



# Mitigating gender violence: The role of the hospitality industry in empowering rural women employed in hospitality

Advocate Professor Stella Vettori  
Graduate School of Business Leadership  
University of South Africa  
[vettom@unisa.ac.za](mailto:vettom@unisa.ac.za)

## Abstract

This article documents the abuse endured by women in rural areas. It sets out the statistics regarding gender based violence in South Africa. South African customary laws and culture that render women almost helpless to escape their fate are set out as well. Both customary law and national legislation are applicable in South Africa. Despite some of the provisions of customary law being discriminatory and consequently falling foul of the equality clause in the Constitution, customary law is still adhered to in the rural areas of South Africa. The fundamental rights contained in the Constitution applicable to the protection of women are described hereunder. The article explains the provisions of domestic and international laws that seek to promote equality and dignity for women and to protect women from physical and other forms of abuse. A brief discussion of international instruments and international laws designed to protect and promote women's rights demonstrates that South African legislation as described in the article is in line with international law. Despite the progressive nature of these laws, many factors render the laws incapable of achieving their stated goals. The reasons for such failure are multifaceted and together contribute to the dire plight of women in South Africa especially those in rural areas. The article analyses and explains these reasons and surrounding socio-economic circumstances in detail. This is necessary so that creative and effective solutions can be put in place to temper and reduce the effect of these factors that contribute to rendering laws helpless in protecting and advancing women's rights. Finally, given the fact that the law alone cannot adequately address the abuse of women, some suggestions are put forward regarding how the hospitality industry can contribute to mitigating the severe abuse women suffer at the hands of their spouses or partners and in the workplace and empower them.

**Keywords:** international law, customary law, constitution, gender-based violence, legislation.

## Introduction

The main sources of employment in rural areas are in the agricultural sector or in the hospitality industry. Aside from these two sources of employment there is very little opportunity for gainful employment emanating from anywhere else in the rural areas. Therefore, it is important for the hospitality sector, amongst others, to have some insight into the life of the female employees in rural areas, specifically with reference to gender-based violence. The Deputy Minister of Tourism of South Africa, Tokozile Xasa at the Southern African Women in Tourism –RETOSA Conference, 28 November 2016, stated as follows in her speech opening the conference:

“Flowing from the conference in Malawi, the SADC Protocol on the development of tourism spells out an important regional objective to use tourism as a vehicle for social economic development, and as a part of implementing its mandate RETOSA has initiated this Women in Tourism Conference to act as a platform promoting gender equality and the



empowerment of women in southern Africa. It has been noted that generally in RETOSA and member states it is the women who are economically disadvantaged, and there is therefore significant potential for tourism to be used as a political tool in the empowerment of women from both the urban and rural areas. It is important to include women from rural areas as the majority of tourism resources in Southern Africa are natural and cultural, and these are found in the communal and rural areas.”

The dire circumstances faced by rural women in South Africa are a consequence of a myriad of multi-faceted and inter-connected factors. The long and short of it is that rural women face extreme poverty, abuse at the hands of their employers and partners, be it sexual, financial, emotional or physical. Despite the laws in South Africa that promote amongst other things equality and attempt to deter gender-based violence, women in rural areas are not adequately protected against violence, inequality, poverty and dependence.

The purpose of this article is to expose the statistics relating to gender based violence in South Africa, particularly in the rural areas. Thereafter, the applicable laws in South Africa both national and international that intend to protect and promote women will be set out. The relevant customary laws will also be described in order to illustrate that despite discriminatory practices prevalent in the customary laws, they are still being adhered to in the rural areas. It will be demonstrated how these customary laws serve to render women powerless in combatting abuse from their partners.

The reasons that laws on their own have been largely ineffective in achieving their stated goals will be explored. One of the major reasons for the legal protection failing the women is the lack of resources available to them especially financial resources and accommodation. Furthermore fear of violent abuse as a consequence of women seeking to protect themselves against the abuse by invoking the law, serves as a major deterrent for recourse to the law.

### **Statistics on violence against women**

According to Carol Bower<sup>1</sup> “...violence against women and children in South Africa is endemic. There are as many as 180 to 265 rapes each hour of every day: four women die every day at the hands of their intimate partners; and more than two children are murdered every day, with the same number being the victims of attempted murder every day... women in rural areas remain amongst the most vulnerable and marginalized in the country.”

According to a publication of the Institute of Development Studies<sup>2</sup> “South Africa’s rate of rape, as a particular form of gender-based violence has been found to be one of the highest in the world (UNODC South Africa, 2002). In a cross-sectional study in three South African districts in the Eastern Cape and KwaZulu Natal, researchers found that 27.6% of all men had raped a woman or a girl, of all the men who were interviewed, almost half (42.4%) had been physically violent to an intimate partner (Jewkes, Sikweyiya, Morrell and Dunkle, 2011).” According to the Institute of Race Relations “if data for all violent assaults, rapes,

---

<sup>1</sup> “The Plight of Women and Children: Advancing South Africa’s Least Privileged” ANNALS, AAPS, 652, March 2014 at 107.

