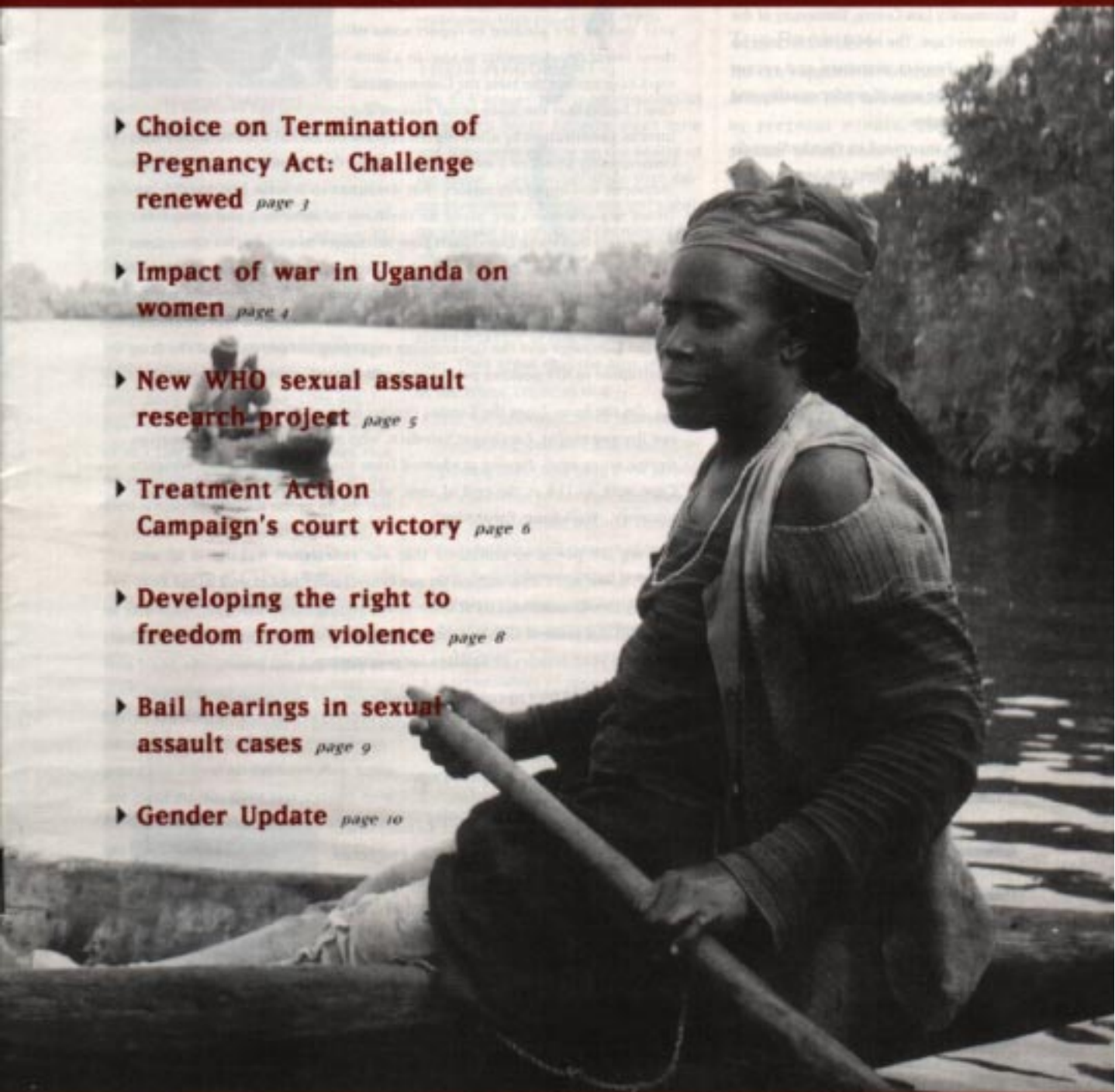


# GenderNews

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The views expressed in *GenderNews* do not necessarily reflect the views of the Gender Project, Community Law Centre or the University of the Western Cape.

