

**CHILDREN'S EXPERIENCES AND VIEWS ON  
DOMESTIC VIOLENCE**

**By**

Ntombenani Primrose Ntebe (9765212)

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**UNIVERSITY OF WESTERN CAPE**

**Supervisor:** Prof: Julia Sloth-Nielsen, Law Faculty, UWC.

# **DECLARATION**

I, Ntombenani Primrose Ntebe, hereby declare that the work on which this research paper is based is my own work in design and execution (except where acknowledgments indicate otherwise) and that neither the whole nor any part of it has been, is being, or is to be submitted in support of an application for another degree or qualification of this or any other institution of learning.



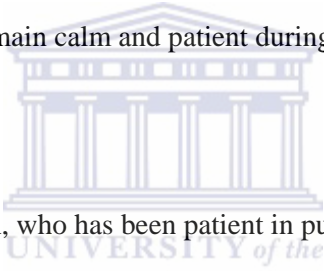
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**DATE: 20 NOVEMBER 2012**

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This study is dedicated to my family. To my husband, Luvuyo Ntebe, who has supported me and encouraged me through the years and never doubted that I would one day be a Master's graduate. To my parents, Nokwandisa and Gqumashe Mtini (who passed away in 2008), Namhla and Baulis Ntebe (my parents in-law), who supported me through the years of hardship and study. To my sisters and brothers, for their unwavering support and patience.

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contribution you have made to the final stages of this paper in so far as how I manage time in order to finish the work.

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Children's views

Impact

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# ABSTRACT

In a country in which human rights feature prominently in our discourse about who we are, as well as in the South African constitutional and legal framework, so many wrongs continue to be perpetrated on women and children. However, children seem to be particularly affected by domestic violence, either physically, emotionally or socially. In order to adequately address these diverse experiences and understand what children say, an in-depth investigation into how children experience domestic violence, and what their views are, is required. The study will focus on those children who had been affected emotionally and socially in their homes.

This study will make an attempt to expand on how children experience domestic violence, what the general reaction of a selected group of children, who have observed domestic violence, is and what their views of domestic violence are. Attention was given to the relevant literature as well to legislative and policy frameworks. The study employed a qualitative research method in order to obtain in-depth data from the children.

Children were selected from three schools in a small Northern Cape town, which participated in the study and the schools were grouped as follows: one school from each area, which are Nonzwakazi, Sunrise and De Aar (town). Each high school had five participants. The participants' ages were between 12 and 17. All the participants reside at De Aar which is situated in Priesley District about 300 kilometres from Kimberley, Northern Cape Province. Data was coded according to the themes that emerged from the study and were analysed.

The results indicated that children are able to share their experiences when given the opportunity. It is further shown in the results that children view domestic violence as a wrong and that men are the sole abusers. It further indicated that children do not have confidence in the courts; they are of the view that the courts are being too lenient on the abusers and they further said that more protection orders

should be issued in order to prevent domestic violence. They blame this on non-responsiveness of the police when they are called and the kind of punishments the courts impose when the abuser is brought before court.

The majority of children expressed their wish to see justice being done. The study found that children are of the view that there is little support from the police and the courts. The study concluded that children, acting voluntarily and with appropriate ethical safeguards, can make a significant contribution to both describing their experiences of domestic violence, and to indicating the standard of services and other interventions that they can trust and use.



## ACRONYMS AND ABBREVIATIONS

ACRWC:	African Charter on the Rights and Welfare of the Child
CAT:	The Covenant Against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment
CEDAW:	International Convention on the Elimination of All Forms of Discrimination Against Women
CRC:	United Nations Convention on the Rights of the Child
CRCGC:	Committee on the Rights of the Child General Comment
DVA:	Domestic Violence Act 116 of 1998
SAPS:	South African Police Services
WHO:	World Health Organisation
DECLARATION:	Universal Declaration of Human Rights



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# CHAPTER 1

## BACKGROUND OF THE STUDY

### 1.1 Introduction

This small study was done in order to develop our understanding of children's experiences of domestic violence and their views on services rendered to them. The study is sensitive to the various definitions of 'domestic violence' adopted by legislation for victims of domestic violence. The study offers an in-depth exploration of children's experiences of domestic violence and domestic violence services in South Africa. The term 'domestic violence' will be used throughout the study but its implicit definition used here reflects a wide range of behaviours other than physical violence. The voices of children themselves were considered paramount in elucidating the complexities of domestic violence as it pertains to them.

In previous research, Mullender wrote about the importance of knowing about the experiences of child witnesses and how their voices could inform community responses to create a more child centred approach.<sup>1</sup> For this to happen, there needs to be much more research with the intention of hearing the voices of children and young people in their responses to domestic violence.<sup>2</sup>

Despite the growing awareness of the impact of domestic violence on children and an increasing recognition of the need to understand children's experiences directly from them, research on domestic violence has until relatively focused exclusively on the adults involved. The inclusion of children in research, notably as subjects rather than objects, underpins recent

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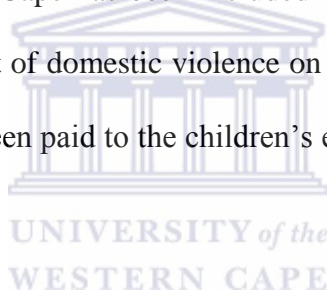
<sup>1</sup> Mullender et al., '*Children's perspectives on Domestic Violence*,' London: Routledge 2002.

<sup>2</sup> Mullender et al., 2002.

developments in children's rights with recognition of children as people.<sup>3</sup> This movement towards including children's voices in policy and legal provisions has created a new demand to have ways of accessing children's narratives.<sup>4</sup>

Child exposure to adult domestic violence has increasingly become a concern for both practitioner and researchers.<sup>5</sup> For an example, the research in child welfare systems has revealed that large numbers of children under protective supervision are exposed to adult domestic violence but the screening and investigations of violence is often inadequate.<sup>6</sup>

Over the past two decades, extensive research has been done on various aspects of domestic violence, and Priesley kaSeme district, which is a community in De Aar about 300 kilometres from Kimberley in the Northern Cape has been included in such research. To date research has largely focused on the impact of domestic violence on women and resources available to them, whilst little attention has been paid to the children's experiences and views of domestic violence.



The difference between this research from the previous researches is that children will participate; the study focuses on them – to gain their experiences and views. It is estimated that three million children worldwide witness domestic violence.<sup>7</sup> Domestic violence has been recognised by many research studies as a human rights violation and has been present in society and cultures for many years.

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<sup>3</sup> Hogan F. & O'Reilly M., *Listening to Children: Children's stories of domestic violence*, 2007.

<sup>4</sup> Hogan F., & O'Reilly M, 2007.

<sup>5</sup> Jeffrey et al, *Assessing child exposure to adult domestic violence*, University of Minnesota School of Social Work, 105 Peters Hall : United States, 2007.

<sup>6</sup> English, DJ, Edleson, JL & Herrick ME, *Domestic Violence in one state's child protective Caseload: A case study of different case disposition and outcomes*; see also Hazen, AL, Connelly, CD, Kelleher, K, Landsverk, J & Barth, R, *Intimate partner violence among Female caregivers of children: Report for child maltreatment*: Child Abuse and Neglect 2004 28 301-19.

<sup>7</sup> Carlson, BE, *Children's Observation of Inter-parental Violence*. 1984.

Effects of domestic violence are not confined to the acts of violence occurring between intimate partners but also extend to children who witness such violence.<sup>8</sup> Over the past two decades, extensive research has been done on the dynamics of domestic violence, whilst little attention has been paid to children's views on domestic violence or how they cope with violent situations in their homes.

## **1.2 Importance of the Study**

I regarded this study as an important responsibility that I should undertake. It is clear from the literature that domestic violence harms children and very few studies deal with their experiences and views. In most instances researchers find very short summaries from parents as to how children feel about the whole issue. I have realised that for about four years, previously working as a presiding officer in the Priesley kaSeme district, I dealt with a vast number of domestic violence cases in the De Aar district court and that is an indication that complaints of this form of violence have increased immensely. Being a presiding officer then, I see this as my responsibility to find out how children are affected by domestic violence and what are they saying about how it affects them and further what we can do, as informed citizens and decision makers, to limit their exposure to violence. I think it should be a factor that presiding officers must take into account that domestic violence is often witnessed by children. If these groups of people do not take upon themselves the responsibility of limiting this type of exposure and hearing the child's voices, the cycle will only continue with more

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<sup>8</sup> Bowker CA, '*Children understandings of domestic violence* Unpublished Thesis for MA in Clinical Psychology, University of Limpopo' 2007.



and more children being subject to or witnessing violence. The cycle is surely that children who witnessed abuse at home are more likely themselves to perpetuate it.

The study is sensitive to the various definitions of ‘domestic violence’ adopted by South African law, statutory and non-statutory service providers for victims of domestic violence. The term ‘domestic violence’ will be used throughout the study because it reflects the wide range of behaviours involved in violence in the home beyond physical violence. It is hoped that the findings and recommendations will inform other judicial officers’ and decision makers’ perceptions of children about of domestic violence.

### **1.3 Objective of the Study**

#### **1.3.1 Aims**

The aims of the study were to investigate the complexity of children’s experiences and their views of domestic violence. It sought to hear the voice of children directly from the children.

Though the study focused on the experiences and views of children on domestic violence, the study will hypothesize that children witness domestic violence and believe that domestic violence is wrong; further that their views can enrich our understanding of the lived effects of domestic violence that they report. Consideration of children’s experiences of violence is consistent with article 12 of the United Convention on the Rights of the Child (1989). Article 12 acknowledges that children are people who have a right to be heard, and the importance of children having the opportunities to express their feelings and views. Therefore, study guided by the provisions of the CRC, this research hopes that those children’s experiences and views can contribute to prevention and the other interventions to stop violence that they witness.

### 1.3.2 Research Question

The following research questions have been developed to guide the study:

- 1) How do children experience domestic violence?
- 2) How children understand domestic violence?
- 3) To what extent does domestic violence influence children's lives?
- 4) What are their views about domestic violence?
- 5) How does this link to law/the Domestic Violence Act 116 of 1998/ the police's response to domestic violence?

### 1.4 Operational Definitions

Clarifying definitions helps us communicate with a shared understanding of important concepts. Several terms need to be defined for purposes of this study. The dilemma of defining domestic violence is widely recognized in literature.<sup>9</sup> However, many researchers have made efforts to define domestic violence in order for it to be researched.<sup>10</sup>

First, the term 'domestic violence' has been used to refer to a wide range of behaviours. In this study I use the term 'domestic violence' more specifically to refer to incidents of physical aggression (including slapping, pushing, punching, kicking, choking) between adults or parent figures in the family. The children as direct victims are not included for the purpose of this study.

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<sup>9</sup> Siyothula EB, *Children's experiences of domestic violence* Unpublished Thesis for MA in Clinical Psychology, University of Zululand 2004: 4.

<sup>10</sup> *Ibid* 4.

The current common definition used in South Africa, and for the purpose of this study is the one provided for in the Domestic Violence Act 116 of 1998. The Domestic Violence Act of 1998, which provides South Africa with its first legal definition of domestic violence, states that domestic violence includes: physical abuse, sexual abuse, emotional, verbal and psychological abuse, economic abuse, harassment, stalking, damage to property, entry to complainant's home without consent, where the parties do not share the same home, any other controlling or abusive behaviour where such conduct harms, or may cause imminent harm to the safety, health or well-being of the complainant.<sup>11</sup>

Secondly, the concept 'child' needs to be defined for purposes of this study. A child is defined in international treaties, the South African Constitution and the Children's Act 38 of 2005. The Convention on the Right of the Child says a child is a person below (instead of under) 18 years.<sup>12</sup> The same definition is found in the African Charter on the Rights and Welfare of the Child,<sup>13</sup> as well as in the Constitution of South Africa which defines the child as a person under the age of 18 years. This vulnerable group includes the infant (under 2 years), the pre-school child (under 6 years), the pre-adolescent child (under 12 years), the adolescent child (under 15 years) and the emerging teenager (less than 18 years). For purposes of this study a child is defined as a group of high-school-going children aged between 12 years to 17 years old, which by no means differs from the definition provided by the above policies.

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<sup>11</sup> Section 1(viii) of the DVA.

<sup>12</sup> Article 1 of the CRC.

<sup>13</sup> Article 2 of the ACRWC.

Thirdly, ‘exposure’ and ‘witnessing’ refers to children’s awareness of adults’ physical aggression toward each other. Children can be aware of parents’ physical aggression by seeing or hearing violent interactions, but also by hearing stories about the violence and by being present during abuse.

