:<sup>89</sup>

- “(6)The measures to be adopted by the State to achieve equality must—
- (a) proactively address systemic and multidimensional patterns of inequality and discrimination found in social structures, rules, attitudes, actions or omissions which prevent the full and equal enjoyment of rights and freedoms as contemplated in the Constitution, including equal access to resources, opportunities, benefits and advantages and social goods; and
- (b) provide for reasonable accommodation of the needs of persons on the basis of any of the prohibited grounds.”<sup>90</sup>

It is hoped that these changes, combined with the changes to domestic violence legislation,<sup>91</sup> will help ameliorate the effects of patriarchy

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89 clause 25(3).

90 clause 25(6).

91 Discussed below at par 4.

on women in South Africa and result in fewer incidences of domestic violence in South Africa.

#### 4 Domestic violence legislation in South Africa

The current Domestic Violence Act provides for the application by a victim of domestic violence for a protection order. The applicant can apply for a protection order against the perpetrator of domestic violence at their nearest magistrate's court. Inadequacies in the provisions of the Domestic Violence Act led to the drafting of the Domestic Violence Amendment Bill. This bill was one of three bills that cabinet has approved to combat gender-based violence. The other bills are the Sexual Offences and Related Matters Amendment Bill and the National Register for Sexual Offences Bill. The purpose of the Domestic Violence Amendment Bill is to address shortcomings in the Domestic Violence Act. The amendments also aim to align the Domestic Violence Act with the Protection of Harassment Act 17 of 2011. The Domestic Violence Amendment Bill stipulates that a "relationship" in terms of the bill includes anyone who has been dating, engaged in customary relationships, in intimate or in sexual relationships of any duration and perceived romantic relationships.<sup>92</sup> Provision is also made for the departments of health, social development, basic education and higher education to provide services to domestic violence survivors and to refer them to medical care and shelter. Section 18B was included in the amendment and provides that the directors-general of the previously mentioned departments may provide directives. These directives must:

*"prescribe services to be provided to a complainant who is a child, a person with a disability or an older person, prescribe the manner in which a functionary who must deal with a complainant who is a child, a person with a disability or an older person in order to protect them against further acts of domestic violence, prescribe services to be provided to a complainant who is an adult person, provide for a public and communication initiative to education the public on the provisions of the Act [and] the obligations of the ... South African Police Services ... provide for the designation of accredited shelters ... prescribe the manner in which a risk assessment must be conducted in respect of a complainant to provide or refer the complainant for further services".*

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92 clause 2 of the bill.

## 6 *The impact of COVID-19 on domestic violence*

The amendments also provide that if a functionary<sup>93</sup> “becomes aware of the fact, or on reasonable grounds believes or suspects” that domestic violence has been committed against a child, a person with a disability or an older person and fails to report it to a social worker or to the police that such person can then be fined or imprisoned<sup>94</sup>. Additionally “a court may also, when considering an application for a protection order, cause an investigation to be carried out as contemplated in section 47 of the Children’s Act, 2005 “and if a child that is affected by the proceedings is in need of care and protection then the court must order that the question of whether the child is in need of care and protection must be referred to designated social worker for an investigation.”<sup>95</sup> The bill amends the previous section 5(6) and now provides that the interim protection order will be of full force from the time that it exists and its contents have been brought to the respondent’s attention. Prior to the amendment, the interim protection order had to be served on the respondent and had no effect until this had been done. The amended section 18(1) states that

“a prosecutor may not refuse or institute a prosecution or withdraw a charge, ... [where] that contravention or offence involve[s] the infliction of grievous bodily harm or a dangerous wound against the complainant or a related person, or where the complainant or a related person is threatened with a weapon, unless that prosecutor is authorised thereto by the relevant Director of Public Prosecutions”.

The amendments also stipulate that arrest can take place without a warrant.<sup>96</sup> Orders for domestic violence protection can be applied for online and applications “must be uploaded onto the integrated

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93 Medical practitioner, health service provider, social worker, official in the employ of a public health establishment, educator or care-giver.

94 clause 2A. Functionaries must also provide the complainant with a list containing the names of accessible shelters and public health establishments and give the complainant a notice with information and the remedies that the complainant may make use of.

95 clause 5.