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**Sida**

## *In this edition...*

**W**elcome to our latest edition of *GenderNews*! Many excitingly progressive events which we hope will have a positive impact on women in South Africa have been unfolding in the courts this year and we are pleased to report some of these latest developments to you. In a landmark case against the State the Constitutional Court found that the State acted against the Interim Constitution by allowing the release on bail of a sex offender who consequently attacked a young woman – Alix Carmichelle. The Carmichelle judgment will hopefully ensure that decisions to release previously convicted sex offenders are made on the basis of informed and competent deductions that these individuals pose no danger to society. We also examine two more cases dealing with the state's duties to protect victims of violent crime. On the HIV/AIDS front the Community Law Centre was admitted as amicus curiae of the court in the matter between the Treatment Action Campaign and the Government regarding the provision of the drug Nevtrazine to HIV positive pregnant mothers.



**FARAHNAAZ SAFODIEN**

On the home front the Gender Project has sadly had to say goodbye to our documentalist, Farahnaaz Safodien, who managed our Documentation Centre since 1996. Having graduated from the University of the Western Cape with an LLB at the end of 2001, she is now working as a candidate attorney. Well done, Farahnaaz!

We are proud to announce that our redesigned website is up and running. For more information on our Project activities as well as the Community Law Centre, visit us at [www.communitylawcentre.org.za](http://www.communitylawcentre.org.za). We hope you find this issue of *GenderNews* to be both informative and concise, and welcome your articles or updates for publication.

Please feel free to contact us if you have any questions or need additional information on any of the articles featured in this edition.

Zulpha Geyer, Project Administrator.

Since the previous edition of *GenderNews*, Zulpha Geyer has joined the Gender Project as Administrator. She has a BA degree from UCT in English and Social Anthropology and is now pursuing her interest in psychology through UNISA, including a course on HIV/AIDS Care and Counselling. As administrator she keeps track of our project activities, finances, conference and travel arrangements.



**ZULPHA GEYER**

# WHOSE CHOICE IS IT ANYWAY?

Anneke Meerkotter

## THE CTOP ACT

The Choice on Termination of Pregnancy Act 92 of 1996 (the Act) came into operation on 1 February 1997. The Act allows a girl or woman to access termination of pregnancy services upon request during the first 12 weeks of her pregnancy. The Act explicitly promotes the provision of "non-mandatory and non-directive counselling" before and after the termination of a pregnancy. A termination of pregnancy may only take place with the *informed consent* of the pregnant woman. In the case of a pregnant *minor*, however, a doctor or midwife must advise the minor to consult with her parents, guardian or friends before the pregnancy is terminated. (The Act defines a minor as a person under the age of 18.) The Act explicitly provides that no termination of pregnancy may be denied simply because a minor chose not to consult her parents or guardians.

## NEW COURT CHALLENGE

In July 1997 three Christian groups including the Christian Lawyers Association (CLA), challenged the Act. They argued that the Act violated the right to life of the foetus and was accordingly unconstitutional. The government opposed the action on the basis that, since the right to life does not extend to a foetus, the Christian groups had no legal basis for their claim.

Four years later, the CLA launched a new challenge to the Act concerning a minor's right to exercise her choice to terminate a pregnancy. The government objected to the case on the grounds of it being vague and embarrassing and not disclosing a cause of action. In June 2002, the CLA resubmitted their amended pa-

pers in this case (*Christian Lawyers Association v Minister of Health, Premier of Gauteng and Health MEC*, Case No 772B/2000, High Court of SA, TPD).

## THEIR ARGUMENT

The CLA argues that a termination of pregnancy poses adverse short term and long-term effects on the health of the minor. They further argue that, during pregnancy a woman and girl's ability to make an informed decision about whether or not to have an abortion is adversely affected and she is not in position to make an informed decision about whether or not to have an abortion. They argue that the best interest of the minor requires that –

- ▶ she be provided with mandatory counselling, guidance and support regarding short and long term effects of a decision to have an abortion.
- ▶ she be protected against these effects by requiring consent of her parents before her decision is made, alternatively requiring her to consult her parents/guardian before making a decision.
- ▶ a termination of pregnancy be prohibited where she refuse to obtain consent of her parents/guardian or where consent is refused.
- ▶ there be a mandatory period of reflection between the decision to have

an abortion and the abortion itself as well as mandatory post abortion counselling.

## THE PROBLEM

The CLA's application does not take into account the real circumstances faced by pregnant minors. Contrary to popular belief, women under 18 make up only a small portion of those women who access abortion services. Young women also often delay seeking an abortion until later stages in their pregnancy due to the difficulty in finding a service provider, obtaining financial resources for the procedure or lack of recognition of the early signs of pregnancy.