<sup>2</sup> Accessed at <http://interactions.eldis.org/gender-based-violence/country-profiles/south-africa> on 31 January 2017.



and other sexual assaults against women are taken into account, then approximately 200,000 adult women are reported as been attacked in South Africa every year”.<sup>3</sup> Between April 2011 and March 2012, 64 524 rapes were reported to the South African police services. This equates to more than 170 rapes every day. However, according to the South African police services only one in 36 rapes is reported. According to the Genderlinks and Medical Research Council (2013) there are more than 4000 rapes a day at a rate of roughly 180 rapes an hour in South Africa.<sup>4</sup>

There are no reliable statistics on domestic violence in South Africa. However the World Health Organisation reported in 2012 that about 60,000 women and children in South Africa were victims of domestic violence every month.<sup>5</sup> What is certain is that domestic violence against women is a problem of massive proportions. According to the 2011 census 52% of the population is made up of women and 47% of them live in rural areas.<sup>6</sup> Given the patriarchal nature of traditional leadership gender-based violence in the rural areas is endemic. Furthermore, given the fact that almost half of the female population live in rural areas and are therefore subject to traditional leadership, the issue of gender-based violence is of huge relevance in rural areas.

### International legal obligations

The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW),<sup>7</sup> ratified by South Africa in 1995, requires signatory states to eliminate gender discrimination. The Elimination of Discrimination Against Women General Recommendation 12, Violence Against Women<sup>8</sup> and the Elimination of Discrimination Against Women General Recommendation 19<sup>9</sup> specifically address the issue of violence against women. The Declaration on the Elimination of Violence Against Women (DEVAW) recognises women as the main victims of domestic violence. The Preamble to DEVAW states as follows:

“Concerned that some groups of women such as woman belonging to minority groups, indigenous women, refugee women, migrant women, **women living in rural and remote communities**, (my emphasis) destitute women, women in institutions or in detention, female children, women with disabilities, elderly woman and woman in situations of armed conflict, are especially vulnerable to violence.”

Therefore DEVAW is concerned with violence against women in general and is not limited to domestic violence only. Regarding gender- based violence article 1 provides that for the purposes of the Declaration the term “violence against women” means “any act of gender-based violence that results in, or is likely to result in, physical sexual or psychological harm was suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, with occurring in public or in private life.”

---

<sup>3</sup> Carol Bower “The Plight of Women and Children: advancing South Africa’s Least Privileged” ANNALS, AAPSS, March 2014 at 111.

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

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> Adopted 18 December 1979, G.A. Res 34/180, U.N GAOR, 34<sup>th</sup> session, Supp. No.46, U.N.Doc A/34/46 (1980).

<sup>8</sup> Adopted 3 march 1989 U.N. Doc. A/44/38 (1990).

<sup>9</sup> Adopted 30 January 1992 U.N Doc. A/47/38 (1993).



Article 2 provides that: “Violence against women should be understood to encompass, but not limited to, the following:

- a) Physical, sexual and psychological violence occurring in the family, including better ring, sexual abuse of female children in the household, diary related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- c) Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.

Article 4 provides that:

“States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women...”

The article then sets out means that a state should adopt in order to eliminate violence against women. These means include amongst others preventative approaches of a legal political, administrative and of a cultural nature. It also includes the adoption of measures to modify the social and cultural patterns of conduct of men and woman in order to eliminate prejudices, customary practices and all practices based on the idea that women are inferior based on s sexual stereotypes and stereotypical roles for men and women.

Given the patriarchal culture prevalent in South Africa specifically and in Africa in general, the reference to the modification of social and cultural patterns of conduct of men and woman in order to eliminate prejudices, customary practices and all practices based on the idea that women are inferior is very significant because it addresses underlying cultural norms and values that may negatively influence the effect of any laws promulgated with the objectives of providing equality, and seeking to eliminate discrimination and to promote the protection and advancement of women. As will be seen in the discussion below one of the reasons that statutory legislation intended to eliminate violence against women is not effective is that it is in deep contrast with traditional norms and values that are based on the patriarchal society.

The Protocol to the African Charter on the Rights of Women in Africa<sup>10</sup> enjoins signatory states to modify harmful traditional cultural practices that prevent the application of laws that protect women.<sup>11</sup> Unfortunately South Africa is not a signatory to this international source of law. Nevertheless, it demonstrates a willingness amongst African states in general to modify traditions and practices that act as a barrier to the achievement of equality and the

---

<sup>10</sup> Organisation of African Unity Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, 2<sup>nd</sup> Ordinary Session of the Assembly of the union, 11 July 2003.

