

GenderNews

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- [Sexual assault cases in the news - Raygaanah Barday](#)
- [Women farm workers and the Unemployment Insurance Bill](#)
- [Gender Update](#)
- [New Acquisitions](#)

Sexual assault cases in the news

Raygaanah Barday

On 26 June 1999, 14-year old Valencia Farmer was brutally gang-raped by at least six people and stabbed 53 times in an abandoned house in Eerste River, Western Cape. In March 2001, three of the perpetrators were sentenced in the Cape High Court. Double life sentences were given to two of her killers aged 20 and 21 respectively. The third, a 17-year old youth was sentenced to 18 years for murder and 15 years for gang rape, 10 years of which to run concurrently. The effective 23-year sentence is the highest sentence to be imposed on a juvenile.¹

During the same period the Constitutional Court heard the matter of *S v Dodo*, in which the constitutionality of section 51 (1) of the Criminal Law Amendment Act 105 of 1997 had to be decided. Section 51 obliges a court to sentence people convicted of certain offences to life imprisonment unless "substantial and compelling circumstances" justify a lesser sentence. The matter was referred to the Constitutional Court for confirmation after the Eastern Cape High Court found the provision on mandatory minimum sentences to be unconstitutional, infringing on the right to human dignity, as well as the constitutional requirement of separation of powers between the judiciary and legislature. The Constitutional Court held that section 51 was not unconstitutional and the matter was referred back to the Eastern Cape High Court for sentencing. *Dodo*, who had been convicted of raping and murdering a 69-year old woman, still did not receive a life sentence because the judge found "substantial and compelling" reasons justifying the imposition of a lesser sentence. *Dodo* is currently serving a sentence of 25 years for the murder and 15 years for the rape, 10 years of which is to run concurrently with the murder sentence.²

The Namibian Supreme Court has ruled in the case of *S v Gaseb and others* where three accused were charged with four counts of rape, attempted rape and housebreaking, that it was permissible to charge each accused with assisting in the rape of the others. The court had to decide whether charging this practice amounted to a duplication of convictions and whether such practice was oppressive. The court also had to decide whether the sentences were too long, especially the sentence of accused number one who had been sentenced to an effective 19 years imprisonment. The Supreme Court found that the intent to rape and the intent to assist each other were distinct from each other and thus did not constitute a duplication of charges. The court stated that the accused had acted as gangsters and that their crimes were cowardly, merciless and barbaric. The court upheld the sentences.³

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According to the Child Protection Unit, 87% of rapists of children in the greater Cape Town area have in the past six months escaped conviction. Only 13% of perpetrators are convicted of child abuse, including rape. It was stated that prior to a case going to court, a social worker and prosecutor would first interview the child to determine whether the case would go to court. In cases where it is found that the child is unable to tell the difference between a lie and the truth, the alleged perpetrator is not arrested.⁴

¹ Cape Argus, 27 March 2001

² S v Dodo 2001 (3) BCLR 279 (E), S v Dodo CCT1/2001. The full judgment can be downloaded at www.concourt.gov.za/cases/2001/dodsum.shtml

³ S v Gaseb and others 2001 (1) SACR 438

⁴ Cape Argus, 10 May 2001

No job, no pay, no chance: Women farm workers and unemployment insurance

During March this year, the Parliamentary Portfolio Committee on Labour held hearings on the proposed Unemployment Insurance Bill. Several organisations made submissions expressing their outrage at the exclusion of South Africa's estimated one million domestic workers and tens of thousands of seasonal workers from the Bill. The South African Domestic Services and Allied Workers Union protested outside Parliament during the hearings. The Department of Labour initially suggested that an investigation be conducted on the possible inclusion of these workers, and that recommendations be tabled within 18 months after the legislation came into force. There have since been moves by the Department to shorten this time period in response to concerns by NGOs, faith-based organisations, trade unions and the Commission on Gender Equality, who argue that sufficient investigation has already been done in this regard.

Extract from the submission by the Women on Farms Project:

Women workers play an important role in agriculture. Within the deciduous fruit industry, 59% of the workforce consists of women; 57% of the workforce in the table grape sector are women and within the apple industry, although women constitute 40% of the permanent workforce, 70% of the seasonal workforce comprises women.