The Act's "failure" to insist on mandatory counselling and parental consent provides an important mechanism for minors to access safe termination of pregnancies instead of trying to go the route of dangerous back street abortions. Forcing minors to first consult with parents before making a decision on whether or not to have a termination of pregnancy could often prove too big an obstacle for a minor to overcome should she desire a legal termination of pregnancy. The Act's requirement of counselling and informed consent prior to a termination should then be adequate.



For more information about the case, contact the Reproductive Rights Alliance (RRA). The RRA publishes *Barometer*, a regular publication with a summary of the latest information, statistics and research on termination of pregnancy services in South Africa.  
Tel/Fax: 011 782 2051  
E-mail: rracoord@sn.apc.org.za



# Improving Health Services for Victims of Sexual Assault: New WHO Initiatives

Helene Combrinck

**T**he Department of Injuries and Violence Prevention of the World Health Organisation (WHO) recently initiated a number of activities to strengthen health services for victims of sexual violence.

Health care workers can provide comprehensive, gender-sensitive health services to manage the physical and mental health consequences of sexual violence, including pregnancy testing, STD testing and prophylaxis, treatment of injuries, and psychosocial counselling. Health care workers can also function as an important referral point for other services that the victim may need, including trauma counseling or legal advice services. Specially trained health staff can collect and document the evidence necessary to establish the circumstances of the rape, the identity of the perpetrator, and the consequences of the event. Such evidence can prove crucial for the prosecution of cases of sexual assault.

However, a gap exists between the service needs experienced by victims of sexual violence, and the existing level of health services provided in most countries. The Department of Injuries and Violence Prevention, in collaboration with the WHO's Department of Gender and Women's Health, is therefore currently developing tools to provide guidance for countries on how they can improve health services. These tools will include -

▶ **A conceptual policy document,**



which will outline the basic health service needs of persons who experience sexual violence, will inform policymakers about models used in different types of health systems to address sexual violence, and will help decision-makers in the health system design health policy measures that help improve the systemic capacity to address the problem of sexual violence.

▶ **Protocols for medical management.** These protocols will assist health providers in learning about the phenomenon of sexual violence, in addressing the health care needs presented by persons who experienced sexual violence, in carrying out a forensic examination, and referring the client to other relevant services they may need.

As knowledge on service provision for victims of sexual violence is limited, particularly in developing countries, a series of background research projects are being currently underway to inform the content of the policy document referred to above. These studies include

a global review of national legislation on sexual violence.

This review of national legislation on sexual violence focuses on selected countries in five regions, viz sub-Saharan Africa, the Middle East, India, South America and Eastern Europe. The review investigates, for example, the legal rules on the admissibility of evidence relating to medico-legal examinations (for example, which professional categories are recognized as 'expert witnesses'), and whether it is necessary to show that the victim resisted the attack in order to succeed with a criminal prosecution. These legal questions play a significant role in the nature and extent of medico-legal examinations. An example: where the legal definition of rape requires proof of vaginal penetration (as is the case in South African law), the medico-legal examiner must be trained and equipped to perform this evaluation.

The Gender Project has agreed to assist in compiling this legal review, and is currently finalizing the regional report on Africa, which examines the law in South Africa, Uganda, Ethiopia, Ghana and Cameroun. These countries were selected on the basis of their legal systems, geographic distribution and socio-economic circumstances.

For more information, visit the website of the WHO Department of Injuries and Violence Prevention at: [http://www5.who.int/violence\\_injury\\_preventionmain.cfm?p=000000016](http://www5.who.int/violence_injury_preventionmain.cfm?p=000000016)

# Providing Options to Pregnant Women Living with HIV/AIDS

Anneke Meerkotter

## BACKGROUND

In 1998 the Treatment Action Campaign (TAC) initiated a campaign calling upon the South African government to provide AZT to pregnant women with HIV to reduce the risk of their babies being infected with the virus. Whilst the campaign was met with opposition from the government, it was embraced by communities, health care workers and trade unions as an important public health intervention to reduce the risk of HIV infection in children.

Mother-to-child transmission of HIV during pregnancy, birth or through breastfeeding (MTCT) accounts for most HIV infections in children. At the 2000 International AIDS Conference reports indicated that a new drug, Nevirapine, could reduce the risk of MTCT by 47%, simply by giving one tablet to the mother during birth and one dosage in syrup form to the baby within 72 hours after birth. The company that manufactures Nevirapine simultaneously offered to donate it to South Africa for five years.

Armed with this new scientific information, activists urged the government to implement a national MTCT prevention programme. The government decided instead to make the drug available at two pilot sites per province covering only 10 percent of pregnant women who would need it.