### **1.5 Scope of the Study**

The study was conducted in the Prieska district of the Northern Cape province situated in De Aar, about 300 kilometers from Kimberley in South Africa. The sample for the study was composed of grade eight (8) to grade twelve (12) – fifteen learners from schools in three geographical locations. Children ranged from 12 to 17 years. A variety of cultural groups was represented such as English, Afrikaans and Xhosa speakers, although the majority of the sample comprised of Afrikaans speaking children.

This study, closely informed by the UN Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child and the South African Constitution, prioritises the application of highest ethical standards. I have abided by the Code of Research Ethics of the Human Science Research Council and furthermore, ethical and procedural requirements as stipulated by the University of the Western Cape were adhered to. The study was granted approval from the Ethics Committee of the University of the Western Cape (See APPENDIX IV). Permission was also granted for the study by the Department of Education Northern Cape (See APPENDIX V).

Consent was obtained from the principals and parents as well as children themselves.

### **1.6 Chapter Outline**

The study will be discussed in six chapters. The second chapter explores relevant literature as well as gives an explanation of the theories giving rise to the child development. The third

chapter presents the international and domestic laws relevant and being implemented to address the problem of domestic violence. The aim of chapter four is to discuss the methodological design and framework that was involved including details of the research technique, participants who were involved in the study as well as description of the procedure to be utilised to analyse the results. The results as well as discussion of the results will be discussed in chapter five. The study concludes with recommendations.



# CHAPTER 2

## LITERATURE REVIEW

### 2.1 Introduction

This chapter is concerned with reviewing literature on essential issues relating to domestic violence. The information gathered in this study contains information from both a global and a local context. The purpose is to analyse studies and research from global context to help illustrate the extent to which witnessing domestic violence can affect the child's welfare and behaviour. This literature review draws together research findings about domestic violence, children's views and experiences of living with domestic violence, as well as children's participation in research.

### 2.2 Children and Domestic Violence

Research indicates that children were present in over half of the cases (55%) when domestic violence or abuse took place.<sup>14</sup> In cases involving post-separation violence, issues related to child contact were mentioned as a feature in nearly a third of cases (30%).<sup>15</sup> When it comes to domestic violence towards children involving physical abuse, research in the UK by the NSPCC indicated that 'most violence occurred at home' (78 %). It was found that 40%-60% of men and women who abuse other adults also abuse their children. A study in Leon, Nicaragua, reports that children of women who were physically and sexually abused by their partners were six times more likely than other children to die before the age of five. The exact manner in which violence against women affects their children is not known.

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<sup>14</sup> Hester, M, *'Who does What to Whom? Gender and Domestic Violence Perpetrators'*, Bristol: University of Bristol in association with the Northern Rock Foundation.2009.

<sup>15</sup> Hester et al., *'Making Impact: Children and Domestic Violence'*. A Reader. London: Jessica Kingsley Publishers 2000.

### 2.3 Causes of Domestic Violence

When dealing with domestic violence it is of great importance to know the cause. Many studies when dealing with domestic violence focused on different issues like effects, prevalence and coping strategies without looking at the underlying cause. There is no one single factor to account for commission of domestic violence. In this paper I am not going to discuss all possible factors, I focused on those that can be known to, or seen by, children. First, excessive consumption of alcohol, such as witnessing domestic violence and experiencing physical and sexual abuse, have been identified as factors that put children at risk.<sup>16</sup> More than 60% of abusers in South Africa tend to abuse alcohol.<sup>17</sup> Violence may be used as a means of resolving conflict and asserting manhood, say by children who have witnessed such patterns of conflict resolution.<sup>18</sup> Secondly, excessive consumption of alcohol and other drugs has also been a factor in provoking aggressive and violent male behaviour towards women and children.<sup>19</sup> A survey of domestic violence in Moscow revealed that half of the cases of physical abuse are associated with the husband's excessive alcohol consumption.<sup>20</sup>

### 2.4 Prevalence of Domestic Violence

The available statistics on domestic violence cases were just the tip of the iceberg in South Africa as there are large numbers of cases that may go unreported, more especially from the

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<sup>16</sup> Innocenti Digest No- 6, June 2000 , 'Domestic violence against women and girls. United Nations Children's Fund Innocent Research Centre, Florence, Italy.

<sup>17</sup> Singh, D., 'Intimate abuse – a study of repeat multiple victimisation' 2003 Acta Criminologica, 16 (14) 34-51

<sup>18</sup> Innocenti Digest No-6.

<sup>19</sup> Innocenti Digest No-6.

<sup>20</sup> Innocenti Digest No-6.

disadvantaged communities.<sup>21</sup> No figures recording the number of domestic violence cases reported to the police exist, for the simple reason that 'domestic violence' is not officially defined as a crime.<sup>22</sup> An NSPCC prevalence study of 2,869 young adults in England revealed that 20% of the participants had witnessed violence between their parents at least once, and for 5% the violence was frequent and on-going.<sup>23</sup> During a research study about family violence, nearly half of the children said they witnessed their fathers choking their mothers.<sup>24</sup>

A United Nations Secretary-General 'Study on Violence against Children' estimated that between 240,000 and 963,000 children in the UK were exposed to domestic abuse.<sup>25</sup>

The Department of Justice estimates that one out of every four South African women is a survivor of domestic violence.<sup>26</sup> One in six women is regularly assaulted by her partner, according to the Advice Desk of Abused women.<sup>27</sup> At least one in four women is forced to flee a life-threatening situation in her home at some point in her life.<sup>28</sup>

Global studies have indicated that between 133 million and 275 million children worldwide witness domestic violence each year.<sup>29</sup> A New Zealand study conducted by the National Collective of Independent Women's Refuges indicated that, 'for women receiving help from refuges, 90% of their children had witnessed violence, and 50% of the children had also been

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<sup>21</sup> Buzawa, ES., & Buzawa, CG., '*Domestic Violence, the Criminal Justice Response*', 3<sup>rd</sup> ed, London Sage, 2003.

<sup>22</sup> Desiel, A. & Ngubeni, K., '*Giving women their voice : Domestic violence and Restorative Justice in South Africa*'. A paper presented at the XIth International Symposium on Victimology, Stellenbosch, July, 2003.

<sup>23</sup> Cawson, P., '*Child Maltreatment in the Family*'. The Experience of a National Sample of Young People, London: NSPCC. 2002

<sup>24</sup> McCloskey et al '*The effect of systemic Family Violence on Children's Mental Health, Child Development*' vol. 66 pp 1239-61.

<sup>25</sup> A United Nations Secretary-General '*Study on Violence against Children*' , 2006.

<sup>26</sup> Submission to South African Law Commission, May 1999.

<sup>27</sup> Advice Desk, Human Rights Watch, 1995.

<sup>28</sup> Advice Desk, Human Rights Watch 1995.

<sup>29</sup> Holden, GW. & Ritchie, KL., '*Linking extreme marital discord, child-rearing and child behaviour problems*'. Evidence from battered women: *Child Development*, 62 311-27, 1991



physically abused<sup>30</sup> (National Collective of Independent Women's Refuges, 1991). In a study in the UK fifty-four children, aged 8-16 (half 11 or under), twenty-four girls, twenty-one boys, over half from ethnic minorities, with perspective of South Asian sub sample (14) explored in detail, seven disabled children, urban/rural mix; no more than half came through refuge.<sup>31</sup> Details of exposure to domestic abuse were given, a fifth living with domestic violence for a year or less, a third between 1-7 years, most for substantial part of childhood.

Between April 2002 and March 2003 there were 4 798 cases of child abuse and neglect.<sup>32</sup> The levels of domestic violence reported in various studies are also cause for concern: in KwaZulu-Natal 31% of women surveyed reported domestic violence.<sup>33</sup> One study conducted in three South African provinces found that 27% of women in the Eastern Cape, 28% of women in Mpumalanga and 19% of women in the Northern Province had been physically abused in their lifetime by a current or ex-partner. In the Eastern Cape 51%, 50% in Mpumalanga and 40% in the Northern Province had experienced emotional and financial abuse.<sup>34</sup> Even though these studies were about women it is known that domestic violence against women affects children in many different ways. In most, if not all, cases of domestic violence, children may be affected as they experience and witness violence against their mothers and consequently their rights become violated.

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<sup>30</sup> National Collective of Independent Women's Refuges, 1991.

<sup>31</sup> Mullender et al., 2002 .

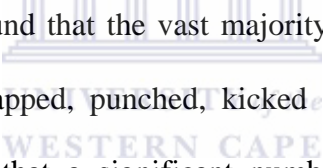
<sup>32</sup> South African Police Service Crime Statistics, 2003.

<sup>33</sup> Hoque, MF, Hoque M, Kader, SB, *'Prevalence and experience of domestic violence among rural women in KwaZulu-Natal*, South Africa, available online at: <http://www.sajej.co.za/index.php/SAJEI/article/view/106/209>

<sup>34</sup> Jewkes et al, *'He must give me the money, he must not beat me: Violence against women in three South African Provinces'*, Pretoria, CERSA (Women's Health) Medical Research Council.

## 2.5 Witnessing Domestic Violence

For the purposes of this study, I sought to include children who had seen or heard domestic violence. Witnessing domestic violence suggests that a child may not be a physical victim of the violence; it also suggests that the child is actually present when violent incidents or behaviour occurs.<sup>35</sup> Hester further argues that children can witness domestic violence in many other ways that extend beyond being physically present.<sup>36</sup> Children may, for example, overhear the violent incident or may become aware of it through witnessing its aftermath. Similarly, witnessing domestic violence can include direct observation of the violence and indirect awareness of the violence through overhearing the behaviour or witnessing the physical and/or emotional manifestations of the violence in the form of injuries, fear and intimidation.<sup>37</sup>



In 2000, the mentioned study found that the vast majority of children in her study directly witnessed their mother being slapped, punched, kicked and hit with objects, often on a regular basis.<sup>38</sup> She also found that a significant number of children overheard violent behaviours and witnessed the physical aftermath of the abuse; she concludes that it is important to acknowledge that negative impact on children is not just a result of extreme forms of physical violence. In fact, a number of children felt that hearing the violence was more distressing than actually seeing it, in terms of their feelings of powerlessness.

Many years of research had seen a flurry of research on children witnessing domestic violence, and numerous qualitative reviews of this research have concluded that children's

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<sup>35</sup> Hester et al, 2000.

<sup>36</sup> Hester et al 2000.

<sup>37</sup> Jaffe P., Wolfe DA. and Wilson, SK., '*Children of Battered Women*', Thousand Oaks, CA: Sage, 1990.

<sup>38</sup> McGee C., '*Childhood Experiences of Domestic Violence*', London: Jessica Kingsley Publishers, 2000.

exposure to marital violence is associated with a wide range of psychological, emotional, behavioural, social and academic problems.<sup>39</sup> Children whose mothers experience domestic violence are rarely protected from the knowledge that domestic violence is occurring. Children may see the abuse happening; they may overhear incidents and they may witness the aftermath of assaults.

### 2.5.1 Forms of Violence Witnessed

Defining precisely what is understood by ‘witnessing domestic violence’ is an important challenge for those providing services to children and researchers investigating service responses. Witnessing domestic violence suggests that a child may not be a physical victim of the violence; it also suggests that the child is actually present when the violent incident or behaviour occurs.<sup>40</sup> Studies that have investigated the impacts of domestic violence all show clear evidence that witnessing inter-partner violence can have a negative effect on the child’s emotional and behavioural development.<sup>41</sup>

Children are regularly slapped, kicked, beaten with fists, whips, sticks, hosepipes and belts in South Africa.<sup>42</sup> They experience this in their homes and at the hands of their parents.<sup>43</sup> This study includes children who reported directly seeing violent incidents, listening to the violence and witnessing its aftermath in terms of physical injuries. According to South

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<sup>39</sup> Fantazzo, JW, & Lindquist, CU, ‘The effects of observing conjugal violence on children: A Review and Analysis of Research methodology,’ *Journal of Family Violence*, 4, 77-94; Jaffe, P, Wolfe, D & Wilson, 1989, SK ‘*Children of battered women*’, 1990 Newbury Park. CA: Sage; Kolbo, JR, Blakely, FH, & Engleman, D, ‘Children who witness domestic violence: a review of empirical literature’, *Journal of Interpersonal Violence* 11, 22:281-293 1996; Margolin, G, & Gordis, EB, ‘*The effects of family and community violence on children*’. *Annual Review of Psychology*, 51 445-479 2000; Wolak, J & Finkelhor, D, ‘*Children exposed to partner violence*’, 1998.