Women form an easily accessible and cheap pool of labour from which to meet the requirements of highly labour intensive seasonal activities such as picking, sorting and packing fruit. Women's access to employment (whether temporary or permanent) and housing is based on their relationship with an employed man. Women farm workers are generally regarded as 'causal' labourers. This enables farmers to pay them at a lower rate than male workers who perform the same or similar types of jobs. The wages of women workers range from R75.00 to R80.00 per week. Low wages, together with the practice of preventing women workers from seeking employment off the farm, deprives them of cash income even when they are not needed during off - season periods. This has left women in a particularly weak economic position.

In many instances women's only opportunity for financial survival during the off-season time is to do domestic work. If these women become sick or fall pregnant, they have no income at all. Many farmers regard it as unnecessary to deduct UIF from seasonal workers, as these workers will only be there for a short period.

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Women seasonal workers often work long hours without getting any overtime payment or any other benefits. These women are often not aware of their rights to claim UIF benefits and do not take it up with the farmer. They are also afraid to lodge a complaint against the farmer as they have reasonable expectation that the farmer will re-employ them in the next season, and they do not wish to jeopardise this employment.

Even though the picking season is normally between three and five months long, the same people are employed every season yet have no access to Unemployment Insurance benefits. Because of the continuing global trend many fruit and wine farmers are facing liquidation or are mechanising. These result in the fact that farmers further employ more seasonal labourers.

The bill should:

- clearly define "seasonal workers"
- stipulate that these workers are entitled to claim UIF benefits
- unambiguously state that all casual workers, and contract workers are entitled to UIF contributions from their employers
- be more explicit in its definition of who it. The most vulnerable workers are the ones that need to benefit from UIF as they need insurance against the periods of unemployment forced on them by the nature of the sector.

Women seasonal workers experience the double bind of having no protection against unemployment as seasonal workers and no protection in the off-season as domestic workers. The inclusion of domestic workers will be a victory won for the most marginalised workers and will indicate to farm workers that the new Government is serious about changing the lives for all workers

This extract is reprinted with the kind permission of the Women on Farms Project. The Women on Farms Project is an NGO that strives to strengthen the capacity of women who live and/or work on farms to claim their rights and fulfill their needs. They do this through farm community and organisational building, socio-economic rights based and gender education, lobbying and advocacy. For more information on the WFP contact Levurn Jantjies: Tel +27 -21 8872960 Fax +27 -21 8872963, levurn@wfp.org.za

The full submissions of the Women on Farms Project, Black Sash, Human Rights Committee, COSATU, South African Council of Churches, National Progressive Primary Health Care Network and other organisations on the Unemployment Insurance Bill can be obtained from the Parliamentary Monitoring Group website: www.pmg.org.za/UIF/UIF.htm

A copy of the Unemployment Insurance Bill can be obtained from the government website: www.gov.za/bills/index.html

GENDER UPDATE

Anneke Meerkotter

CAMPAIGNS

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Justice for Women Campaign

On 23 April 2001 the Centre for the Study of Violence and Reconciliation and the Network of Violence Against Women launched the Justice for Women Campaign when they handed over the application for presidential pardon for Maria Scholtz. The aim of the campaign is to secure the early release of women imprisoned for killing their abusive partners and it is argued that the lengthy sentences some women received indicate that the effect of the abuse upon the women was not understood or adequately taken into account. The Campaign aims to achieve a national review of the sentences of all women imprisoned for killing their abusive partners; greater awareness amongst service providers of the need to intervene earlier and more effectively in cases of domestic violence; a commitment from civil society and government to increasing and improving services to women experiencing domestic violence; and increased public understanding of some of the impact upon children of their mother's imprisonment.

For more information or to sign the petition contact the CSVR at Tel: 011 403 5650, Fax: 011 339 6785, E-mail: info@csvr.org.za

COMMENCEMENT OF LEGISLATION

Promotion of Access to Information Act 2 of 2000 on 9 March 2001 (except sections 10, 14, 16 and 51 for which regulations must still be drafted). Section 32 of the constitution provides for the right of access to information held by the state and any information that is held by another person that is required for the exercise/protection of any rights. The information officer to whom a request for information is made, must within 30 days decide whether to grant the request and inform the requester of such decision. If the information officer fails to give a decision within this period, the officer is regarded as having refused the request, and the requester then has the right to internal appeal or an application to court.