Nevirapine was subsequently registered for prevention of MTCT. This

meant that private sector doctors could prescribe the drug to their patients where this was medically indicated, but public doctors outside the pilot sites, could not do so in the absence of a government policy authorising such prescription. The pilot sites took some time to start and it soon became clear that there would not necessarily be a commitment to a more comprehensive roll-out of a MTCT prevention programme. In the meantime one province, the Western Cape, rapidly increased the sites where Nevirapine would be offered as part of a MTCT prevention programme, with clear timeframes towards 100 percent implementation.

It must be noted that at this stage it was estimated that 70 000 babies would be born with HIV annually. Unfortunately, instead of taking proactive measures to prevent this, the government was embroiled in controversy and its refusal to implement such a programme was often contradictory and arguably unreasonable.

## GOING TO COURT

It is in this context that the TAC approached the court. At issue was:

▶ Whether the respondents (the government) are entitled to refuse to make Nevirapine (a registered drug) available to pregnant women who have HIV and who give birth in the

public health sector, in order to reduce the risk of transmission of HIV to their infants, where in the judgment of the attending medical practitioner this is medically indicated; and

▶ Whether the respondents are obliged, as a matter of law, to implement and set out clear timeframes for a national programme to prevent MTCT, including voluntary counseling and testing, antiretroviral therapy and the option of using formula milk for feeding.

The High Court ruled in favour of the TAC and the government took the case on appeal to the Constitutional Court. The Court heard argument early in May 2002. The main right upon which the action was based, was section 27 of the Constitution. Section 27(1)(a) provides that everyone has the right to have access to health care services, including reproductive health care. Section 27(2) provides that the State must take reasonable legislative and other measures within its available resources, to achieve the progressive realization of these rights. On the first day of the case, the TAC organized "Stand up for your rights" rallies, interfaith services and marches in solidarity with the thousands of women and children whose rights were the subject of the court hearing. In Johannesburg about 6000 people marched to the Constitutional Court itself.

## THE JUDGMENT

For the Constitutional Court, the crux of problem presented to them was what should happen to those mothers and their babies who cannot afford access to private health care and do not have access to the research and training sites? The Court accordingly held that "government policy was an inflexible one ... and constitutes a breach of the state's obligations under section 27(2) read with section 27(1)(a) of the Constitution. The Court continued that "implicit in this finding is that a policy of waiting for a protracted period before taking a decision on the use of Nevirapine beyond the research and training sites is also not reasonable within the meaning of section 27(2) of the Constitution."

The Constitutional Court declared that sections 27(1) and (2) of the Constitution require the government to devise and implement within its available resources a comprehensive and co-ordinated programme to realize progressively the rights of pregnant women and their newborn children to have access to health services to combat MTCT, which must include reasonable measures for counseling and testing pregnant women for HIV, counseling HIV-positive pregnant women on the options open to them to reduce the risk of MTCT, and making appropriate treatment available for them for such purposes.

The Constitutional Court ordered the government to, without delay, remove the restrictions that prevent Nevirapine from being made available at public hospitals and clinics that are not research and training sites and to make provision for counselors to provide the necessary counseling for the use of Nevirapine. It further ordered that the government must take reasonable measures to improve HIV testing and counseling facilities.

## REPRODUCTIVE CHOICE

Due to the complexity of the issue of breastfeeding and the lack of sufficient evidence before it, the Court decided not to make a finding on whether the State should provide formula milk without charge to women, leaving it to health care workers to address the issue during counseling. In this regard health care workers should have regard to World Health Organisation policies on breastfeeding and infant feeding in HIV-infected women.

Many women who took part in the rallies and campaigns that preceded the Court case and who submitted affidavits to the Court itself, testified that the right to be given a choice in deciding whether or not to use Nevirapine to reduce the risk of MTCT was fundamental. Similarly many women with HIV felt that they should be given formula milk should they choose not to breastfeed their babies as well as additional nutritional support to look after the well-being of their children. Health care workers testified as to the heartbreak involved in knowing that there are methods available to prevent MTCT, but not being able to use it as well as the difficulty of not being able to assist the mother much in maintaining her own health. The campaigns by the TAC had many positive spin-offs – all over the country people living with HIV/AIDS, and especially women, had the courage to stand up and speak out against discrimination and inadequate health care services. Thousands of people all over South Africa were given information on HIV/AIDS, how it can be transmitted to an infant, the need for testing and Nevirapine and the additional issues pertaining to breastfeeding.