<sup>11</sup> Article 2(2).



advancement of women's <sup>12</sup>rights. South Africa has however ratified and signed the SADC Protocol on Gender and Development.

### The South African Constitution

The South African Constitution renders South Africans obligations in terms of international law relevant in that it provides that "when interpreting the Bill of Rights, courts, tribunal or forum-

- a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
- b) **must consider international law;** (my emphasis)
- c) may consider foreign law."<sup>13</sup>

The South African Constitution contains comprehensive Bill of Rights in chapter 2. Section 9 provides for equality and provides amongst other things that no person may unfairly discriminate directly or indirectly against anyone on one or more grounds including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

Section 10 provides that "everyone has inherent dignity and the right to have their dignity respected and protected." Section 11 provides that everyone has the right to life. Section 12 provides as follows:

"(1) Everyone has the right to freedom and security of the person, which includes the right-

- a) not to be deprived of freedom arbitrarily or without just cause;
- b) not to be detained without trial;
- c) **to be free from all forms of violence from either public or private sources** (my emphasis);
- d) not to be tortured in any way; and
- e) **not to be treated or punished in a cruel, inhuman or degrading way.** (My emphasis)"

(2) Everyone has the right to bodily and psychological integrity, which includes the right-

- a) to make decisions concerning reproduction;
- b) to security and control of the body; and
- c) not to be subjected to medical scientific experiments without the informed consent."

Finally section 13 provides that no one may be subjected to slavery, servitude or forced labour.

Section 39(2) obliges the courts to develop the common law or customary law in line with the spirit, purport and object of the Bill of Rights. This is very relevant for the rights of rural women in circumstances where customary law may be contrary to the rights contained in the

Bill of Rights. The discussion below concerning customary law will demonstrate the areas where customary law may encourage the breach of the rights contained in the Bill of Rights.

---

<sup>12</sup> Section 9(4).

<sup>13</sup> Section 39(1).



## National Legislation

The most important and significant piece of legislation in South Africa dealing with domestic violence is the Domestic Violence Act (DVA).<sup>14</sup> Recognising the high levels of domestic violence in South Africa the legislature sought to protect victims of such violence in terms of the DVA.<sup>15</sup> The Act obliges law enforcement officials to provide assistance to victims of abuse who seek interdicts against their partners. The idea is to make protection easily accessible to the victims of abuse.

The DVA extends the net of protection beyond spouses and includes unmarried partners, children, people in same sex relationships and all people who share the same living space. The DVA adopts a broad definition of violence and includes physical, sexual, emotional and psychological abuse. Sexual violence is defined by the World Health Organisation as: any sexual act, attempt, attempt to obtain a sexual act or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, but not limited to home and work.

Physical abuse in terms of the DVA includes any act or threat of physical violence that causes pain, injury, suffering or bodily harm. Physical abuse can be direct such as hitting, punching, choking or pushing the victim. It can be indirect as well, such as denying the victim access to medical care or medication when the victim is ill or injured. Sleep deprivation or forcing the victim to drink alcohol or take drugs are also forms of physical abuse.

Any conduct that results in the humiliation, degradation or violates the sexuality of the person qualifies as sexual violence or abuse. Examples include forcing a person to engage in sexual activity, even if that person is the legal spouse. Unwanted sexual comments or advances also qualify as sexual abuse or violence. According to some estimates nearly two thirds of all women worldwide have been physically, sexually, or severely emotionally abused by an intimate partner. Although statistics reveal that men can also be abused the statistics confirm that the majority of victims are female. According to a study undertaken in the USA 74 percent of abused women are employed are abused not only at home but also at work.<sup>1</sup> This is a very relevant statistic since workers in the hospitality industry face abuse in various forms including sexual and physical abuse from both clients and colleagues. Physical violence against hospitality employees includes sexual assault, kicking, pushing, burning someone with hot equipment or food, and throwing objects. This often involves clients or members of the public who are inebriated. Employees in rural lodges also face the risk of abuse and violence from the public.

Psychological abuse includes repeated insults or threats, name-calling and obsessive possessiveness and jealousy. Other forms of emotional abuse include controlling the victim by directing what they can and cannot do; constantly checking up on them; isolating the victim from friends and family so they have no-one to turn to; withholding information and giving conflicting messages aimed at confusing the individual so that ultimately the individual blames him or herself for the abuse.

Economic abuse, includes for instance refusing to share money; withholding resources and necessities from the victim even if the resources belong to the victim; destroying or disposing

---

<sup>14</sup> 116 of 1998.

<sup>15</sup> In the case of *Seria v Minister of Safety and Security* (9165/2004)[2004] ZAWCHC 26, 2 the court stated that the Domestic Violence Act "...was promulgated in response to the alarmingly high incidence of domestic violence within South African society."



of property that belongs to the victim; preventing the victim from obtaining education or being gainfully employed.