A copy of the Act can be obtained from: www.gov.za/acts/00index.html

INTERNATIONAL

Sex workers to receive equal labour rights in Germany

The German government has proposed a law which will give sex workers labour rights similar to that of other professions. Whilst sex work is allowed, the law, proposed by the Social Democrats and Green parties, would remove much of the stigma around sex workers. Sex worker organisations have urged the government to go one step further and classify sex work as a trade.

Source: CNN, 11 May 2001.

www.cnn.com/2001/WORLD/europe/05/11/germany.prostitutes/index.html

GENERAL

One in Nine South Africans has HIV

In March 2001 the Department of Health released the National HIV and Syphilis Sero-Prevalence Survey of Women Attending Public Antenatal Clinics in South

GenderNews

Africa for 2000. The report estimates that 4,7 million South Africans were living with HIV by the end of 2000, with women in their twenties comprising nearly 60 percent of those infected. Of the nine provinces, the worst hit are KwaZulu-Natal with a prevalence rate of 36 percent and Mpumalanga and Gauteng with prevalence rates of 29 percent. Whilst the infection rate of women under 20 years of age decreased from 21 percent to 16 percent, that of women in their early twenties increased from 25 percent to 29 percent.

Source: www.hst.org.za, or <http://196.36.153.56/doh/>

CASE LAW

Pharmaceutical Manufacturers Association (PMA) withdraws case against government

In the previous edition of GenderNews we reported on the case between the PMA and the South African government, where the PMA questioned the validity of the Medicines and other Substances Control Amendment Act 90 of 1998. The Act attempts to make medicines more accessible and affordable. After huge public outcry, community mobilization led by the Treatment Action Campaign (TAC) and the Congress of South African Trade Unions (COSATU), international solidarity and calls by various governments, the PMA withdrew its case. The government is in the process of finalising Regulations to the Act. Subsequent to this victory the Kenyan parliament passed a similar Industrial Properties Bill 2001 on 12 June 2001.

Source: www.tac.org.za,
dailynews.yahoo.com/h/nm/20010612/sc/health_drugs_dc_2.html
Act and Regulations: [Department of Health website](#)

Suit against Old Mutual for HIV discrimination

In May 2001 the Cape Town Labour Court handed down a judgment in favour of a woman who sued her previous employer, Old Mutual, for refusing her medical aid on the basis of her HIV status. Old Mutual argued that the case should be dismissed on the grounds that the woman was no longer an employee and that Old Mutual was not responsible for the actions of the benefit funds. Judge Waglay dismissed these arguments and the case will now proceed to trial. It will be the first case to look at the fairness of refusing employee benefits to people living with HIV. The employee, represented by the AIDS Law Project, is asking that Old Mutual's AIDS policy be declared an unfair labour practice.

Source: [Business Day, 18 April 2001](#)

SALC REPORTS

Recent South African Law Commission Discussion Papers:
Discussion paper 98 - Publication of Divorce Proceedings, s12 of the Divorce Act 70/79, Comment by 15/6/2001
Discussion Paper 97 - Sentencing, Compensation for victims of crime, Comment by 31/7/2001

GenderNews

Discussion Paper 96 - Simplifying of Criminal Procedure, A more inquisitorial approach to criminal procedure, Comment by 30/6/2001

Obtainable from www.law.wits.ac.za/salc/discussn/discussn.html

Fifth Interim Report on Aspects of law relating to HIV/AIDS: (Project 85)

The SA Law Commission, investigating a request by the Justice Portfolio Committee, recommended in its final report that existing common law be used to prosecute harmful HIV behaviour. They argued that there was no scientific, empirical or even informal evidence that the behaviour is occurring to such an extent that the creation of HIV-specific statutory offences is necessary.

The Report can be obtained at www.law.wits.ac.za/salc/report/report.html

NEW ACQUISITIONS

Gill Kerchhoff
Consultant to the Documentation Centre

Do arrests and restraining orders work?

Editors, Eve S. Buzawa and Carl G. Buzawa.
Thousand Oaks: Sage, 1996
ISBN 0803970722

This work is concerned with domestic violence in the United States of America. The authors look at the dilemma of whether arrests or restraining orders are more effective, in terms of safety and cost, in deterring domestic violence, as well as preventing escalation into other crime.