## SPREADING THE NEWS

The Court specifically stated that the judgment must be communicated to health care workers in all public facilities



and to the beneficiaries of the programme without delay. HIV/AIDS makes women more vulnerable and less in control of reproductive decisions. Whilst one in four pregnant women who attend antenatal facilities are HIV positive, few are aware of their status or that they can access termination of pregnancy services or services to prevent MTCT.

The case is a significant achievement for women since it provides them immediately with the right to access HIV counseling and testing services and Nevirapine. The challenge is to ensure that the judgment is implemented. Women's ability to decide freely and in an informed manner on when and how to have children could enable them to also make choices about many other aspects of their lives.

### Source:

Minister of Health v Treatment Action Campaign and others CCT 8/02, judgment (5 July 2002):

<http://www.concourt.gov.za>.

For documents on the campaign:

<http://www.tac.org.za>. The Community Law Centre intervened as amicus curiae in the case: <http://www.communitylawcentre.org.za/>

# Beyond *Carmichele*: Developing the Right to Freedom From Violence

Helene Combrinck and Raygaanah Barday

The South African Constitutional Court made legal history during 2001 with its landmark judgment in the case of *Carmichele v Minister of Safety and Security and Another*. This case dealt with a claim by Alix Carmichele, who had been attacked and seriously injured by a perpetrator who was at the time awaiting trial for rape. In spite of a previous conviction for indecent assault and a history of violent behaviour towards women, he had been released unconditionally on his own recognizance in the rape matter.

Ms Carmichele sued the police and prosecution for their negligent failure to take proactive steps to protect her as a potential further victim. The Constitutional Court found in her favour that the state officials had a legal duty to take steps to prevent further violent actions by the perpetrator, and referred the matter back to the trial court for determination of further issues in the delictual claim. The Cape High Court subsequently heard evidence in this matter during May 2002 and ultimately ruled that the state was indeed liable.

One of the questions that came up after the *Carmichele* case was whether these judgments implied that all victims of violent crime would potentially have a claim against state officials (such as the police) for failing to prevent the crime perpetrated against them. While legal experts pointed out that the facts

presented by the *Carmichele* case were unique and that the case was unlikely to open the 'floodgates of litigation', it was also clear that the exact ambit of the positive duties imposed on the state still had to be determined by the courts.

Following *Carmichele*, the Cape High Court and Supreme Court of Appeal re-

In August 2002, the Ministers of Safety and Security and of Justice (the defendants in *Carmichele*) asked the Supreme Court of Appeal to overturn the High Court judgment on the grounds that 'it placed an inappropriate burden on the state'. They alleged that the trial court erred in not having considered the 'chilling effect on the police and prosecutors in the bona fide exercise of their public functions'.

cently dealt with two additional cases centering around state duties to provide protection against violence. Both these cases specifically focused on the duties of the police relating to firearms.

The first case arose from a shooting incident in Stellenbosch, in which the plaintiff, Ian Hamilton, was shot by one Elna McArdell and was paralysed from the chest down. Hamilton sued the police, claiming that they had been negli-

gent in failing to investigate McArdell's application for a firearm licence in spite of her history of mental instability.

In his judgment, Jooste AJ remarked that without the granting of the licence McArdell would not have acquired a firearm; had she not acquired a firearm she would not have shot and seriously injured the plaintiff. He added that the police had a duty to investigate her application and investigate her history of mental instability. The court also found that Hamilton was a "foreseeable plaintiff" in that he matched the exact grouping that McArdell disliked.

The second judgment of interest is the *Minister of Safety and Security v Van Duivenboden*. The plaintiff, Mr Van Duivenboden, was injured when he attempted to intervene in a domestic violence incident involving a neighbouring family. The perpetrator, one Neil Brooks, was the licensed owner of two firearms, with which he shot and killed his daughter and wife and also injured Mr Van Duivenboden.

The basis of the plaintiff's claim was that the police had been negligent in failing to take the steps that were available to them in law to deprive Brooks of his firearms before the tragedy, and that this negligence was the cause of the plaintiff's being shot.

Long before the fatal incident, the police had information that reflected on Brooks's fitness to be in possession of firearms. This knowledge arose from



two occasions when police officials were summoned to the Brooks home to intervene in domestic violence incidents. The court found, with reference to one of these incidents, that for more than a year prior to the final tragic events a number of police officials had had information indicating that Brooks was unfit to possess a firearm - yet had failed to take any steps to initiate the statutory inquiry into his fitness to possess firearms. No satisfactory explanation had been given for this failure.