All forms of intimidation and harassment, stalking, damage to property and entering a person's home without their consent will qualify as violence. All the forms of abuse and violence damage the internal strength of the victim leaving them depressed, helpless and unable to escape from the situation.

The Act also provides for an extensive and broad definition of domestic violence to include not only violence perpetrated against married women and their children, but also protects unmarried women involved in relationships or living with their partners, people in same sex relationships, and generally anyone who shares the same living space. Violence perpetrated by women against men, although less common, is not unheard of and men in relationships are also protected from domestic violence in terms of the Act.

The main vehicle for protection in terms of the Act is for the victim to obtain a protection order. Although this is a civil process it is not as complicated as what is generally the case in civil procedures. The DVA has made it simple for victims. All that is required is that the victim set out in an affidavit the details of the abuse. Based on this *prima facie* evidence the magistrate can issue an interim order. The DVA renders it a legal obligation for the South African Police Service (SAPS) to help victims of violence. SAPS are obliged to find suitable accommodation and medical help for victims. The victims' rights must be explained to them and victims must be assisted in obtaining a protection order. The Act makes provision for the arrest by a peace officer of any person who may have committed an act of domestic violence without a warrant of arrest. Furthermore a peace officer is also empowered to seize any weapons from the premises. A peace officer may also make application for protection orders on behalf of victims with their written consent unless they are unable to provide such consent because they are minors, mentally retarded or unconscious.

The process of obtaining a protection order is very simple and does not cost the victim any money. All that the victim must do is approach the local magistrate's office, where the clerk of the court will help the abused person to complete an affidavit. The affidavit is then given to the magistrate, or a judge in the High Court, who will consider the matter. If the magistrate or judge requires more evidence be it verbal or written they will ask for it. When satisfied that the victim is being abused, the magistrate or judge will issue an initial protection order. This is an interim or temporary order with a return date. This means that the respondent is given an opportunity to state his or her side of the story on the return date in court. In the time preceding the return date the applicant will be given protection. If the respondent does not appear in court on the return date and papers were properly delivered to the respondent, or if they do appear in court and are unable to properly defend their case, the magistrate or judge will then order that the interim order be made final. A final order remains valid until the court sets it aside. The respondent however does have the right to appeal against the order.

If the respondent acts in breach of the interim or final order, the respondent will be arrested immediately without the need for the applicant to go to court again. Alternatively provision is made for the police to give the respondent notice to appear in court on a later date instead of arresting him or her in circumstances where they feel that the contravention of the order is not serious. It would be worthwhile to train police members adequately to enable them to properly assess situations to determine whether to detain a member of the public who has been cited as a perpetrator or not.



## Customary Law

There are no rules in customary law that deal specifically with domestic violence. However the rules relating to marriage, divorce and inheritance are relevant with regard to a women's ability to access financial resources including land and accommodation. This is relevant to the topic of gender violence because it is so much more difficult for a woman with no resources to avail herself of the laws that protect her and to escape the abuse and violence.

### *Marriage and Divorce*

The Recognition of Customary Marriages Act<sup>16</sup> (RCMA) has given legal effect and recognition to customary marriages including polygynous marriages. According to customary law and practice, the payment of *lobolo* is necessary for the conclusion of a marriage. Traditionally the groom's family pay the *lobolo* to the bride's family. The *lobolo* price is generally negotiated by the respective families. Traditionally the *lobolo* is paid in cattle or other livestock. However this is changing and nowadays *lobolo* is generally paid in cash.<sup>17</sup> Another change is that nowadays, it is the grooms themselves and not their family who pay the *lobolo*. *Lobolo* prices have become unaffordable for many and there has consequently been an increase in cohabitation without marriage.<sup>18</sup>

A wife who is abused by her husband is required in terms of traditional norms and values to approach her husband's family in order to resolve marital issues. This is because once

*lobolo* is paid a wife is absorbed into the husband's family.<sup>19</sup> Only when appeals to her husband's family are not yielding results can an abused wife appeal to the male members of her own families. It is obvious that the husband's family is not likely to be sympathetic<sup>20</sup> and the fact that an abused wife can only appeal to male members of her family is also problematic as male members may be more inclined to be unsympathetic. Women can only approach traditional leaders for their marital problems as a measure of last resort. This is because family and private affairs are expected to be handled within the family and it is frowned upon if marital issues are made public.<sup>21</sup> Therefore women are at the mercy of family members, be it their husband's family or their own family. Women are consequently reluctant not only to go to traditional leaders with their marital problems, but are also loathe to resort to the provisions protecting them in terms of the DVA. In this regard Curren and Bonthuys conclude:

"Communities disapprove of women who resort to these public forms of dealing with domestic violence, since they not only expose problems which are supposed to remain in the private domain of the family, but they also imply that their families are unable or unwilling to

---

<sup>16</sup> 120 of 1998. The Act came into effect in November 2000.