<sup>40</sup> Hester et al., 2000.

<sup>41</sup> Kolbo et al., 281-293, 1996.

<sup>42</sup> Waterhouse C. & Nagia-Luddy F., ‘*Linking domestic violence and corporal punishment*’, Article 19 Vol. 5, 2009

<sup>43</sup> Waterhouse, C. & Nagia-Luddy F 2009.

African studies, witnessing or experiencing violence as a child is regarded as a risk factor in South Africa. In a 2003 study, the participants believed that their abusive partners had seen violence or abuse happening or had experienced violence and abuse in their home growing up.<sup>44</sup>

## **2.6 Children's Experiences of Domestic Violence**

While much less is known about children's witnessing of domestic violence, we do know that homicides and incidents of severe violence occur in the home.<sup>45</sup> Osofsky goes further by saying, 'It is estimated that at least 3.3 million children witness physical and verbal spousal abuse each year, including a range of behaviours from insults and hitting to fatal assaults with guns and knives.' In the past several decades, researchers, clinicians, and policy makers have expressed increasing concern that children who witness marital violence may suffer negative consequences even when they are not themselves the target of violence.<sup>46</sup> Many children will have parents who experience issues like parental substance misuse (drugs and alcohol) and parental health problems (mental and physical).<sup>47</sup> Sixty percent of perpetrators of intimate partner violence also abuse children in the household. Typical violence against children is hidden, and is often regarded as a normal part of life. As a result most children grow up witnessing domestic violence regularly in their homes and communities.

The review undertaken by the NSPCC revealed that, although children's experiences are all very different, there are many common themes that arise when they talk about their

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<sup>44</sup> Singh, D., 2003.

<sup>45</sup> Osofsky, JD, 'The effects of exposure to violence on young children', *American Psychologist*, 50(9), 782-788, 1995.

<sup>46</sup> Osofsky JD., 1995.

<sup>47</sup> Gorin, S, 'Understanding what children say: Children's experiences of Domestic Violence, Parental Substance Misuse and Parental Health Problems', London: National Children's Bureau, 2000.

experiences, feelings, coping strategies and what would help them make things better.<sup>48</sup> The review found that: children are often more aware of problems than parents realise, but they don't always understand what is happening and why. Children whose parents have experienced domestic violence, substance misuse and, to a lesser extent, mental health problems, report witnessing or experiencing violence themselves, sometimes very extreme forms thereof. Children worry about their parents more than may be recognized, particularly if they fear for their parents' safety.

According to Gorin, there is limited understanding of children's experiences of domestic violence, parental substance misuse and parental health problems. The complex dynamics that can surround families dealing with these issues may make it difficult for parents and professionals to understand how children feel. Children can be physically present during the violence. Dobash and Dobash<sup>49</sup> found that half of domestic violence attacks took place in front of others, and that three-fifths of the observers were couples' own children. Where children directly witness the abuse of their mothers it may occur accidentally in that the abuser normally tries to hide the violence from the children; it may be deliberate, in that part of the abuse of the woman involves degrading and humiliating her in front of the children, or it may simply be that it does not matter to the abuser if the children are present or not.

In a briefing taken in Scotland in 2008,<sup>50</sup> there were a number of implications recommended for practice, particularly for children and young people living with domestic abuse. Those are the following: It is important to engage directly with children and young people who have experiences of living with domestic abuse; the children's perspective is unique and adults

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<sup>48</sup> Gorin, S., 2000.

<sup>49</sup> Dobash, RE & Dobash., P., 'The nature and antecedents of violent events ', *British Journal of Criminology*, 24 269-88, 1984

<sup>50</sup> Sharp, C & Jones J, '*Briefing on Children living with Domestic Abuse*', 2008.

cannot speak for them; being safe and having someone to listen to them are the two main concerns of children and young people; confidentiality and trust are important to children; children should be believed, taken seriously, treated positively and enabled to have contact with other children who have been through domestic abuse; a spectrum of service provision should be on offer to children, including support workers, counselling, group work and other school based services; children and young people should be asked what support and activities are best for them; service providers should provide children's active partnership in service development.

In a study<sup>51</sup> that took place in 2002 a South African Child Rights survey was commissioned to investigate South African children's own views and experiences of their rights and violations of these rights. The aim of the study was to highlight the importance of listening to children's views and to assist the state and relevant NGOs and CBOs in their work in the child's rights arena around the issues raised as being of importance to children.<sup>52</sup> The right to participation (understood in this context as the right to be heard and taken seriously) was ranked by children as the third most commonly violated right (following the right to a safe environment and the right to protection against abuse).<sup>53</sup>

## **2.7 Effects of Domestic Violence on Children's Well-being: A Theoretical Application**

The most literature on the effects of domestic violence on children had been conducted by medical researchers and specialists, as the consequences of witnessing domestic violence

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<sup>51</sup> Save the Children Sweden, 'Children's Poll South African Rights Survey: A summary Report', Save the Children Sweden, 2002.

<sup>52</sup> Save the Children, 2002: 3.

<sup>53</sup> Save the Children 2002: 9.

need some scientific and/or medical investigation before any conclusions can be made on the effects on children.

When I refer to the effects of domestic violence in this study the main focus should be on the cognitive, behavioural and emotional effects as the researcher has found from literature on this area that those who see and hear violence in the home have posed the above-mentioned effects. Although damaging effects upon children's wellbeing have been recognised, it has to be acknowledged that witnessing violence, in any way, shape or form, inevitably impacts on overall well-being.<sup>54</sup> Continuous exposure to violence is likely to amount to learning and acceptance of violence as a normal way of life, which in turn increases the likelihood of violent practices in adulthood.<sup>55</sup> Children react in different ways to domestic violence. Children's reactions represent their attempts to cope with extremely frightening and unpredictable events.<sup>56</sup> Children's responses are mediated by their age, sex, developmental stage and role in the family.<sup>57</sup> Studies indicate that the 'witnessing of abuse is usually combined with other childhood experiences that negatively affect children's emotional and social functioning, such as harsh discipline, lack of emotional support and affection and poor parental supervision'.<sup>58</sup>

According to a study in the Social Psychological and Personality Science<sup>59</sup>, the more children are exposed to violence, the more they think it's normal. Unfortunately, the more they think

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<sup>54</sup> McIntosh, JE, 'Thought in the face of violence: A child's need'. *Child Abuse and Neglect*, 26, 229-41, 2002.

<sup>55</sup> Govender, K. & Killian, BJ, 'The psychological effects of chronic violence on children living in South African townships.' *South African Journal of Psychology*. 31 (2), 1-11 2001.

<sup>56</sup> Jaffe, PG, Wolfe, DA & Wilson, SK, 39, 1990.

<sup>57</sup> Jaffe et al, 1990.

<sup>58</sup> Abrahams, N & Jewkes, R, 'Effects of South African men's having witnessed abuse if their mothers during childhood in their levels of violence in adulthood', *American Journal of Public Health* 95 (10) 1811, USA: American Public Health Association, 2005.

<sup>59</sup> Science Daily (Mar, 31, 2011) 'Seeing and Experiencing Violence Makes Aggression 'Normal for Children'.

Downloaded on <http://www.sciencedaily.com/release/2011/03/110329095742.htm> on 2011/07/11.

violence is normal, the more likely they are to engage in aggression against others. In that study, researchers asked nearly 800 children, from 8 to 12 years old, about whether they had witnessed violence at school, in their neighbourhood, at home, or on TV. They also asked the participants if they had been a victim of violence. The school children who had witnessed violence were more aggressive.

In a study by Hester et al, the authors provide an extensive analysis of the wide range of effects on children of witnessing domestic violence.<sup>60</sup> These can be summarised amongst others as manifestations of emotional problems (self-harm, bed-wetting, weight loss), behavioural problems (aggression, and introversion), emotional problems (fear, insecurity, low self-esteem, and social problems (social isolation, poor social skills). McGee<sup>61</sup> identified the following as effects on children: fear, sadness, anger, powerlessness and health problems.

An American family physician<sup>62</sup> has done a lot of research in this area. The discussion that follows was found on her works. Her study, amongst other issues, said the following: ‘that the majority of medical literature deals with the effects of domestic violence on the primary victims; what effect does witnessing domestic violence have on secondary victims, such as the children who live in homes where partner abuse occurs; that 3,2 million children in America witness incidents of domestic violence annually; witnessing domestic violence can lead children to develop an array of age-dependent negative effects; research in this area has focussed on the cognitive, behavioural and emotional effects of domestic violence; children who witness violence in the home have similar psychological effects. These children are at greater risk of internalised behaviours such as depression and for externalised behaviours such as bullying, fighting, lying and being more disobedient at home and at school, and are

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<sup>60</sup> Hester et al., 2000.

<sup>61</sup> McGee C., 2000.

<sup>62</sup> Stiles, M, ‘*Witnessing Domestic Violence: The effects on Children*’, 2002.



more likely to have social problem such as poor school performance and difficulty in relationships with others; children have inappropriate attitudes about violence as a means of resolving conflict and indicate that they tend to use violence themselves.’ Children who witness domestic violence may have difficulty in coping with their school work and find it hard to develop close and positive friendships.<sup>63</sup>

## **2.8 Conclusion**

This chapter has reviewed various studies related to domestic violence and the extent to which witnessing domestic violence can affect the child’s welfare and behaviour. It is clear that the literature found described domestic violence as affecting the majority of children. The evidence strongly suggests that children are present in the majority of cases when domestic violence occurs and they can express their views when given the opportunity to do so. The work of domestic violence research against children has opened the way for researchers to further investigate on a continuous basis and understand the impact of domestic violence upon children who witnesses it.

The study was conducted in partial fulfilment for a master’s degree in Law; it is therefore desirable to have a chapter that will discuss in detail the legislative framework applicable in the children’s rights sphere and in solving the problem of domestic violence. The next chapter will therefore focus on legislative framework that guided this study. Domestic law, as well as international law applicable, will be discussed to emphasise legal interventions that are in place in order to protect children against domestic violence, as well as the state’s obligation in ensuring that these policies are implemented effectively.

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<sup>63</sup> Innocenti Digest.

## CHAPTER 3

### LEGISLATIVE AND POLICY FRAMEWORK

#### 3.1 Introduction

South Africa has been an active player in providing for children's rights. South Africa has a formal child protective system, which has been developing over several decades. When political change came to South Africa, the concern for human rights and children's rights found expression in the Constitution of 1996, with its Bill of Rights. In the past, children's rights have been inadequately protected, both globally and domestically.<sup>64</sup> In recent years various international instrument have been implemented to address this problem.<sup>65</sup>

South Africa has an impressive legislative and policy framework supporting children's rights.<sup>66</sup> The government has identified domestic violence as a crime that violates the human rights of persons and requires legislative intervention.<sup>67</sup> Children's experiences and exposure to domestic violence can be considered a violation of rights contained within the international and domestic laws that will be discussed in this chapter. This chapter will specifically review the support that is available for such children by drawing upon South Africa's legislation, policy and practice as well as international instruments. South Africa ratified the CRC<sup>68</sup> in

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<sup>64</sup> Badenhorst. C.& Conradie, H, '*Children's perspective on crime and the criminal justice system: main findings*', Acta Criminologica 21 (1). 2008

<sup>65</sup> Badenhorst C, & Conradie, H, 2008.

<sup>66</sup> Waterhouse, S, '*The Impact of Changing Criminal Justice Responses to Child Victims of Sexual Abuse: Good intentions, questionable outcomes*': Criminal Justice Initiative of Open Foundation for South Africa, (Samantha Waterhouse was the Manager of RAPCAN). 2008.

<sup>67</sup> Seba-Collet, A, '*Help stop abuse against women and children*': A handbook for everyone. Southern Africa, Cape Town: Pick'n Pay Film and Publication Board.

<sup>68</sup> Convention on the Rights of the Child, adopted 20 November 1989, GA Res. 44/25/, U.n. GAOR, 44<sup>th</sup> Sess Supp. No 49, UN Doc. A/44/49 (1989). Entered into force 2 September 1990.

1995 and the ACRWC<sup>69</sup> in 2000. Both these instruments recognize a wide range of children's rights. These rights in international law are complimented by the Bill of Rights in the Constitution and affected by the legislative framework particularly the Domestic Violence Act 116 of 1998 as well as the Children's Act.<sup>70</sup> The most important of these will be discussed in this chapter.