The Supreme Court of Appeal found that if such an inquiry had been held, there was little doubt that Brooks would have been found unfit to possess firearms. The court accepted that the events culminating in the respondent's being shot would have taken a different course if Brooks had been denied access to the two firearms that were lawfully in his possession, and thus concluded that the failure to conduct the inquiry was the legal cause of the respondent's injuries.

The import of these two recent judgments is that they delineate more closely the relationship between the right to freedom from violence as entrenched in sec 12(i)(c) of the Constitution and concomitant duties on the state to take steps to protect this right. In addition, these cases provide important guidelines for the development of state policies towards the implementation of crucial legislation such as the Domestic Violence Act and the Firearms Control Act.

The judgments can be accessed at:

- ▶ *Carmichele v Minister of Safety and Security and Another* - <http://www.concourt.gov.za/judgments/2001/carmichele.pdf>
- ▶ *Minister of Safety and Security v Van Duivenboden* - <http://wwwserver.law.wits.ac.za/scrtappeal/2002/20901.pdf>

## 'A Little More Conversation': Bail Hearings & Victims of Sexual Assault

Helene Combrinck and Raygaanah Barday

As previously reported in *GenderNews*, the Gender Project, as a member of the Consortium on Violence Against Women, is currently engaged in a three-year project to monitor the implementation of the bail legislation in sexual assault cases. Now in its final year, the Project is preparing to launch a comprehensive report on its findings.

In the course of the research, a number of police investigating officers, prosecutors and magistrates participated by granting interviews with the researchers, allowing access to dockets and charge sheets and assisting in the drawing of cases for researchers to peruse. A total of approximately 400 dockets were scrutinised along with 263 charge sheets from police stations and courts resorting under the Mitchell's Plain, Cape Town and George regional court jurisdictions.

One of the key findings of the research was that there appears to be a gap in communication between investigating officers, rape victims and prosecutors. As a rule, prosecutors do not have any contact with the victim prior to the trial, and certainly not at the time when the accused is bringing his bail application. Prosecutors therefore depend on the investigating officer to convey to them relevant information such as threats of further violence against the victim.

The court, in deciding on bail, is

in turn relying on the prosecution to present sufficient evidence to enable the court to make a proper decision to give effect to the provisions of section 60 of the Criminal Procedure Act. (This section allows for the court to take into consideration factors such as any threats of violence that the accused may have made, the relationship between the accused and witnesses and the extent to which witnesses could be influenced or intimidated.) The *Carmichele* case presents a chilling example of a situation where crucial information was not placed before the court.

The research therefore shows that there needs to be closer collaboration between the investigating officer, prosecutor and victim and that the victim has to be made aware of every step of the proceedings. For example, the victim may be intimidated by the accused without her being aware that the accused is out on bail. If she does not know that a bail hearing has been held, it would be impossible for her to know what the accused's bail conditions are and what her remedies are in the event of a breach of these conditions.

Based on these findings, the research team is currently investigating various mechanisms that could be put in place in order to facilitate the communication between victim, investigating officer and prosecutor. These recommendations will be included in the forthcoming report.



# GENDER UPDATE

Compiled by Anneke Meerkotter

## RIGHT TO HEALTH CARE

### RECENT STUDIES....

▶ Emergency contraception is little known and rarely used by South Africans according to a study by Smit and others published in *Contraception* 2001 64(6), 333-337. Only about one in four women attending public sector health clinics in South Africa reported having heard of emergency contraception. Few of the women interviewed had ever used the method whilst most of the women who knew about emergency contraception did not know whether it was offered at the facility that they were interviewed at.

▶ Feeding method does not affect mortality of infants of HIV-infected women according to a Kenyan study Mbori-Ngacha and others published in the *Journal of the American Medical Association* 2001 286(19), 2413-2420. The study indicated that HIV-free survival was significantly more frequent among formula fed infants of HIV positive women than among breastfed infants. Diarrhea, pneumonia and malnutrition were the most common causes of death, but none occurred more often in one feeding group than in the other. Whilst there were several shortcomings to the study, the researchers concluded that "the use of formula to prevent HIV-1 transmission can be a safe and viable option even in resource poor settings, if maternal

education, clean water, a supply of formula and access to health care are available."

*Source: The above three studies were summarised in International Family Planning Perspectives Vol 28 No 2, June 2002, 128-130*

### IN THE COURTS....

Emergency contraception has been banned by Argentina's Supreme Court. A narrow majority of the court ruled that the method, which has been legal since 1996, causes abortion. In its decision, the court defined life as beginning at fertilisation, reversing a previous interpretation that life begins when an embryo reaches the uterus.