Justice, change and human rights: international research and responses to domestic violence

Barbara Burton, Nata Duvvury and Nisha Varia
Washington: International Center for Research on Women; The Centre for Development and Population Activities, 2000

PROWID, the Promoting Women in Development grants program, sponsored a number of different projects in different countries over a period of four years, and this paper examines the theme of domestic violence against women. Eleven Prowid projects focused on domestic violence and looked at the changes necessary in society - including families, communities and states - before women can experience full human rights. It is believed, in this document, that until women are free from violence there will be no growth toward a culture of human rights and development. The countries covered were Russia, Bulgaria, Mexico and India.

Seeking protection: addressing sexual and domestic violence in Tanzania's refugee camps

Human Rights Watch Women's Rights Division
New York: Human Rights Watch, 2000
ISBN 1564322475

GenderNews

Human Rights Watch began monitoring the situation of Burundian refugees in Tanzanian refugee camps in 1997. In 1998 and 1999, HRW and other human rights groups presented evidence of violence against women and gave recommendations to the UNHCR for policies and procedures that would provide greater protection to women. Since this pressure has been applied to the UNHCR there have been some changes. They have however been slow and inadequate. The Tanzanian government also has responsibilities to deal effectively with perpetrators of domestic violence. This book provides numerous case studies of women who have suffered sexual and/or domestic violence and presents the responses of both the Tanzanian government and the UNHCR.

Rural woman battering and the justice system: an ethnography

Neil Websdale

Thousand Oaks: Sage, 1998

Sage Series on Violence Against Women

ISBN 0761908528

The author of this book focuses on the incidence of domestic violence in rural communities, particularly in Kentucky, United States of America. Central to his study is the attempt to see things through the eyes of the women who suffer the domestic violence; he also conducted interviews and spent many hours with police officers, judges, attorneys, social workers, spouse abuse shelter workers and leadership of the Kentucky Domestic Violence Association.

Scared at School: Sexual Violence Against Girls in South African Schools

Human Rights Watch

New York: Human Rights Watch, 2001-07-02

ISBN 1564322572

Human Rights Watch recently released a report documenting gender violence in schools, its impact on girls' education and health and the various responses to this by schools, the criminal justice system and government. The report can be obtained from Human Rights Watch: <http://www.hrw.org>

South African Health Review 2000

Four in every ten fixed clinics in South Africa do not offer HIV testing, pap smear tests are available at 64 percent of urban clinics and 41 percent of rural clinics and only half of fixed and mobile clinics offer pregnancy tests? The South African Health Review 2000 provides an annual and long-term review of health policy developments in South Africa and includes useful information on the current state of health care.

Health Systems Trust website: www.hst.org.za, ISBN 1-919839-16-X

Violence, Vengeance and Gender: A Preliminary investigation into the links between violence against women and HIV/AIDS in South Africa.

Lisa Vetten & Kailash Bhana, Centre for the Study of Violence and Reconciliation, April 2001

The investigation was conducted through a survey of research literature and interviews. It contextualises HIV/AIDS and violence against women and its links and proceeds to describe civil society projects addressing some of these links. It

GenderNews

ends with an analysis of government responses to HIV/AIDS and violence against women and some recommendations for future research and work in this area.

The Centre for the Study of Violence and Reconciliation Website:

www.wits.ac.za/csvr

HIV and Partner Violence: Implications for HIV Voluntary Counseling and Testing Programs in Dar es Salaam, Tanzania.

Suzanne Maman et al, Population Council,
February 2001.

A study of 245 women who were enrolled after pretest counseling and prior to collection of test results, and who were followed and interviewed three months after testing. The study results revealed that many women lack autonomy to make decisions about HIV testing; partner violence is a serious problem among many female VCT clients; and women's HIV status is strongly associated with partner violence. Programme and policy recommendations include the encouragement of couple communication about HIV/AIDS and HIV testing when promoting VCT; the training of HIV counselors to ask questions about partner violence and to encourage disclosure when appropriate; and ensuring that clients are the ones making decisions about partner notification of test results.

To read the full report on this study, go to

www.popcouncil.org/pdfs/horizons/vctviolence.pdf