<sup>17</sup> Ericka Curren & Elsje Bonthuys "Customary Law and Domestic Violence in Rural South African Communities" *Centre for the Study of Violence and Reconciliation* at 12.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid* 14.

<sup>20</sup> See Lillian Artz "Why Women Victims of Domestic Violence Retract From the Criminal Justice Process" SA Crime Quarterly No 37, September 2011.

<sup>21</sup> Bennett *Customary Law in South Africa* 213





deal with these problems. These attitudes are shared by police, social workers and nurses who are supposed to assist victims of domestic violence.”<sup>22</sup>

In terms of customary law a wife who has been severely beaten may return to her father's home. The prerequisites for her returning home are that firstly her father is willing to accept her back and support her and; secondly that she has been severely beaten. What this implies is that a husband is entitled to physically chastise his wife as long as the beatings and physical abuse are not severe. What constitutes severe physical mistreatment is physical abuse or violence that is so severe that it “makes cohabitation dangerous or impossible.”<sup>23</sup> Once severe physical abuse that renders cohabitation dangerous or impossible is present, the wife has no guarantee that her father will agree to take her back and look after her. Very often the wife's family is unwilling to offer her refuge because even if the husband is guilty of mistreating his wife, her father may have to pay back some of the *lobolo*.<sup>24</sup> If the *lobolo* was paid in cash the money will have already been spent. If the *lobolo* was paid in cattle or other livestock, the wife's father may still be reluctant to hand some of the cattle or livestock back the husband.<sup>25</sup> Even if the wife has been severely beaten and her family are willing to take her back and care for her, she is still dependent upon her father to initiate a divorce.

A further obstacle is that according to customary law, custody of the children generally vests with their fathers if the father has paid *lobolo* unless the child is extremely young. This is because custody is dependent on the financial ability to maintain the children and because when a woman marries she becomes part of her husband's family as do the children. Normally women are economically dependent on their husbands and are unable to support their children.<sup>26</sup>

The RCMA may provide some solace for abused wives:

Section 8(1) and (2) provide that the rules applicable to civil divorces are also applicable to the dissolution of customary marriages. The High Courts and/or Family Courts have jurisdiction to dissolve these marriages and therefore the laws applicable to civil marriages must be applied with regard to not only the dissolution of the marriage but also to maintenance of the spouse and children follows therefore that the customary rule that the only reason for divorce is severe maltreatment or abuse that renders cohabitation dangerous or impossible, has been rendered inapplicable and superseded by legislation. According to legislation the only grounds for divorce are an “irretrievable breakdown of the marriage; or the mental illness, or the continuous unconsciousness, of a party to the marriage.”<sup>27</sup> Furthermore the Family Advocate must report about the best interests of the child.<sup>28</sup>

---

<sup>22</sup> Ericka Curren & Elsje Bonthuys “Customary Law and Domestic Violence in Rural South African Communities” *Centre for the Study of Violence and Reconciliation* at 15-16.

<sup>23</sup> Bennett Customary Law in South Africa 272

<sup>24</sup> Ericka Curren & Elsje Bonthuys “Customary Law and Domestic Violence in Rural South African Communities” *Centre for the Study of Violence and Reconciliation* at 19.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> 70 of 1979.

<sup>28</sup> Section 8(3) of the Recognition of Customary Marriages Act 120 of 1998.



Although the legislation can help alleviate fears of having to lose custody of children and having no financial means to survive, or only being able to divorce is abuse is severe, there are some very real practical obstacles in enforcing the rights provided in the legislation:

- i) As discussed above, women are expected to sort out their marital problems within the family and not to resort to external sources such as civil courts to protect themselves. It is frowned upon by the community if a woman enforces her rights in public outside the privacy of the family.
- ii) Enforcement of rights through the civil courts is expensive and most rural women live in extreme poverty.<sup>29</sup> Many of them cannot even afford to pay the transport costs to get to court.
- iii) Many rural women are not fluent in English or Afrikaans, are illiterate and ignorant and going to court is a very daunting and frightening experience for them.<sup>30</sup>
- iv) Even those who do manage to make use of the civil courts and have maintenance orders against their husbands land up getting nothing as the default rate is extremely high.<sup>31</sup>

#### *Women's access to property and financial resources*

In terms of customary law women do not own any marital property other than purely personal items such as clothing. Even money earned by the wife for work done outside the home belongs to her husband.<sup>32</sup> In terms of section 7(2) of the RCMA people who married after the coming into effect of the Act<sup>33</sup> are automatically married in community of property unless the parties to the marriage specifically alter that status by entering into an antenuptial agreement.