*Source: 'Day-after pill outlawed in Argentina' BBC News, 6 March 2002, <http://www.bbc.co.uk>*

## RIGHTS OF COMMERCIAL SEX WORKERS

### IN THE COURTS....

In June 2002 the Johannesburg High Court declared sections 160(d)(i) and (ii) of South Africa's Liquor Act unconstitutional. These sections prohibit stripping at places that sell alcohol and are frequently used by police to raid and close strip clubs. The Constitutional Court must still give judgment on this case and another case on whether the section in the Sexual Offences Act that prohibits sex for reward is constitutional.

*Source: 'Clubs may Teaze after court strips down law' 17 June 2002, The Star, <http://www.iol.co.za> (A copy of the court papers in both cases, *Phillips v DPP CCT 2/02* and *Jordan v S CCT 31/02*, can be obtained from the Constitutional Court website, [\[www.concourt.gov.za/\]\(http://www.concourt.gov.za/\)](http://</a></i></p></div><div data-bbox=)*

## FROM THE LAW COMMISSION...

The SALC has completed the first step in the review of the sexual offences legislation pertaining to sex work, an issue paper was released in August 2002 and submissions are due by 31 October 2002.

*SALC website: [http://](http://www.server.law.wits.ac.za/salc/salc.html)*

*[www.server.law.wits.ac.za/salc/salc.html](http://www.server.law.wits.ac.za/salc/salc.html)*

## FAMILY LAW

### IN THE COURTS....

▶ The Nepal Supreme Court ruled in May 2002 that marital sex without a wife's consent should be considered rape. The Court also ruled that rapists of sex workers be given equal punishment to that of other rapists.

*Source: 'Nepal Court judgment on marital rape hailed by rights groups' OneWorld South Asia, 6 May 2002, <http://www.oneworld.net/southasia/>*

▶ A judge challenged the constitutional validity of sections 8 and 9 of the Judges' Remuneration and Conditions of Employment Act 88 of 1989. These sections provide for the payment of benefits to the surviving spouse of a deceased judge and was challenged on the basis that they excluded all those relationships other than heterosexual marriages from the benefits accorded to spouses. The South African Constitutional Court found that the sections discriminate against persons such as the applicant on the

basis of sexual orientation. The Legislature has indicated that they intend to amend the challenged provisions to extend the benefit to same-sex and heterosexual partners where the relationships are intended to be lasting. An order was made by the Court to the effect that the sections are to be read as though the following words appear after the word "spouse" – "or partner in a permanent same-sex partnership in which the partners have undertaken reciprocal duties of support."

*Source: Steinhilber v Minister of Justice and Constitutional Development CCT 45/06, Judgment 25 July 2002, <http://www.concourt.gov.za>*

## RIGHT TO FREEDOM FROM VIOLENCE

### NEW LEGISLATION....

Oklahoma legislature approved legislation that authorises the chemical castration of serious sex offenders. The measure permits judges to order chemical castration for people convicted of first or second-degree rape or forcible sodomy. Repeat offenders could be subject to surgical castration. In chemical castration drugs are used to reduce the amount of the male hormone testosterone the human body produces.

*Source: 'Oklahoma OK's castration for sex offenders' 25 May 2002, <http://www.iol.co.za/>*

### IN THE COURTS....

Organisations like the Congress of South African Trade Unions have expressed deep outrage at the lenient sentence handed down in the Umata High Court to Theophilus Mfonde Mduki for the 1995 murder of his domestic worker, Noluthando Mbovane. She was hit so hard that she bled to death for allegedly leaving the stove on. Her body was dumped on the banks of a river several kilometres away. The court imposed a sentence of R15000 payable in instalments until the end of the year.

*Source: 'R15000 fine for killing domestic worker' 20 June 2002, <http://www.iol.co.za/>*

## Sarah Baartman - Home at last...

Zulpha Geyer

In April of this year South Africa welcomed home the remains of Sarah Baartman after almost two centuries abroad. A local Khoisan woman, Sarah was subjected to scientific scrutiny by European doctors and scientists of the time, and was used as a basis for research on the sexuality of black women. Sarah Baartman became a symbol of shameful racist exploitation when she was subjected to public humiliation in Europe. This was due to colonial preoccupation with her most personal physical characteristics. In death her dignity remained compromised as she was not afforded a proper burial but put on display in

the Musée de l'Homme (Museum of Man) in Paris until 1974 when her remains were finally withdrawn from public view and assigned to a storeroom.