### **3.2 The Constitution of South Africa (Act 108 of 1996)**

The Constitution is the supreme law of the country and was designed to respect, protect, promote and fulfil the rights of all people of the country. This commitment resonates strongly with international principles. The extent to which international instruments and laws are able to improve the lives of children across the world is dependent on the extent to which States Parties implement them and adopt domestic measures to comply with relevant obligations.<sup>71</sup> The special rights accorded to children are found in Section 28 of the Bill of Rights. Section 28 of South Africa's Bill of Rights constitutes a 'mini' children's Bill of Rights due to the detailed listing of rights contained therein. Therefore the Constitution has created a legislative framework to ensure that children's rights are legally justiciable. The Constitution of the Republic of South Africa Act 108 of 1996 provides all citizens (including children) the right to be free from all forms of violence from either public or private sources.<sup>72</sup> Arguably this provision should then also protect children from *any form* of violence perpetrated by a parent.<sup>73</sup>

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<sup>69</sup> African Charter on the Rights and Welfare of the Child. OAU Doc. CAB/LEG/24.9/49 (1990). Entered into force 29 November 1999.

<sup>70</sup> The Children's Act 38 of 2005.

<sup>71</sup> Sloth-Nielsen J & Mezmur BD, 330-353, 2007.

<sup>72</sup> Section 12(1)(c) of the Constitution.

<sup>73</sup> Waterhouse S & Nagia-Luddy F, '*Linking Domestic Violence and Corporal Punishment*', Article 19 Vol. 5-Number 2, 2009.

The Constitution raised the best interests standard to a principle of paramount concern, by indicating that ‘a child’s best interests are of paramount importance in every matter concerning the child’.<sup>74</sup> The Court has also in various cases<sup>75</sup> dealt with the best interests of the child, where the Constitutional Court decided that section 28(2) of the constitution extends beyond and creates a right independent of the other rights listed in Section 28(1) which are the following: ‘Every child has the right– to a name and nationality from birth; to family care or parental care, or to appropriate alternative care when removed from the family environment; to basic nutrition, shelter, basic health care services and social services; to be protected from maltreatment, neglect, abuse or degradation; to be protected from exploitative labour practices; not to be required or permitted to perform work or provide services that– are inappropriate for a person of that child’s age; or place at risk the child’s well-being, education physical or mental health or spiritual moral or social development; not to be detained except as a means of last resort, in which case, in addition to the rights a child enjoys under sections 12 and 35, the child may be detained only for the shortest appropriate period of time, and has a right to be– kept separately from detained persons over the age of 18 years, and treated in a manner, and kept in conditions, that take account of the child’s age; to have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result; and not to be used directly in armed conflict, and to be protected in times of armed conflict.

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<sup>74</sup> Section 28(2) of the Constitution.

<sup>75</sup> Minister of Welfare and Population Development v Fitzpatrick and Others 2000 (3) SA 422 (CC) 428C-D; Jooste v Botha 2000 (2) SA 199 (T); Fraser v Naude and Others 1998 (11) BCLR 1357 (CC); Sonderup v Tondelli and Another 2001 (1) SA 1171 (CC); S v M 2008 (3) SA 232 (CC); and in De Reuck v Director of Public Prosecutions Witwatersrand Local Division and Others 2004 (1) SA 406 (CC); Grootbom v Oostenberg Municipality 2000 (3) BCLR 277 (CC).

The South African Constitution is one of the most progressive in the world in that it gives full recognition of children's rights at the very highest level. In this sense, children in theory at least are treated as full participants in society and as legitimate rights bearers.<sup>76</sup> Although not outlined as a right in Section 28 of the Constitution, the right of children to participate in matters and decisions affecting their lives is clearly articulated in both the UN Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC). The State (South Africa) as signatory in those instruments is therefore obligated to ensure that children have the opportunity to be heard on matters that affect their lives.

### 3.3 Statutes

#### 3.3.1 The Children's Act 38 of 2005

The Children's Act replaces the Child Care Act 74 of 1983 and it sets out a range of factors to be taken into account in considering the best interests of the child in the family environment. The main provisions that are important for purposes of this study in the Children's Act are the following: best interests of child standard<sup>77</sup>, and how to apply that provision in Section 8 and the paramountcy of the best interests of the child in Section 9 of the Children's Act; Child participation.<sup>78</sup> As far as the right to child participation is concerned, children have human rights, with views and feelings of their own.<sup>79</sup> No age limits and no boundaries are set – the Act refers to any 'matter'.<sup>80</sup> These provisions set out the basis for recognising children as victims of domestic violence.

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<sup>76</sup> Section 28 of the Constitution even though it mentions all other rights except, the right to participate in matters concerning children.

<sup>77</sup> Section 7 of the Children's Act.

<sup>78</sup> Section 10 of the Children's Act.

<sup>79</sup> Bosman-Sadie, H & Corrie, L, '*A Practical Approach to the Children's Act*', 25 Lexis Nexis: Interpak Books Pietermaritzburg, 2010.

<sup>80</sup> Bosman-Sadie, H. & Corrie, L., 2010 25.

### 3.3.2 The Domestic Violence Act 116 of 1998

The first piece of legislation to specifically address domestic violence in South Africa was the Prevention of Family Violence Act (PFVA) No 133 of 1993. However, soon after the PFVA was introduced, aspects of its provisions were questioned by attorneys who thought men's right to a fair hearing was being violated by the PFVA.<sup>81</sup> The Domestic Violence Act (DVA) was passed in 1998 and came into operation a year later in 1999. The Domestic Violence Act 116 of 1998 recognises children as the potential victims of domestic violence and expressly provides that children are among its intended beneficiaries.<sup>82</sup>

This Act gives more recognition to the far-reaching scope of domestic violence, compared to its predecessor, the Prevention of Family Violence Act, No. 133 of 1993. This Act marked a distinct shift in South African law. The notable feature of the DVA is its broad definition of domestic violence which includes a range of behaviours within its ambit. The content of the DVA states that: 'It is the purpose of this Act to afford victims of domestic violence the maximum protection from domestic abuse that the law can provide; and to introduce measures which seek to ensure that the relevant organs of the state give full effect to the provisions of this Act, and thereby to convey that the state is committed to the elimination of domestic violence.'<sup>83</sup> The notable feature of the DVA is the wide definition of domestic violence relationships, which includes physical, psychological, financial abuse and

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<sup>81</sup> Vetten, L, '*Addressing domestic violence in South Africa: Reflection on strategy and practice*': Expert paper, Centre for the Study of Violence and Reconciliation in South Africa, 2005.

<sup>82</sup> Waterhouse S & Nagia-Luddy F., 2009.

<sup>83</sup> Preamble to the Domestic Violence Act No116 of 1998.

complainants' entitlement to apply for legal remedies that may include court interdicts and protection orders.<sup>84</sup>

### 3.3.2.1 Implementation of the Domestic Violence Act

The DVA came into effect in December 1999 and has been in operation almost 13 years now. It is widely regarded as one of the more progressive examples of such legislation internationally.<sup>85</sup> There are a number of social, economic, political and personal factors that discourage victims from seeking legal help including shame, guilt, self-blame, fear of abandonment, fear of homelessness and lack of confidence in the police and legal process.

Ignorance about the law within the police continues to be prevalent. In addition, police response to domestic violence is often unsympathetic or hostile. Resources must be devoted to ensuring that police understand that domestic violence in a home is a community issue of priority that must not be condoned by the police in any way.

The implementation of the DVA is also supported by the regulations (No R.13311), as well as Guidelines for the Implementation of the Domestic Violence Act for Magistrates (launched by the DOJ & CD in 2008).<sup>86</sup>

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<sup>84</sup> Matthews, S & Abrahams, N, “*Combining stories with numbers: An Analysis of the impact of Domestic Violence Act (No. 116 of 1998) on women.*” Cape Town South Africa: the Gender Advocacy Programme and the Medical Research Council (Gender and Health Research Group) November 2001; See also Vetten, L, (2005)

<sup>85</sup> Combrinck, H, *The dark side of the rainbow: Violence against women in South Africa after ten years of democracy* in Murray, C & O’Sullivan, M (eds), ‘*Advancing towards Women Rights*’, Cape Town, Juta Faculty of Law University of Cape Town.

<sup>86</sup> Submission to the Portfolio Committee & Select Committee on Women, Youth, Children and People with Disabilities: ‘*Implementation of the Domestic Violence Act No. 116 of 1998*’, Prepared by Tshwaranang Legal Centre to end Violence against Women, Alexandra Justice Centre, Centre for the Study of Violence and Reconciliation (CSV), Justice and Women (JAW), Lethabong Legal Advice Centre, Lifeline Stop Gender-based Violence Helpline, Lungelo Women’s Organisation, Nissa Institute for Women’s Development and Thohoyandou Victim Empowerment Programme (TVEP).

### 3.3.3.2 The Courts' Obligations in Terms of the Domestic Violence Act

The applicant may include anyone who has an interest in the well-being of the complainant. The complainant is a victim of the abuse and the person needing protection. The complainant need not be the applicant but be in a domestic relationship with the respondent/abuser. A protection order is literally a document that a magistrate signs directing an individual to abide by certain conditions. The purpose of this document is to offer legal protection to victims of domestic violence. Protection orders are available from the domestic violence offices of the Magistrate Court. A minor may approach the court for an order without the consent of his or her parents.<sup>87</sup>

In a study on the implementation of the DVA undertaken at nine courts,<sup>88</sup> the following was found: Interim protection orders— These were in the files 78.9% of the time. There were no interim protection orders in more than a tenth (12.9%) of the files. Magistrates did not authorise 5.65% of the interim protection orders granted. The return of service is a form that provides evidence that the interim order has been served on the respondent, as well as the notice to appear in court. Approximately half (50.2%) of the files contained the return of service. At some courts it is practice to keep the returns of service at the local police station, rather than the court. Final protection orders were not in the files 53.4% of the time. The magistrates did not authorise 4.7% of the final orders with a signature. Only 62% of files contained warrants of arrest, 6.6% of which had not been signed by the magistrate.

Five family courts were established in 1996. According to the Department of Justice, the family court structure and extended family advocate services are priority areas for the

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<sup>87</sup> Wessels, TL & Associates which is a Law firm in Durban in its Overview on Domestic Violence, 2011.

<sup>88</sup> Vetten, L, Van Jaarsveld, F & Riba, P, 'Micro-study of the DVA: The Implementation of the Domestic Violence Act at 9 South African Courts.' Report prepared by TLAC for the Department of Justice and Constitutional Development, 2009.



department. Their focus includes maintenance, domestic violence and matters relating to children. The establishment of family courts was motivated by three broad aims: the provision of integrated and specialised services to the family as the fundamental unit in society, facilitating access to justice for all family disputes, and improving the quality and effectiveness of service delivery to citizens who have family law disputes.<sup>89</sup> The initial pilot project has now been overtaken by the Extension of the Jurisdiction of the Regional Courts Act of 2009 which established family courts at regional court level.

In a study<sup>90</sup> conducted in the Western Cape courts in 2003, it was recommended that ‘regarding the child (as an applicant for an order) and in terms of the placement of children, the court must consider the following: If a child applies to the court for a protection order, the court must consider the interests of the child, and if it deems fit, grant an interim protection order; the court must then, if it finds the child to be a child in need of care, refer the child to the Children’s Court in terms of the Children’s Act 38 of 2005.

#### **3.3.3.4 Police Obligations in Terms of the DVA**

The DVA attempted to introduce statutory oversight of police enforcement of the law.<sup>91</sup> Legislators placed obligations in the DVA upon the police in an effort to challenge their long history of neglect of domestic violence. Police services still prefer to remain uninvolved with cases of domestic disturbance.<sup>92</sup> A research report on training for police on the Domestic

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<sup>89</sup> Available at <http://www.info.gov.za/aboutgovt/justice/courts.html>. Retrieved on 18 July 2011.

<sup>90</sup> Art, L, ‘*Magistrates and the Domestic Violence Act: Issues of Interpretation 2003 Institute of Criminology*’, University of Cape Town: South Africa.

<sup>91</sup> Vetten, 2005 5.

<sup>92</sup> Vetten, 2005

Violence Act 116 of 1998 which has given directives as to what is expected from the police and this will be discussed below.<sup>93</sup>

In terms of the DVA the police have received special duties in dealing with survivors of abuse, encompassed in the standing orders. These orders are outlined in the DVA. The victim can ask the police to arrange transport for her/him from the police station or wherever they are called to, for example by calling a friend, or family member to transport the complainant or by organising a taxi for her at their expense.