Section 7(1) provides that:

“The proprietary consequences of a customary marriage entered into before the commencement of this Act continue to be governed by customary law.” “This means that women who were married in terms of customary law prior to November 2000 do not own any matrimonial property or assets. However, section 7(4)(a) provides:

“Spouses in a customary marriage entered into before the commencement of this Act may apply to a court jointly for leave to change the matrimonial property system which applies to their marriage or marriages and the court may, if satisfied that-

- i) there are sound reasons for the proposed change;
- ii) sufficient written notice of the proposed change has been given to all creditors....
- iii) no other person will be prejudiced by the proposed change,

order that the matrimonial property system applicable to such marriage or marriages will no longer apply and authorise the parties to such marriage or marriages to enter into a written contract in terms of which the future matrimonial property system of their marriage or marriages will be regulated on conditions determined by the court.”

---

<sup>29</sup> Mokgoro 2003, 565—566.

<sup>30</sup> SAHRC (2008, 69).

<sup>31</sup> Ericka Curren & Elsje Bonthuys “Customary Law and Domestic Violence in Rural South African Communities” *Centre for the Study of Violence and Reconciliation* at 19.

<sup>32</sup> *Ibid* 18.

<sup>33</sup> The Recognition of Customary Marriages Act 120 of 1998 came into effect in November 2000.



Given the fact that the husband owns everything if the traditional marriage was entered into prior to November 2000 (the date of the coming into RCMA), it is unlikely that husbands will agree to changing the applicable matrimonial property system as set out in section 7(4) of the RCMA.

Unmarried women have even less protection than their married counterparts. Since no *lobolo* was paid for them they cannot turn to their partner's family for support and cannot rely on national matrimonial law. Furthermore the threat of having to return the *lobolo* or part of it if he is severely violent towards his partner is absent.

Since women do not own any matrimonial property and only can own personal effects such as clothes, when their husbands die they are often left with nothing. Normally the eldest son or another close male relative will inherit the marital property. What is supposed to happen is that this male relative will continue to look after the widow who will remain in the homestead. Unfortunately, what often happens is that the widow is often evicted and has no place to go and no income to support herself.<sup>34</sup> Fortunately these customary rules of succession have been declared unconstitutional.<sup>35</sup>

Despite this declaration of unconstitutionality, most rural women are unaware of their rights and do not challenge the customary rules and traditions for the same reasons mentioned above with regard to the enforcement of the meagre protection provided for in terms of the RCMA. However as pointed out above, the lack of formalities required to get an interdict against an abuser, provided the members of the police assist the victims as required in terms of the DVA, should assist victims in easily obtaining a restraining order or domestic violence interdict.

### **Challenges to the application of legal protection against gender based violence**

As seen from the discussion above the application of customary law and practices renders women incapable of securing access to financial resources. The progressive national laws designed to assist women and promote their interests are mostly beyond the reach of rural women for the reasons articulated above. Consequently women are dependent on men for their day do day needs and survival. Furthermore, the patriarchal structures dominant in families and communities in general, especially in rural areas, is a fact of life that women are obliged to accept and live with simply because they do not have the necessary resources to escape their day to day existence. Simply stated women do not have access to legal and financial support necessary to benefit from progressive laws promoting the protection of women and the right to equality.

South African society has a traditional and widespread patriarchal culture. This is described by Carol Bower in the following terms:<sup>36</sup>

“More than 80 percent of South Africans belong to one of the three major religions: Christianity, Islam and Judaism. The latter two provide endless and well-documented justification for regarding women and children as the possessions of men. With regard to Christianity South Africa has a long Calvinist tradition, and widespread adherence to biblical and Calvinist perceptions of the role and status of women as inferior to that of men within families and societies. This is also true among the non-Calvinist branches of Christianity.”

<sup>34</sup> Ericka Curren & Elsje Bonthuys “Customary Law and Domestic Violence in Rural South African Communities” *Centre for the Study of Violence and Reconciliation* at 19.

<sup>35</sup> See *Bhe and Others v Khayelitsha Magistrate and Others* (CCT 49/03 [2004] ZACC 17; 2005 (1) SA 580 (CC); 2005(1) BCLR 1 (CC).

<sup>36</sup> Carol Bower “The Plight of Women and Children: Advancing South Africa’s Least Privileged” *Annals, AAPSS*, March 2014, 108.



This perception of women being possessions of men is reflected in research that concludes that “the most common motivations for all types of rape stemmed from ideas of sexual entitlement, a further measure of which was that 45 percent of men indicated that they had felt no guilt about their act of rape.”<sup>37</sup> This sense of entitlement is easily exacerbated in the hospitality industry. Since the hospitality industry is fuelled by the purpose of having a good time, sexual entitlement by men is simply a means to have a good time.<sup>38</sup>

In a study conducted by Lillian Artz<sup>39</sup> it was demonstrated that the DVA is on the whole not fulfilling its stated objections of protecting victims of domestic violence. The reasons for this are that the act of seeking assistance from the legal avenues available often results in more violence being perpetrated against the victim. Victims of domestic violence are often threatened with death or more violence against themselves or their children if they initiate legal proceedings.