Her return home signals not only a measure of victory for all women who experience or have experienced abuse at the hands of oppressors but for all African people at large. As stated by Ambassador Thuthukile Skweyiya upon her return:

"Saartjie Baartman is beginning her final journey home, to a free, democratic, non-sexist and non-racist South Africa. She's a symbol of our national need to confront our past and restore dignity to all our people".

Sarah Baartman was buried in the

Eastern Cape on Women's Day, 9 August 2002.

*This image of Sarah Baartman was developed for the Sarah Baartman Centre for Women and Children. The Centre and its on-site organisations have a strong history of providing committed intervention work in direct response to the identified needs of abused women and their children.*

### Sources:

[http://www.time.com/time/europe/magazine/article/](http://www.time.com/time/europe/magazine/article/0,13005,901020422-230460,00.html)

0,13005,901020422-230460,00.

html - "Laying The Past To Rest".

<http://www.iol.co.za/> - "Some dignity at last for Saartjie Baartman".

# NEW ACQUISITIONS

GILL KERCHHOFF • IT CONSULTANT

## UNDERSTANDING DOMESTIC HOMICIDE

Neil Werrsdale

BOSTON: NORTHEASTERN UNIVERSITY PRESS, 1999

ISBN 155533930

The author writes about domestic homicide by exploring the microdynamics. He concludes that there is a clear link between ongoing and life-threatening interpersonal violence, and homicide. He shows that men perpetrate more intimate homicides than women, but that there are other cultural and social patterns. He examines the kinship systems of various cultural groups in America (African America, Latin, Caucasian and Asian American) and the natures of families who experience domestic homicide.

He concludes however that the microdynamics of intimate-partner homicide tend to transcend race, ethnicity, social class, age and neighbourhood characteristics.

Lastly, he looks at how agency intervention, and policy initiatives, can prevent such deaths.

## MORE THAN VICTIMS: BATTERED WOMEN, THE SYNDROME SOCIETY AND THE LAW

Donald Alexander Downs

CHICAGO: UNIVERSITY OF CHICAGO PRESS, 1996

ISBN 0226161595

This book seeks to find the best way to accept and deal with the approach to battered women through a victimisation syndrome. The author strongly advocates moving beyond using the syndrome as a



legal defense, pointing out the damage such an approach can have on the women themselves. He argues that they need to be protected from violence, but they also need to participate fully in the discourse of politics and citizenship. He suggests instead a different way of using existing self-defence law to protect battered women.

## GENDER VIOLENCE IN AFRICA: AFRICAN WOMEN'S RESPONSE

December Green

LONDON: MACMILLAN, 1999

ISBN 0113794885

This ground-breaking book introduces gender violence in Africa as a human rights and development issue that has been ignored and minimised by the world at large for many years. The author understands this situation to be the result of gender relationships at three levels – the family, the economic system and the state. She looks firstly at how violence is manifested at each of these three levels, by describing different feminist theories and their explanations for gender violence. Then more significantly, she uses the rest of the book to look at African women as agents of change, able to use formal and informal power structures to resist gender violence, and not be victims of violent abuse.



## BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES

James Ptacek

BOSTON: NORTHEASTERN UNIVERSITY PRESS, 1999

ISBN 155533906

This investigation of women, violence and the courts focuses on the court-

room negotiations between women and judges, in relation to restraining order hearings. The author argues that violence against women is placed within the

context of gender, class and racial inequality. In his study, he examines two particular courts in Massachusetts, with different racial and economic profiles, but where violence against women is regarded seriously and supportively. Despite the growing legislation to protect women's rights against abusive men, judges still have the power to make their own decisions. The author looks at the types of violence that women report, analyses how judges use their authority and looks at the role judges can play in women's efforts to protect themselves against violence.

## WOMEN'S RIGHTS: A GLOBAL VIEW

Edited by Lynn Walter

A WORLD VIEW OF SOCIAL ISSUES

LONDON: GREENWOOD, 2001

ISBN 03130890X

This is a comparative study of women's rights, broadly defined as including civil, political and social rights. There is clear evidence, through the fifteen case studies in this book, that rights are viewed differently by groups that have experienced different cultural practices and historical processes. The conclusions and experiences of the various cases and regions raise significant comparative issues and broaden the understanding of women's rights. By highlighting and exploring these issues, this volume aims to make a positive contribution to the continuing dialogue on women's rights.