For example, in study conducted in Mpumalanga,<sup>94</sup> it was found that only 5% of domestic incidents reported at the station were reordered in the register. Six months' worth of entries were also missing.<sup>95</sup> In an attempt to assist the police or investigate their problems in implementing the DVA, an extensive research<sup>96</sup> was made with the hope that police would have a better understanding of their obligations as far as the DVA is concerned. The police must also: give the complainant/victim a written notice in the language of his or her choice (if a written notice is available in the language of her choice), which explains the rights under the law.<sup>97</sup> The notice also tells the complainant how to enforce his or her rights.<sup>98</sup>

### **3.4 International Law**

#### **3.4.1 Introduction**

South African international and regional obligations when it comes to the rights of children are guided by the following: The Universal Declaration of Human Rights; The United

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<sup>93</sup> Combrinck, H & Wakefield, L, '*Training for police on the domestic violence Act*': Research Report, Community Law Centre : University of the Western Cape, 2009.

<sup>94</sup> Vetten et al 2009.

<sup>95</sup> Vetten et al 2009.

<sup>96</sup> Combrinck, H & Wakefield, L, 2009.

<sup>97</sup> Combrinck, H., & Wakefield, L 2009.

<sup>98</sup> Combrinck, H., & Wakefield, L 2009.

Nations Convention on the Rights of the Child and The African Charter on the Rights and Welfare of the Child; the International Convention on the Elimination of All forms of Discrimination Against Women, and the Covenant Against Torture and other Cruel, Inhuman Degrading Treatment or Punishment. Amongst others, the United Nations Declaration on the Rights of the Child and the United Convention on the Rights of the Child (CRC) stand out as the most significant global instruments in the field of children's rights<sup>99</sup>. These are going to be discussed below in detail.

### **3.4.2 The Universal Declaration of Human Rights (1948)**

The Universal Declaration of Human Rights was adopted in 1948 by the United Nations General Assembly. It was drafted as a common standard of achievement for all people and nations. The Universal Declaration of Human Rights recognizes the family as a natural unit of society.<sup>100</sup> Additionally, the declaration recognizes the inherent and equal and inalienable rights of all the members of the human family and this constitutes a meeting point for joint deliberations, reflection and action. A person therefore has a right to be treated with human dignity, respect and worthiness.<sup>101</sup> The family unit has also to afford a person protection from all forms of violence against women and children and these must be underpinned by empathy and humility. Consequently all forms of abuse of women and children curtail and violate person humanity.<sup>102</sup>

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<sup>99</sup> Olowu, D, '*Children's Rights, International Human Rights and the promise of Islamic legal theory*', 2010.

<sup>100</sup> Article 16 of the Declaration.

<sup>101</sup> Zastron, C, '*Introduction to Social Work and Social Welfare*', Empowering People, 8<sup>th</sup> ed., USA: Brooks/Coles, 2004.

<sup>102</sup> January, ES, '*A Social work study on health consequences of domestic violence against women*', unpublished Master's theses: South Africa : University of the Western Cape, 2003.

### **3.4.3 International Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW)**

The Human Rights Commission drafted the CEDAW, which was adopted on 18 December 1979 and entered into force in 1981. CEDAW is one of the laws that specifically recognises women's human rights and deals with issues that pertain to gender violence that is inclusive of those who deal with traditional attitudes, equality in employment and access to health services.<sup>103</sup> It obliges States Parties to the Convention to undertake to: embody the principle of equality of men and women in their national constitutions and to ensure, through law and other appropriate measures, the practical realisation of this principle; adopt appropriate legislative and other measures, that include sanctions where appropriate, prohibiting all discrimination against women; establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals, the effective protection of women against any act of discrimination; take all appropriate measures to eliminate discrimination against women by any person, organisation, and enterprise; modify consequently or abolish laws, regulations, customs and practices which constitute discrimination against women.<sup>104</sup>

The Committee established under CEDAW has put forward General Recommendation No. 19 that suggests that States Parties in their laws and policies should take cognisance of the recommendations raised concerning gender-based violence. Even though CEDAW is not directly referring to children, children are affected when violence or any form of discrimination is committed against their mothers. Which means that, any form of protective measures provided by the CEDAW may save the children from witnessing domestic

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<sup>103</sup> Green, D. 'Gender Violence in Africa: African Women's Response 1999. London: MacMillan Press Ltd.

<sup>104</sup> Article 2 of the CEDAW.

violence. The provisions of CEDAW being applicable to women, it may also refer to a girl child hence it has been included when discussing international standards in this study.

#### **3.4.4 The Covenant Against Torture and Other Cruel, Inhuman Degrading Treatment or Punishment (1984)**

Witnessing domestic violence by children may also form part of cruel, inhuman and degrading treatment that may include acts of violence and torture. The Abuser may usually commit these acts as a form of punishment to the mother without realising or taking into account that it affects the children. The Covenant introduced some elements to combat these acts of violence. It states that the torturer may be prosecuted whenever he is found in the territory of the State party, he may be brought to trial when there is reliable information indicating that torture is being practised in the house, and an enquiry may include visit to the home and a full investigation of the abuse maybe conducted in some cases with the woman's consent.

#### **3.4.5 United Nations Convention on the Rights of the Child (1989)**

Early in the history of UN, the international community recognized the need to protect the human rights of children.<sup>105</sup> The Declaration on the Rights of the Child, proclaimed by the UN General Assembly in 1959 set out 10 principles aimed at providing special safeguards for children.<sup>106</sup> In 1989, the General Assembly adopted the United Nations Convention on the Rights of the Child (herein referred to as the CRC) which has since been ratified and signed by 193 member states<sup>107</sup>, and is thus binding in- all but two countries worldwide. As stated earlier in the introduction of this chapter South Africa ratified the Convention on 16 June

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<sup>105</sup> Elimination of Violence Against Children, Handbook for Parliamentarians Unicef No.13-2007 14.

<sup>106</sup> Handbook for parliamentarians No. 13 2007 14.

<sup>107</sup> Unicef no. 13 2007 14.

1995 and has therefore assumed the obligation to take ‘all appropriate legislative, administrative and other measures for the implementation of the rights’ contained in the CRC.

The Committee on the Rights of the Child has identified four rights of special importance for the implementation of the Convention.<sup>108</sup> These four “pillars” of the CRC are the best interests’ principles,<sup>109</sup> the principle of non-discrimination,<sup>110</sup> the right to survival and development,<sup>111</sup> and the child’s right to participate in matters concerning his or her well-being.<sup>112</sup> These general principles are also contained in the African Charter on the Rights and Welfare of the Child as indicated in the references. When interpreting any provision of the CRC and the ACRWC it is important to bear in mind these four principles as discussed below.

For purposes of this paper the CRC and the ACRWC will be discussed separately but these four principles will only be discussed under the CRC with reference to the ACRWC. The introduction of these rights for children was depicted as heralding a total break from previous international approaches to children’s rights.<sup>113</sup> In the same way as children’s participation rights are crucial to the interpretation of all the rights enshrined in the Convention on the Rights of the Child it can be said that these rights

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<sup>108</sup> *General guidelines regarding the form and contents of initial reports to be submitted by States Parties under article 44, paragraph 1(a) of the Convention on the Rights of the Child*, adopted by the Committee on the Rights of the Child at its first session, in October 1991 (Official records of the General Assembly Forty- seventh Session, Supplement No.41 (A/47/47), Annex III). <http://www.unhcr.ch/html/mem6/2/fs10htm> (last accessed on 18 July 2011).

<sup>109</sup> Article 3 of the CRC, also in article 4(2) of the ACRWC.

<sup>110</sup> Article 2 of the CRC, also in article 3 of the ACRWC.

<sup>111</sup> Article 6 of the CRC, also in article 5 of the ACRWC.

<sup>112</sup> Article 12 of the CRC, also see article 4(2) of the ACRWC.

<sup>113</sup> Sloth-Nielsen, J., *Ratification of the United Nations Convention on the Rights of the Child: Some implications for South African Law*, op. Cit., pg. 403.

influence and inspire the Charter's rights as well.<sup>114</sup> Before discussing these four pillars it was important to discuss article 19 of the CRC.

### 3.4.5.1 Article 19 of the CRC

Amongst the rights enshrined in the CRC are those that pertain to a child's protection from all forms of violence.<sup>115</sup> The most important provision on the CRC for purposes of this paper states as follows: States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.<sup>116</sup> It also states further that such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.<sup>117</sup>

The Committee on the Rights of the Child (the Committee) issued general comment on article 19 of the CRC, since the extent and intensity of violence exerted on children is alarming.<sup>118</sup> Measures to end violence must be massively strengthened and expanded in order to effectively put an end to these practices which jeopardize children's development and

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<sup>114</sup> Sloth-Nielsen J, 'Ratification of the United Nations Convention on the Rights of the Child: Some implications for South African Law', op. Cit., pg. 403.

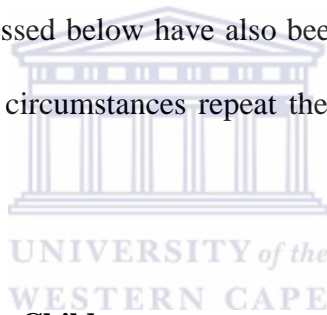
<sup>115</sup> Unicef Handbook for Parliamentarians No.13 2007 4.

<sup>116</sup> Article 19(1) of the CRC.

<sup>117</sup> Article 19(2) of the CRC.

<sup>118</sup> United Nations Convention on the Rights of the Child: Committee on the Rights of the Child, General Comment No. 13 2011 3 'The right of the child to freedom from all forms of violence'.

societies' potential non-violent solutions for conflict resolution.<sup>119</sup> The Committee recognizes that article 19 is one of the many provisions in the CRC directly relating to violence.<sup>120</sup> However, the Committee holds that article 19 forms the core provision for discussions and strategies to address and eliminate all forms of violence in the context of the CRC more broadly.<sup>121</sup> Article 19 is strongly linked to a broad range of provisions in the CRC beyond those relating directly to violence. In addition to articles containing the rights identified as principles of the CRC (see section V of the present general comment), implementation of article 19 must be situated in the context of articles 5, 9, 18 and 27.<sup>122</sup> Children's rights to respect for their human dignity, physical, and psychological integrity and to equal protection under law are also recognized in other international and regional human rights instruments.<sup>123</sup> The four principles that are discussed below have also been dealt with in General Comment No. 13 2011, so I will under no circumstances repeat them in this heading as they will be dealt with below.



#### **3.4.5.2 The Best Interests of the Child**

The best interests of the child shall be a primary consideration in all actions concerning children.<sup>124</sup> Holding that one of the factors in determining the best interests of the child is the child's preference, if the Court dealing with the matter concerning the child is satisfied that in the particular circumstances the child's preference should be taken into consideration, and that if the child is mature enough to accurately express his/her own feelings or to make an

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<sup>119</sup> General Comment No. 13 2011 3.

<sup>120</sup> General Comment No. 13 2011 5.

<sup>121</sup> General Comment No. 13 2011 5.

<sup>122</sup> General Comment No.13 2011 5.

<sup>123</sup> General Comment No. 13 2011.

<sup>124</sup> Article 3 of the CRC and article 4 of the ACRWC.



intelligent judgement, weight should be given to his/her expressed preference.<sup>125</sup> The CRC has been referred to in numerous reported cases that have appeared before the South African courts.<sup>126</sup> Article 3 provides that the best interests of the child must be given primary consideration in all matters concerning the child, and extends this to public and private social welfare institutions.

What is stated in this article indicates that the application of the principle of the best interests of the child requires particular attention. The Committee notes that the best interests of the child is conceived both as a collective and individual right; in the case of children the best interests of a child cannot be neglected or violated in preference for the best interests of the group. The Committee considers that there may be a distinction between the best interests of the individual child and the best interests of the group. In decisions regarding one individual child, typically a court decision or an administrative decision, it is the best interests of a specific child that is the primary concern. However, considering the collective cultural rights of the child is part of determining the child's best interests. The Committee reiterates its understanding of development of the child as set out in its general comment No 5, as a 'holistic concept embracing the child's physical, mental, spiritual, moral, psychological and social development'.<sup>127</sup>

The best interests of the child do not find application in article 3 of the CRC and 4 of the ACRWC; it is also provided for in article 19 of the CRC, which is an important article for purposes of this study. In interpretation of article 19 of the CRC the Committee emphasise

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<sup>125</sup> McCall vs. McCall 1994 (3) SA 201 (C).

<sup>126</sup> Davel, CJ & Skelton, AM, Commentary on the Children's Act 38 of 2005 1-22.