96 clause 3: A police official “who receives a report that an offence containing an element of physical violence has allegedly been committed during an incidence of domestic violence; and reasonably suspects that a person who may furnish information regarding the alleged offence is in any private dwelling may ... without warrant enter those premises for the purpose of interrogating that person and obtaining a statement from him or her”.

electronic repository”<sup>97</sup> and provision is made for electronic (online) service of the protection order; this includes service via Facebook.<sup>98</sup> If electronic communications were used to perpetrate domestic violence then the “electronic communication service providers” now have to provide assistance to the court with regards to these communications.<sup>99</sup>

### 5 Conclusion

COVID-19 and the effects of lockdown have revealed and exacerbated pre-existing problems in South African society. Due to the close proximity in which victims and their abusive partners have had to live and the difficulty of obtaining services to help them, the instances of domestic and gender-based violence have increased in South Africa during lockdown. It is clear that gender-based violence, including domestic violence is due to patriarchy<sup>100</sup> and gender inequality in South Africa.<sup>101</sup> Dlamini<sup>102</sup> makes it clear that the government needs to give the same amount of attention to gender-based violence as it has to COVID-19. The Domestic Violence Amendment Bill has been long awaited. Hopefully some of its provisions will provide assistance and relief to victims of domestic violence in South Africa. However, a band-aid in the cracks of South African society, alone, is not sufficient to correct these problems in society and to prevent further violence against women. “When oppression is woven into the fabric of everyday life, we don’t need to go out of our way to be overly oppressive. In order for an oppressive system to produce oppressive consequences as the saying goes what evil requires is simply that ordinary people do nothing”.<sup>103</sup> Legislation alone is not sufficient to fix gender-based violence in South Africa. Caution must also be exercised in the way that the media is used to raise awareness of domestic violence, for example, challenges were caused by the use of the hashtag #MenAreTrash to raise awareness of violence against women, as men are needed to be allies in the prevention of violence against women.<sup>104</sup> Recent statistics

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97 clause 4.

98 clause 13(1): if the order cannot be served immediately then it may be served by email, fax, sms or on a “known social media platform”.

99 clause 5B.

100 Dlamini “Gender-based violence, twin pandemic to COVID-19” Nov. 30 2020 *Critical Sociology* 583–590 uses the term “toxic masculinity”.

101 Johnson (n 67) 26.

102 See (n 100) 583.

103 Johnson (n 67) 26.

104 D’Avanzato, Bogen, Kuo and Orchowski “Online dialogue surrounding violence against women in South Africa: a qualitative

indicate that gender-based violence is continuing to rise in South Africa<sup>105</sup> and recent rape statistics are “horrific”.<sup>106</sup> It is hoped that the amendments to legislation will help curb this. The amendment will allow direct referral to social workers and it will allow for investigations to be done on order from the Domestic Violence (Magistrate’s) court.

A South African study has shown that “Domestic Violence in South Africa is a consequence of the complex interplay of patriarchy, culture and negative masculine construct”.<sup>107</sup> It has been shown that systemic inequalities make women vulnerable to gender-based violence. Policies should not just look at “ideological perspectives” but the “lived experiences of women”.<sup>108</sup> The Human Sciences Research Council<sup>109</sup> stipulated that the available figures on gender-based violence in South Africa are outdated so the council is conducting a study into gender-based violence in South Africa, over a 30 month period. The study will look at “emotional, economic, physical and sexual intimate partner violence, non-partner sexual violence; sexual harassment and other forms of GBV which were not often included in similar studies, such as *ukuthwala* (bride abduction)”. It is clear that more studies and actions on ground level are needed with regards to domestic violence in South Africa and that the amended Domestic Violence Bill is a step in the right direction. COVID-19 lockdown just brought the existing issues to the fore and even where gender-based violence or domestic violence is not yet present, there are systemic inequalities in South Africa, often caused by patriarchy. This needs to be redressed.

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analysis of #MenAreTrash” 2021 *Journal of Sexual Aggression* at DOI: 10.1080/13552600.2021.1892219 (21-09-2021).

105 MP Zandile Majosi, as quoted by News 24 “Parliament’s adoption of GBV is ‘a leap that is long overdue’” 10 September 2021 at [www.news24.com](http://www.news24.com) (15-09-2021).

106 Ibid.

107 Mshweshwe “Understanding domestic violence: masculinity, culture, traditions” October 2020 *Heliyon* at <https://www.sciencedirect.com/science/article/pii/S2405844020321770> (30-09-2021).

108 See (n 25) 70.

109 Research on GBV: HSRC and DSI briefing 23 February 2021 at [www.hsrc.ac.za/en/news/general/research-on-gbv](http://www.hsrc.ac.za/en/news/general/research-on-gbv) (21-09-2021).