In addition to the fear of further violence the research indicated that the application of the DVA by the authorities leaves a lot to be desired. Artz notes that: “In 23% of the cases, the interim protection order was never served. In an additional 13% of cases, the respondent did not sign for the service or fled from the police. Seventeen percent simply lost confidence in the system. Nine per cent of applicants reported that they had not returned to finalise their orders because the court had not provided them with a copy of the protection order. These applicants were therefore unlikely to know their return dates. In eight percent of cases DVA applicants explicitly stated that the courts had failed to provide them with information about their return dates and in an additional five per cent of cases the applicants were not aware that they had to come back to court to finalise their orders. And yet another five percent reported that they *had* returned to court to finalise the order, but upon arrival learned that their cases had been struck from the court roll.” Given the lack of resources available to rural women they do not have easy access to bodies that could assist them such as legal aid centres or People Opposing Women Abuse.

In summary, the combination of a lack of financial and other resources, a customary legal system that deprives women of any rights to property, a lack of knowledge regarding the national legislation or the means to set it in motion, immense fear of retribution from their spouses or partners, as well as ostracism from society in general when a woman resorts to seek assistance from the legal system thus making her plight public, all contribute to domestic violence not even being reported. Another deterrent is the attitude of the South African police towards victims of violence. It has been documented that “the attitudes and prejudices of law enforcement agencies and other government officials and the inaccessibility of services that should be made available to the public, especially in rural areas, are also part of the problem. Most South Africans still regard the police as agents of oppression like during the apartheid regime...”<sup>40</sup> In short women in South Africa, especially in rural areas, are in a position of dependence in relation to their male family members or spouses and do not have resources to make use of the progressive legislation intended to empower them and protect them from all forms of abuse. They are not supported by prevalent cultures in their communities. On the contrary, they may be ostracised for trying to escape their positions as victims of abuse. Consequently they are left with very little choice but to endure a lifetime of abuse from their male partners or spouse.

---

<sup>37</sup> Jewkes *et al* 2011, 9.

<sup>38</sup> Gutek *et al* “Predicting social-sexual behaviour at work: A contract hypothesis” *Academy of Management Journal* 33(3) 1990, 560-570.

<sup>39</sup> Lillian Artz “Fear or Failure? Why victims of domestic violence retract from the criminal justice system” *SA Crime Quarterly* No 37, September 2011.



## Conclusion and recommendations

Lodges and hotels are often situated in rural areas because it is the beauty and natural resources prevalent there that attract tourists. Consequently, the players in the hospitality areas that are situated in rural areas are in a position to not only provide work for rural women, but can also provide accommodation for them on premises thus offering them a sanctuary to protect them from abuse from their spouses. This is the most urgent and immediate need for an abused woman. At the same time, although provided with work and accommodation, women may become the victims of abuse from colleagues and/or customers.<sup>41</sup>

Hotels, resorts and lodges and other players in the hospitality industry thus need to establish effective formal written policies and procedures which are designed to educate employees about sexual harassment issues. Furthermore, the hospitality sector can encourage a work environment in the resorts, lodges and hotels that encourages respect for women and a value system that values their contributions to the workplace and society as a whole. This can be achieved *inter alia* by adopting workplace policies that consider sexual and other forms of harassment at work by colleagues to be serious forms of misconduct warranting dismissal.<sup>42</sup>

In a study by Stevens,<sup>43</sup> students as well as human resources managers viewed sexual harassment as a highly unethical act needing attention. Ethical issues such as sexual harassment should be a major concern area due to the intrinsic characteristics of the hospitality sector.<sup>44</sup> Hotels thus need to establish effective formal written policies and procedures which are designed to educate employees about sexual harassment issues. The hospitality sector can also adopt rules and regulations that are applicable to the public that prohibit sexual harassment and other forms of abuse committed against staff members.

Furthermore the industry should embark on education initiatives regarding ethics education in order to create an ethical basis for all work activities in the hotel industry.<sup>45</sup>

The sector can promote the employment and training of rural women to render them employable in the sector in partnership with government and non- governmental organisations (NGOs). The sector can eliminate gender stereotyping and encourage the creation of women co-operatives where the women acquire business skills to supply the tourist industry with quality goods and services.

---

<sup>41</sup> Berman, J. (2014). 80 Percent Of Female Restaurant Workers Say They've Been Harassed By Customers, *The Huffington Post*. [http://www.huffingtonpost.com/2014/10/08/sexual-harassment-restaurants\\_n\\_5948096.html](http://www.huffingtonpost.com/2014/10/08/sexual-harassment-restaurants_n_5948096.html) [accessed 29 March 2016].

<sup>42</sup> Beck, J. A., Lazer, W., & Schmidgall, R. (2007). Hotel marketing managers' responses to ethical dilemmas. *International Journal of Hospitality & Tourism Administration*, 8(3), 35–48.