<sup>127</sup> CRC, General Comment No. 5.

that the interpretation of a child's best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence.<sup>128</sup>

### **3.4.5.3 Non-discrimination**

The Committee has identified non-discrimination as a general principle of fundamental importance for the implementation of all the rights enshrined in the CRC. Every child shall be entitled to enjoyment of the rights and freedoms recognized and guaranteed in the Charter irrespective of the child's or his or her parent's or legal guardians' race, ethnic group, colour, sex, language, relation, political, or other opinion, national and social origin, fortune, birth or other status.<sup>129</sup>

### **3.4.5.4 The Right to Participate**

The right of the child to participate in matters affecting him or her is made explicit in article 12 of the UN Convention on the Rights of the Child.<sup>130</sup> This article clearly states that States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. This article asserts that all children who are able to voice their opinions must be provided with opportunities to participate in decisions that affect them. This right applies to decisions that are made within both the private sphere of the family and the public domain of the community. It refers to decisions that affect the individual child and to those that impact children as a group together with the child's right to freedom of expression,<sup>131</sup> freedom of thought, conscience and

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<sup>128</sup> CRC, General Comment 13 2011.

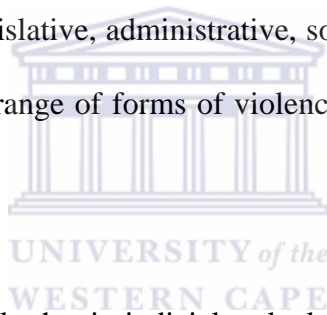
<sup>129</sup> Article 3 of the ACWRC.

<sup>130</sup> See similar provisions in article 4(2) of the ACRWRC.

<sup>131</sup> Article 13 of the CRC.

religion<sup>132</sup> and freedom of association.<sup>133</sup> Additionally, the right to information<sup>134</sup> requires duty bearers to provide child friendly information to support children in claiming their rights. The child's rights to participate in matters affecting his or her well-being, is crucial to the interpretation of all the rights enshrined in the CRC.<sup>135</sup>

The CRC recognizes that in order for the child to develop his or her full potential, moral and spiritual capacities, the child requires a healthy and safe environmental setting. This requires access to care and protection, minimum standards of nutrition, clothing and shelter, among other things. The CRC also acknowledges the primary role of the family and parents in the care and protection of children and the obligation of the state to help to carry out these duties. State Parties must ensure that legislative, administrative, social and educational measures are taken to protect children from a range of forms of violence, abuse, neglect, maltreatment or exploitation.<sup>136</sup>



The CRC also provides specifically that in judicial and administrative proceedings that affect the child, the child must be provided with an opportunity to be heard, either directly or through an impartial representative.<sup>137</sup> It further provides that children have the right to give their opinion in all matters that affect them. The child's age, maturity and developmental stage must be taken into account in the way in which the child participates, and in the weight that is accorded that opinion.<sup>138</sup>

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<sup>132</sup> Article 14 of the CRC.

<sup>133</sup> Article 15 of the CRC.

<sup>134</sup> Article 17 of the CRC.

<sup>135</sup> Sloth-Nielsen, J, '*Ratification of the United Nations Convention on the Rights of the Child: Some implications for South African Law*', op. Cit, pg. 403

<sup>136</sup> Article 19 of the CRC.

<sup>137</sup> Article 12(2) of the e CRC.

<sup>138</sup> Article 12(1) of the CRC.

The Committee is of the opinion that child participation promotes protection and child protection is key participation. The child's right to be heard commences already with very young children who are particularly vulnerable to violence. Children's views must be invited and given due weight as a particular relevance in situations of violence.<sup>139</sup> With regard to family and child-rearing, the Committee expressed that this plays a preventative role against all forms of violence in the home and family. The Committee notes that barriers to participation are faced by particularly marginalized and/or discriminated groups.

#### **3.4.5.5 Right to Survival and Development**

State Parties recognize that every child has an inherent right to life.<sup>140</sup> It has been highlighted that the respective Convention article 6 is one of the four pillars of this instrument and goes far beyond merely addressing the physical continuance of existence.<sup>141</sup> What is usually known as the right to life can be found in article V of the Charter under the heading "Survival and Development".<sup>142</sup> Protection from all forms of violence must be considered not only in terms of the child's right to 'life' and 'survival', but also in terms of their right to 'development', which must be interpreted in line with the overall goal of child protection.<sup>143</sup> Thus, the obligation of the State Party includes comprehensive protection from violence and exploitation which jeopardize a child's right to life, survival and development.<sup>144</sup>

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<sup>139</sup> The Committee's General Comment No. 12 (2009), para 118 ff, in General Comment No. 13 (2011) para 63.

<sup>140</sup> Article 6(1) of the CRC.

<sup>141</sup> See Prof Sloth-Nielsen, J, op cit. pp 408 et seq. In Gose, M, 'The African Charter on the Rights and Welfare of the Child', pp 43, 2002.

<sup>142</sup> Gose, M, 43, 2002.

<sup>143</sup> General Comment No. 13 (2011) 23.

<sup>144</sup> General Comment No. 13 24.

The Committee expects the States Parties to interpret ‘development’ in its broadest sense as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological and social development.<sup>145</sup> Implementation measures should be aimed at achieving the optimal development for all children.<sup>146</sup> It is clear from the above discussed articles that article 19 should be read in conjunction with these articles.

### **3.5 Regional Agreements**

#### **3.5.1 The African Charter on the Rights and Welfare of Children**

The African Charter on the Rights and Welfare of Children was drafted partly in response to the under-representation of African states in the drafting process of the CRC,<sup>147</sup> and the need to address particular issues that are peculiar to children’s rights in Africa beyond those covered by the CRC.<sup>148</sup> The ACRWC emerged out of sentiment that the CRC ignored vital socio-cultural and economic realities of the African milieu.<sup>149</sup> It stresses the need to consider African cultural peculiarities in matters relating to the rights of children.<sup>150</sup> On 7 January 2000 South Africa ratified the African Charter on the Rights and Welfare of Children (ACRWC) and that came into force with domestic authority equivalent to the CRC.

South Africa’s ratification of the Charter on the Rights and Welfare of the Child also signalled the entry into force of this regional human rights instrument, almost a decade after

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<sup>145</sup> General Comment No. 13 24.

<sup>146</sup> General Comment No. 13 24, 2011.

<sup>147</sup> Viljoen F, ‘*The African Charter on the Rights and Welfare of the Child*’ in Davel CJ, (ed). Introduction to Child Law in South Africa 218, 2000.

<sup>148</sup> Fotrell, D. (ed) ‘*Revisiting children’s rights 10 years of the UN Convention on the Rights of the Child*’ 5, 2000.

<sup>149</sup> Viljoen 2000: 110-18, Olowu, D, 2002: 128.

<sup>150</sup> Olowu, D., 2002:128.

its adoption.<sup>151</sup> The ACRWC was the first regional treaty on the human rights of the child. It was adopted by the Organisation of African Unity (OAU) on 11 July 1990.<sup>152</sup> The ACRWC makes direct reference to the CRC in its preamble and the ACRWC is equally premised upon the same fundamental principles of the children's rights established by the CRC.<sup>153</sup> The four principles that were discussed under the CRC are also contained in the ACRWC.

Further, article 17 of the ACRWC provides that '...every child who is capable of communicating his or her own views shall be assured the right to express his opinions freely in all matters and to disseminate his opinions subject to such restrictions as are prescribed by laws.' In all actions concerning the child undertaken by any person or authority, the best interests of the child shall be the primary consideration.<sup>154</sup> In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as part of the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.<sup>155</sup>

Unlike the CRC which includes public or private social welfare institutions, courts of law, administrative authorities or legislative bodies in its list, the ACRWC extends this responsibility further to 'any person or authority.' The issue of state obligations when it comes to protection against violence was also emphasised by the Constitutional Court of

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<sup>151</sup> See Prof. Sloth-Nielsen, Foreword University of the Western Cape Law Faculty in Gose, M., *The African Charter on the Rights and Welfare of the Child* 2002 .

<sup>152</sup> Sloth-Nielsen, J. and Mezmur B.D., 2007.

<sup>153</sup> Gose, M. 2002: 17.

<sup>154</sup> Article 4(1) of the ACRWC.

<sup>155</sup> Article 4(2) of the ACRWC.

South Africa when it held that the Constitution imposes a direct obligation on the state to protect the right of all persons to be free from domestic violence.<sup>156</sup>

### **3.6 Conclusion**

It is clear from the instruments discussed that there are legal interventions in place to protect children against domestic violence, and the state as well as communities have an obligation to protect children. From the international as well as domestic instruments discussed in this chapter, there is commitment from government and States Parties to eradicate domestic violence and to afford children the maximum protection from witnessing the incidents of abuse. This chapter also indicated that children have rights that they may be assisted with when they are in situations of domestic violence. This chapter has highlighted how international and domestic laws can ensure that children, who witness domestic violence and their circumstances, are provided for and to what extent the laws can assist them. The next chapter will focus on the research design used in this study. It will also highlight the manner in which the study was approached; the ethical consideration complied with before and during the study and the method of data collection and analysis that was used.

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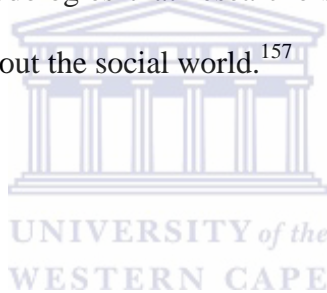
<sup>156</sup> S v Baloyi 2000 (2) SA 425 (CC).

# CHAPTER 4

## RESEARCH METHODOLOGY

### 4.1 Introduction

This chapter explains how the research was conducted. It reviews the design of this study, the method, and the way in which data was collected and analysed. It also gives a detailed description of the ethical issues associated with this study and the steps taken to maintain ethical standards. The aims of this study required a methodology that allowed the researcher to draw on the experiences of a strategically designed sample of children. Social research is a collection of methods and methodologies that researchers apply systematically to produce scientifically based knowledge about the social world.<sup>157</sup>



### 4.2 Research Design

A research design is a strategic framework for action that serves as a bridge between research questions and the execution of the research.<sup>158</sup> There are two types of research methods, namely, qualitative and quantitative research methods. Both these research methods make valuable contributions to social research and can be used to complement each other because they both have strengths and limitations.<sup>159</sup>

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<sup>157</sup> Neuman, W L, 'Social Research Methods: Qualitative and Quantitative Approaches' 4<sup>th</sup> ed.. 2 Boston: Pearson Education Inc., 2006.

<sup>158</sup> TerreBlanche & Durrheim, 29, 1999.

<sup>159</sup> Neuman, WL, 'Social research methods: Qualitative and quantitative approaches'. 3<sup>rd</sup> ed. 14.London: Allyn and Bacon, 1997.



### **4.2.1 Quantitative Research**

Samples of the general population can provide some estimate of the extent of domestic violence. Surveys for the general incidence of domestic violence in South Africa are provided by the South African Crime Survey report which is a comprehensive statistical survey. Although quantitative and qualitative research methods differ in many ways, they complement each other.

### **4.2.2 Qualitative Research**

Children's words have not been believed when sensitive issues like child abuse have come to the fore, and in the case of domestic violence, children have been ignored.<sup>160</sup> Domestic violence research acknowledges the importance of qualitative research methods for a more accurate understanding of the meaning that occurs.<sup>161</sup>

A qualitative research design was used to conduct the study. The use of this approach is relevant based on the research question, aims and theoretical development, which is qualitative in nature and effective to gain in-depth accounts of children's views. The use of the method is particularly relevant because the objective of the study is to determine individual experience and views. A qualitative research design was used by way of a questionnaire.

### **4.3 Participants**

When it comes to measuring experience – that is how children feel about domestic violence – methods to be used are absolutely crucial. Because the study focused directly on children the intention was to conduct this research at three high schools in De Aar.

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<sup>160</sup> Blanchard, A, '*Violence in Families*', Family Matters, 31,1993.

<sup>161</sup> Hester et al., 2000.

A sample of fifteen children was obtained from three different high schools at De Aar in Northern Cape after participants volunteered to participate in the study. Participants' ages ranged from 12 to 17 years. Information was collected three months after the beginning of the year to ensure that the informants (teachers) had sufficient knowledge of the target group. Researchers have stated that domestic violence is a sensitive topic with emotional connotations such as fear, guilt and loyalty conflict, therefore it is difficult to undertake because of participants' reluctance to freely disclose information.<sup>162</sup> Participation was voluntary; no individual was obliged to participate in the survey. The participants were recruited through their parents by requesting the school principal to inform them about the request, after which parents and children met with the researcher before the study was conducted. The participants volunteered to participate in the study after receiving information about the study. I endeavoured not to discriminate in choosing the participants because of sex, race, gender, age, religion, educational background or physical abilities. The questionnaire was completed by the learners.

#### **4.4 Research Instrument**

This study relied primarily on a self-administered questionnaire. The use of open-ended questions allowed participants to respond in their own words. The questionnaire, due to its nature, allowed participants to disclose their experiences of domestic violence openly. This ensured that their voices were heard. It is argued that in the absence of an interviewer,

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<sup>162</sup> Buzawa ES & Buzawa, CG, '*Domestic violence. The Criminal Justice Response.*' 2<sup>nd</sup> ed.. Thousand Oaks, CA: Sage Publications, 1999.

respondents are more likely to discuss issues of a personal nature.<sup>163</sup> The questions that form the majority of the questionnaire were designed to help achieve the objectives of the study and, in particular, to answer the research questions. The questionnaire was also designed to gain the co-operation of the participants, and elicit accurate information.

#### **4.5 Ethics Statement**

Sound ethical practice governing the inclusion of children in non-medical research has received very little attention until recently.<sup>164</sup> Given the nature of this study, ethical considerations were paramount. The ethical issues involved in researching domestic violence can be particularly acute.<sup>165</sup> In understanding this study various sources have been consulted in order to ensure that the study meets acceptable ethical guidelines.

##### **4.5.1 Consent**

I ensured that participants in the study knew that they were taking part in a study and that this study was carried out with their consent. To avoid possible deception, misunderstanding, or misrepresentation, I developed a participant information sheet (APPENDIX I) which explained as much as possible about the study.

Because they were to give a valid consent to their involvement in this research, children needed to fully understand what it was about, and what their own involvement would entail. However, in addition to good information, children needed a genuine choice about their participation. I had to ensure that information about the research was given in such a way that

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<sup>163</sup> Robson, C, *Real World Research* ' 2<sup>nd</sup> ed, London: Blackwell Publishers Ltd, 2002.

<sup>164</sup> Greene, S & Hogan. D, *Researching Children's Experience: Approaches and Methods.* London: Sage Publications, 2005.

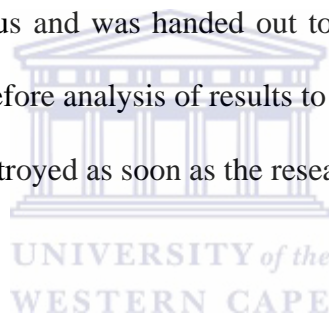
<sup>165</sup> Langford, DR, *Pearls, pith and provocation: Developing a safety protocol in qualitative research involving battered women.* Qualitative Health Research, 10 (1) p 133-44, 2000.

it was understandable and attractive to children, and included information about their rights as participants and about how the data they provided would be handled.

A meeting was held with all the school principals to discuss the purpose and the benefits of the study. The meeting also focused on their roles granting permission and identifying and accessing participants for the study. They were given information sheets and consent forms (see Appendix I and II respectively). Thereafter a meeting was held with the parents and the children.

#### **4.5.2 Anonymous**

The questionnaire was anonymous and was handed out to participants in a group situation. Questionnaires were combined before analysis of results to ensure anonymity. Questionnaires were kept in a safe place, and destroyed as soon as the research process was completed.



#### **4.5.3 Confidentiality**

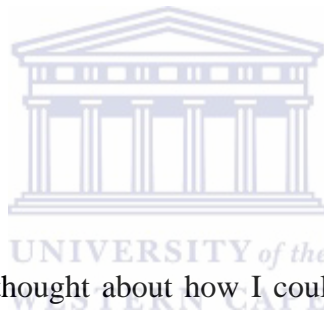
It is essential that identities of participants be protected. Children with experience of violence are likely to be especially concerned about the issues of confidentiality. From the outset of the study, the researcher had a plan in place for how to achieve this in practice. Care had been taken not to have names of the participants on the questionnaire. Information provided was treated with confidentiality throughout the study. The learners did not disclose their identity in order to ensure confidentiality. In order to ensure confidentiality between them no learner saw one another's answers.

#### **4.5.4 Voluntariness**

The consent of the participants was voluntary and was based on an adequate understanding of the questionnaire. The participants were free to withdraw at any stage. The participants' concerns were taken very seriously.

#### **4.5.5 Support**

I ensured that support would be provided should the questionnaire give rise to any distress or emotional suffering. Psychological counselling was privately arranged for the participants at Ethembeni Trauma Centre. Arrangement for further ongoing support to individual children who need it can be provided.



#### **4.5.6 Accountability**

In planning this research, I had thought about how I could contribute to build useful skills amongst participating children and adults. It was essential at the end of the process to bring back the results of the research to the schools that participated in it, presenting them in a form that they could use.

#### **4.6 Data Analysis**

I considered the wording of the questions and how they would elicit data before administering the questionnaire. This involved how the questionnaire would be presented and

structured. I ensured that research aims informed the questionnaire. Data was collected through the production of coding as suggested by Robson.<sup>166</sup>

The expected small number of responses to the questionnaire meant data analysis could be accomplished manually. This meant highlighting the key themes that emerged from each of the questions. The nature of the questionnaire meant that I was sure that a genuine child had responded to the questionnaire.

#### **4.7 Conclusion**

This chapter described the research method used in this study. Ethical considerations were also discussed. The following chapter presents detailed results of the study as well as discussions of the findings, recommendations and conclusion.



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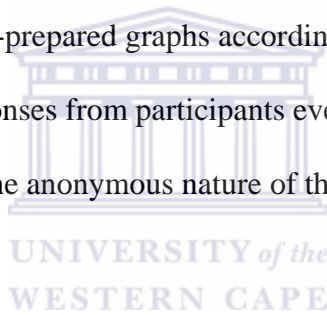
<sup>166</sup> Robson, C, '*Real World Research*', 2<sup>nd</sup> ed. London: Blackwell Publishers Ltd, 2000.

# CHAPTER 5

## FINDINGS AND DISCUSSIONS

### 5.1 Description of Sample

This was an anonymous questionnaire. It consisted of eighteen qualitative questions. There were fifteen (15) participants but there only twelve participants' responses to the questionnaire. The reason for this was because out of fifteen participants one decided not to answer the questionnaire and two answered only two questions. Their involvement in the sample was not taken into account when analysing data. The qualitative data was collected, analysed and displayed using self-prepared graphs according to research objectives. Quotes verbatim were used to show responses from participants even though not each and every response will be quoted. Due to the anonymous nature of the questionnaire the names of the participants were unknown.

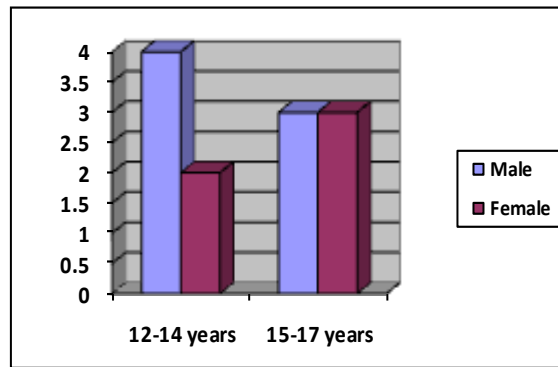


### 5.2 Findings

#### 5.2.1 Analysis: Biographical Data

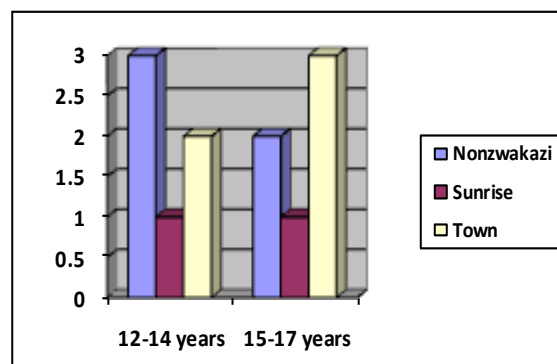
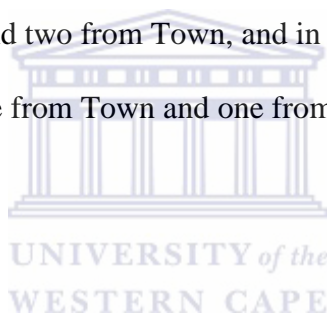
Children were recruited through their parents with the help and consent of school principals. Parents, who were approached by the principals, gave consent for their children's participation. Male and female children participated with four males and two females between 12 and 14 years, and three males and three females between 15 and 17 years old. The majority of the sample consisted of mainly males.

#### Figure 1: Age and gender



The sample was made up of children from three different areas, Nonzwakazi, which is mainly a black location, Sunrise coloured location and Town, which is mostly a white (Afrikaans speaking) community. In the ages 12-14 years there were about three participants from Nonzwakazi, one from Sunrise and two from Town, and in the ages 15-17 years old there were two from Nonzwakazi, three from Town and one from Sunrise.

**Figure 2: Geographic Location**





## 5.2.2 Analysis – Aim One

### Section B: Children’s Experiences of Domestic Violence.

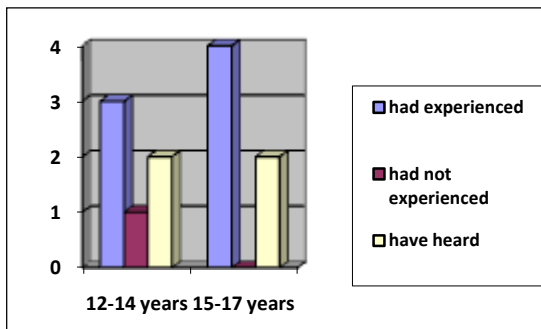
#### Have children experienced domestic violence?

A touching story came from a 17 year old girl.

*“At the age of 4 years and 5 years old, my parents started to fight in front of me and my brother. My father was constantly drunk and misused dagga. This made him aggressive; I remember one day he came home, he grabbed my mother’s hair and he dragged her to the lounge. He shouted at her because of the biscuit crumbs I had messed on the floor. In front of us he started hitting her. That caused my mom to start seeing someone else and she fell pregnant. This other men one day locked me and my brother in a bird cage outside and refused to give us food. My mom used to slip out at night to feed us. He caught her and assaulted her severely. This again happened when I was 15 years and 16 years; when I visited a friend of mine, a huge fight and argument broke out because of that; I just ran away.”*

From the sample the majority of children had experienced domestic violence. The findings indicate that of the twelve participants seven had experienced domestic violence, which is about 84% of the sample; four had heard about domestic violence and only one had not experienced or heard about domestic violence.

**Figure 3: Have children experienced domestic violence?**



### 5.2.3 Analysis – Aim two

#### Section C: What are Children’s Views on Domestic Violence?

##### Why do you think violence occurs?

Various factors were identified by the participants, which they think are the causes of domestic violence in their homes, namely alcohol abuse, exercise of power by men over women, unemployment and witnessing domestic violence from parents. The majority of the participants think that violence occurs as a result of the high rate of alcohol abuse. And a small number thinks it is because of exercise of power by men over women and unemployment. There was one child who said that it is learned from parents.

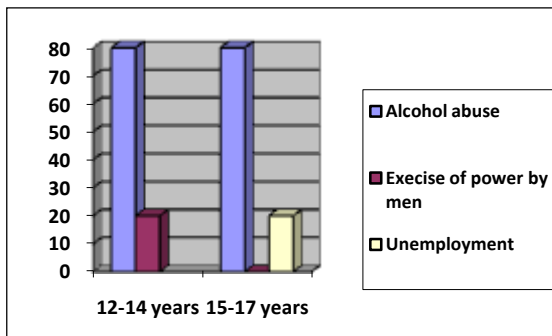
*“Alcohol is often the cause of violence.”*

*“To let go of anger, to feel better about oneself, it is a bad thing for a man to hit a woman just to feel better about himself.”*

*“It is something that the father had learned from their parents and wants to do it as well.”*

*“People that do not work and just sit there and drink chip alcohol.”*

**Figure 4: Why domestic violence occurs?**



**Figure 5: Who is the abuser and whose fault is it?**

Out of fifteen participants only one said it was nobody’s fault, the rest said it was his fault.

But there was also one who said it is her (the child’s) fault and also blames herself for messing the biscuit crumbs on the floor.