<sup>43</sup> Stevens, B. (2001). Hospitality ethics: Responses from human resource directors and students to seven ethical scenarios. *Journal of Business Ethics*, 30, 233–242.

<sup>44</sup> Jung, H. S., Namkung, Y. & Yoon, H. H. (2010). The effects of employees' business ethical value on person–organization fit and turnover intent in the foodservice industry. *International Journal of Hospitality Management*, 29(3).



The hospitality industry should get involved in local communities as part of their corporate social responsibilities promoting community based tourism projects. This will serve as a means of earning an income for rural women who can sell their crafts to tourists and showcase their culture to visitors. The hospitality industry should also partner with the private and public sector in education programmes aimed at equipping the community in general and in particular women with knowledge about their legal rights regarding access to ownership of property and the right to equality. They should be made aware of their rights concerning matrimonial property, inheritance and their rights in terms of the DVA.

The tourism sector should inform government of the plight of rural women in their communities so that government can formulate and implement policies to address the myriad of inter-related challenges that reduce women to victims of all sorts of abuse.

## References

- Artz (2011). "Why Women Victims of Domestic Violence retract from the Criminal Justice Process", *SA Crime Quarterly*, No 37, September 2011.
- Beck, J. A., Lazer, W. & Schmidgall, R. (2007). Hotel marketing managers' responses to ethical dilemmas. *International Journal of Hospitality & Tourism Administration*, 8(3), 35–48.
- Bennett, T.W. (2004). Customary Law in South Africa. Edition, reprint. Publisher, Juta, 2004.
- Bhe and Others v Khayelitsha Magistrate and Others* (CCT 49/03 [2004] ZACC 17; 2005 (1)
- Berman, J. (2014). 80 Percent Of Female Restaurant Workers Say They've Been Harassed By Customers, *The Huffington Post*. [http://www.huffingtonpost.com/2014/10/08/sexual-harassment-restaurants\\_n\\_5948096.html](http://www.huffingtonpost.com/2014/10/08/sexual-harassment-restaurants_n_5948096.html) [accessed 29 March 2016]
- Bower, C. & Rotberg, R.I. (2014). The Plight of Women and Children: advancing South Africa's Least Privileged. *The ANNALS of the American Academy of Political and Social Science*, Vol 652, Issue 1, 106 – 126.
- Curren, E. & Bonthuys, E. (2004). "Customary Law and Domestic Violence in Rural South African Communities" *Centre for the Study of Violence and Reconciliation*.
- Domestic Violence Act 116 of 1998.
- Gutek B. A. & Cohen, A.G. (1990). Predicting Social-Sexual Behaviour at Work: A Contract Hypothesis" *Academy of Management Journal*, 33(3), 560-570.
- Jewkes, R.K., Dunkle K., Nduna, M. & Shai, N. (2010). Intimate partner violence, relationship gender power inequity, and incidence of HIV infection in young women in South Africa: a cohort study. *The Lancet* 367: 41–48.
- Jung, H. S., Namkung, Y. & Yoon, H. H. (2010). The effects of employees' business ethical value on person–organization fit and turnover intent in the foodservice industry. *International Journal of Hospitality Management*, 29(3).



African Journal of Hospitality, Tourism and Leisure, Volume 6 (1) - (2017) ISSN: 2223-814X Copyright: © 2017 AJHTL - Open Access- Online @ [http://: www.ajhtl.com](http://www.ajhtl.com)

Lee, L. Y. S. & Tsang, N. K. (2013). Perceptions of tourism and hotel management students on ethics in the workplace. *Journal of Teaching in Travel & Tourism*, 13(3), 228–250.

Mokgoro, Y. (2003). “Constitutional Claims for Gender Equality in South Africa: A Judicial Response.” *Albany Law Review* 67(2): 565—73.

Nonceba “Violence Against Women-A Problem in South Africa” BUZZSOUTHAFRICA 2016 <https://www.thursdaysinblack.co.za/violence-against-women-%E2%80%93-problem-south-africa-892016> [Accessed on 03/3/2017].

Organisation of African Unity Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, 2<sup>nd</sup> Ordinary Session of the Assembly of the union, 11 July 2003.

Recognition of Customary Marriages Act 120 of 1998 (November 2000).

*Seria v Minister of Safety and Security* (9165/2004) [2004] ZAWCHC 26.

South African Human Rights Commission (SAHRC) 2008. “Progress Made in Terms of Land Tenure Security, Safety, and Labour Relations in Farming Communities Since 2003.”

Stevens, B. (2001). Hospitality ethics: Responses from human resource directors and students to seven ethical scenarios. *Journal of Business Ethics*, 30, 233–242.

U.N Doc. A/47/38 (1993).

---

<sup>i</sup> See Report on Costs of Domestic Violence, Victim Services of New Your, 1987.