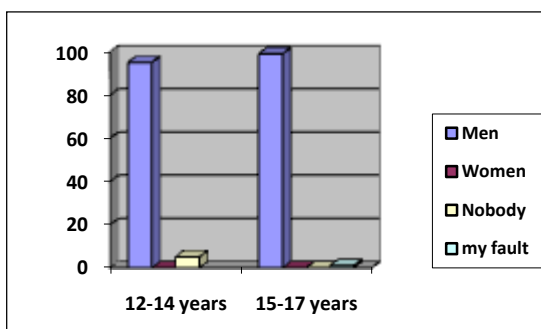
*‘It is the men’s fault.’*

*‘It is him who cause the violence.’*

*‘I blamed myself for messing the biscuit crumbs.’*

*‘It is nobody’s fault that violence occurs.’*

*‘Men are the cause of violence.’*



## How does domestic violence affect children?

All children indicated that domestic violence affects them in that, eight (N=8) of them between 15 and 17 years indicated various reactions they have because of domestic violence. This can lead to the conclusion that it has negative effects on the children. Out of fifteen participants four (N=4) indicated that it makes them violent too. None of the participants indicated any positive reactions from witnessing domestic violence.

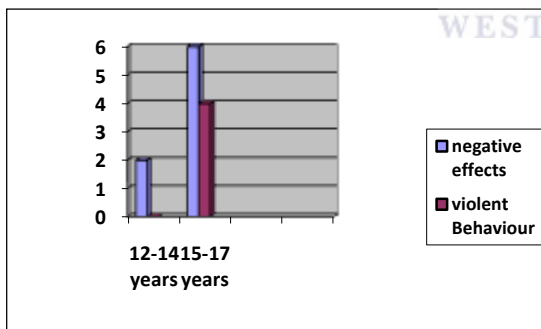
*'They start being violent too.'*

*'They have low self-esteem.'*

*'I become angry and sad.'*

*'It makes me negative and depressed.'*

**Figure 6: How violence affects children?**



## What do you think can be done to protect you from domestic violence?

The findings clearly showed that children require more action from the police and the courts. They showed that they are aware of the services required to assist/protect them from domestic violence.

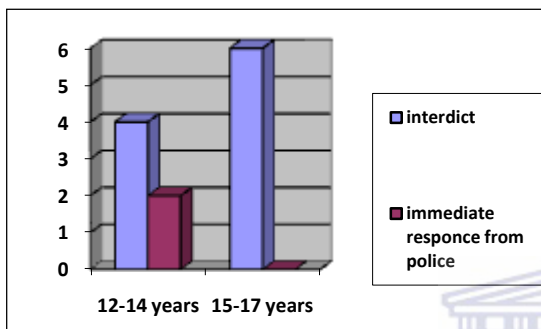
*"That justice is served through interdicts."*

*“Old people should go and look for employment.”*

*“Action should be taken immediately by the police.”*

*“Interdict, normally the police and the courts do nothing the person is only given a suspended sentence that’s all.”*

**Figure 6: What do you think can be done to protect you from domestic violence?**



### **5.3 DISCUSSION OF THE FINDINGS**

This final part of the study discusses the findings presented above as they relate to literature and similar studies. Children’s experiences and views on domestic violence are discussed according to research questions. Recommendations for further research will also be discussed. Before the findings are discussed it is important to recognise the limitations of the study.

#### **5.3.1 Limitations of the study**

The extent to which qualitative data can be transferred to broader population is restricted.<sup>167</sup> This problem is furthered by the limited size and range of the study’s sample. The findings

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<sup>167</sup> Robson, C., ‘Real World Research’ 2<sup>nd</sup> Ed. , London : Blackwell Publishers. 2002 467.

presented in this study are not widely representative as they are based on a small sample taken from only three high schools.

### **5.3.2 Discussion of Significant Findings.**

#### **5.3.2.1 Children's Experiences of Domestic Violence**

This study provided a platform for children to tell their stories; there are very few stories provided other than that of the seventeen-year-old girl about domestic violence. As seen in chapter five of this study, children between the ages of 12 to 17 years, once asked, were able to discuss their experiences of domestic violence. Children wrote about a range of abusive behaviours that they had witnessed and had heard about.

#### **5.3.2.2 Children's Views on Domestic Violence.**

##### **A) Why do you think domestic violence occurs?**

There were various factors that were considered by children as the cause of domestic violence. These factors included alcohol abuse, exercise of power by men against women, unemployment and witnessing domestic violence from abuser's parents. For the majority of the sample, alcohol misuse by men was the reason why domestic violence occurs. Singh 2003<sup>168</sup> says that more than 60% of abusers in South Africa tend to abuse alcohol. As mentioned in chapter 2 several studies have identified alcohol and drug abuse as a factor in domestic violence.

##### **B) Whose fault is it that domestic violence occurs?**

Children who participated in the study generally feel that domestic violence occurs because

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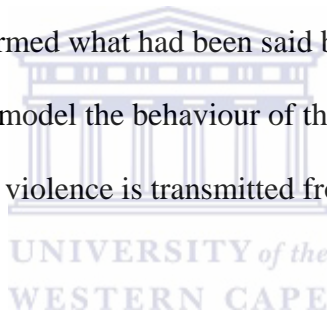
<sup>168</sup> Singh, D., 2003.

of men. This finding confirms what has been said in Chapter 2, in Mullender's

Study,<sup>169</sup> which asked children whose fault the abuse was?

**C) What effect has domestic violence had on you?**

Although the majority of the sample (84%) had been exposed to domestic violence in their homes no child indicated that as a result of such experience he or she is abusive. There was one participant who indicated that men who commit domestic violence had seen it from their parents and wanted to do it. It is clear from the findings that domestic violence affects children one way or the other. The findings also in a way reflected what had been stated by Wolfe et al<sup>170</sup> that children adapt to their harsh environment in a way that impacts their personal development. This confirmed what had been said by Bandura<sup>171</sup> that children who grow up in violent homes tend to model the behaviour of their parents. It is through observational learning theory that violence is transmitted from one generation to the next generation.<sup>172</sup>



From literature reviewed, the qualitative research suggests that domestic violence against children has lasting effects. This abuse can involve emotional and psychological forms by seeing, hearing of witnessing the aftermath of violence. Children in this study indicated a number of effects (particularly that it has negative effects) on them as a result of domestic violence that they witness in their homes. They mentioned the following: anger, children start being violent, they may have low self-esteem, and they may experience sadness and

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<sup>169</sup> Mullender et al, 2002.

<sup>170</sup> Wolfe et al, 2003.

<sup>171</sup> Bandura, 1977 .

<sup>172</sup> Bandura, 1977.

negativity and feel depressed. The findings confirmed studies<sup>173</sup> which identified the following effects on children: fear, sadness, anger, powerlessness, health problems, educational difficulties and impact on relationships with peers. The findings also confirm the impact of domestic violence on children as mentioned in the study<sup>174</sup> as they also made mention of low self-esteem.

#### **D) What can be done to protect you from Domestic Violence?**

It is clear from the results as discussed in Chapter 5 that children do not have confidence in the courts, they are of the view that the courts are being too lenient on the abusers and they further said that more protection orders should be issued in order to prevent domestic violence. They blame this on non-responsiveness of the police when they are called and the kind of punishment the courts imposes when the abuser is brought before court. The majority of children expressed their wish to see justice being done. The study found that children are of the view that there is little support from the police and the courts.

The legal framework discussed in chapter 3 clearly leads the researcher to draw the conclusion that there are protective measures in place to protect children against domestic violence. Stakeholders and role players are required by children to play their part when it comes to reaction when domestic violence is reported.

#### **5.4 Recommendations**

All that is required from the States Parties and stakeholders is implementation and compliance with the provisions of international and domestic law and standards. Children should be given more platforms on a regular basis to express their views on matters that

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<sup>173</sup> McGee, C, 2002.

<sup>174</sup> Hester et al, 2000.



affects them, particularly in small areas like Northern Cape. There still needs to be education about domestic violence and children.

#### **5.4 Conclusion**

In this qualitative study the research questions were combined to provide an analysis of how children experience domestic violence and what their views are on domestic violence. The findings confirm that children have experienced and witnessed domestic violence at their homes. They have been present when their mothers were abused by their fathers; some had heard about domestic violence incidents. The results indicated that children are able to share their experiences when given the opportunity. It is further shown in the results that children view domestic violence as wrong and men are the sole abusers. It further indicated that children do not have confidence in the courts; they are of the view that the courts are being too lenient on the abusers and they further said that more protection orders should be issued in order to prevent domestic violence. They blame this on non-responsiveness of the police when they are called and the kind of punishments the courts imposes when the abuser is brought before court.

The majority of children expressed their wish to see justice being done. The study found that children are of the view that there is little support from the police and the courts. The study concluded that children, acting voluntarily and with appropriate ethical safeguards, can make a significant contribution to both describing their experiences of domestic violence, also to indicate the standard of services and other interventions that they can trust and use.

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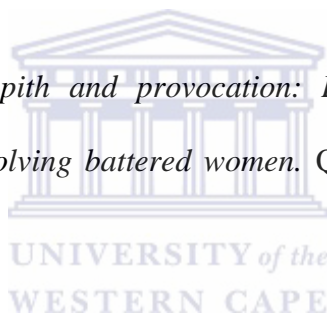
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## **APPENDIX I**

### **RESEARCH OVERVIEW**

Dear Parent/Learner

I, **Ntombenani Primrose Ntebe**, a Law Masters student from the University of the Western Cape, am conducting a research project on the children's experiences and views on domestic violence.

You are invited to allow your child to participate/participate in the project by giving consent/completing the attached questionnaire. The aim of the study is to investigate the complexity of children's experiences and perceptions of domestic violence. It sought to hear the voice of children directly from them.

A questionnaire will be administered at the school, after which the information gathered will be analysed and published as part of a research report. All the information collected in the questionnaire will remain confidential. Participation in this study is voluntary. By completing the questionnaire you are agreeing to take part in this research. If at any stage you do not wish to continue with the survey you may withdraw your consent by simply not returning the questionnaire or by destroying the copy. You are free to ask me any questions before you make a decision to consent or not.

This is an anonymous study. I am not trying to find out your identity nor examine the responses on an individual basis. Should any emotional suffering arise, psychological counselling can be privately arranged for you at Ethembeni Trauma Centre.

Should you have any complaints against me they can be referred to my supervisor.

#### **Supervisor's Contact Details:**

Professor Julia Sloth-Nielsen, Dean Law Faculty, University of the Western Cape,

email address:

Telephone number: 021 959 3932

**Researcher's Contact Details:**

Ntombenani Primrose Ntebe, University of the Western Cape, Department of Public Law and Jurisprudence. E-mail address: [9765212@uwc.ac.za](mailto:9765212@uwc.ac.za) Cell number: 073 1784714.



**APPENDIX II**

**CONSENT FORM**

**PARENT/GUARDIAN/CHILD**

I, \_\_\_\_\_ the undersigned give permission to participate/for my child to participate in the research project entitled, ***CHILDREN'S EXPERIENCES AND VIEWS ON DOMESTIC VIOLENCE***. I understand that, in order to participate in this project, my child/I must also agree to participate. I understand that my child and/or I can change our minds about participating, by notifying the researcher to end participation in this project.



**Name of the Child**

**(Print):** \_\_\_\_\_

**Name of Parent/Guardian (Print):**

\_\_\_\_\_

**Parent's/Guardian's Signature:**

\_\_\_\_\_

### **APPENDIX III**

#### **RESEARCH INSTRUMENT- QUESTIONNAIRE SURVEY**

Copy of Questionnaire

##### Section A – Biographical Data

Please answer the questions below by marking the answer that applies to you:

- a) Gender: 1) Female 2) Male
- b) Age:            in years
- c) Ethnicity: 1) Afrikaans 2) Xhosa 3) English 4) Other
- d) I am living in: 1) Sunrise 2) Nonzwakazi 3) Town

##### Section B- Experience

1. Have you ever been involved in or witnessed scenes of domestic violence in your family?
2. Was this at age 12-14, 15-16 or all of the above?
3. Tell me about stories regarding violence that you have seen or heard about?
4. Did it involve you or other people at home?
5. Were you ever physically hurt during these episodes? If so how?
6. How does this affect your emotions?
7. How does it affect your performance at school?
8. How does it make you feel about yourself?
9. How does it affect your interest in other activities that other children do?
10. How does violence around you make you feel?

11. Do you believe your experience to have been detrimental to your ability to enjoy and participate in school? If so, how?

Section C: Views

1. Why do you think violence occurs?
2. Who is the perpetrator – father, mother, or your sibling?
3. Whose fault do you think it is?
4. What do you think can be done by your family to protect you from domestic violence?
5. What do you think the police and the courts can do to protect you?
6. How do you think children who witness violence are affected?
7. Is it right for a man to hit a woman or for a woman to hit a man, or a parent to hit a child?

