

Sonke Report 08

Masculinities and public policy in South Africa: changing masculinities and working toward gender equality

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A report prepared by Sonke Gender Justice Network
October 2008





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INTRODUCTION

This report on policy approaches to changing masculinities and working with men and boys for gender equality in South Africa forms a part of a broader multi-country project coordinated by Instituto Promundo with seed funding from the MacArthur Foundation. This project aims to compare public policies (including legislation) related to men, masculinities and gender across a range of countries. The goals of the project include obtaining comparative data on men and gender equality and reaching policymakers and program planners with information on how to achieve large-scale impact in changing men's attitudes and behaviours. The project proceeds from the conviction that notions of masculinity and femininity may provide important points of entry for change. Gender equality efforts which engage men directly seek to build on the momentum for change in men's gender attitudes and practices which already exists and to emphasise that change in such attitudes and practices is possible. This report adopts a broad approach, seeking to identify policies that can effect change.

BACKGROUND

International scholarship and civil society work with men and boys began to gather pace in the late 1990s and early 2000s. South Africa has been among the leaders of masculinity work in the developing world. The stimulus for much of the research and work with men in South Africa stems from the country's unique and complex history. There has been a surge in scholarship focusing on men and changing conceptions of manhood in the region. Morrell (1998)¹, Campbell (2001)², Xaba (2001)³, Lesejane (2005)⁴, Ratele (2003)⁵, Hunter (2005)⁶ and others have looked at the many ways in which colonialism, the migrant labour system, apartheid, racism, resistance to apartheid and, more recently, HIV/AIDS have contributed to the emergence of particular forms of masculinities. Such masculinities have often been characterised by aggression, a willingness to use violence and by very rigid conceptions of manhood, but also sometimes by a commitment to social justice and to taking a stand against violence and inequality (Peacock & Botha, 2005⁷; Barker, 2005⁸; Sideris, 2005⁹).

In the context of critical interrogation of masculinity, some civil society organisations in South Africa have focused on gender roles and relations in order to address the major gender challenges facing South Africa today, notably the high levels of violence and the rapid spread of

¹ Morrell R (1998) "Of Boys and Men: Masculinity and Gender in Southern African Studies", *Journal of Southern African Studies*, 24, 4, 605-630.

² Campbell C. (2001) "Going underground and going after women: Masculinity and HIV transmission amongst black workers on the gold mines", in R Morrell (ed) *Changing men in Southern Africa*, Pietermaritzburg: University of Natal Press.

³ Xaba T (2001) "Masculinity and its Malcontents: The Confrontation between 'Struggle Masculinity' and 'Post-struggle Masculinity' (1990-1997)", in R Morrell (ed) *Changing Men in Southern Africa*, Pietermaritzburg: University of Natal Press.

⁴ Lesejane D (2005) "Fatherhood from an African perspective", in L Richter & R Morrell (eds) *Baba: Men and Fatherhood in South Africa*, Cape Town: HSRC Press.

⁵ Ratele K (2003) "Recovering the ordinary", in M Pieterse & F Meintjies (eds) *Voices of the transition: The Politics, Poetics and Practices of Social Change in South Africa*, Johannesburg: Heinemann.

⁶ Hunter M (2005) "Fathers without amandla: Zulu-speaking men and fatherhood", in L Richter & R Morrell (eds) *Baba: Men and Fatherhood in South Africa*, Cape Town: HSRC Press.

⁷ Peacock D & Botha M (2005) "The New Gender Platforms And Fatherhood", in L Richter & R Morrell (eds) *Baba: Men and Fatherhood in South Africa*, Cape Town: HSRC Press.

⁸ Barker G (2005) *Dying to Be Men: Youth, Masculinities and Social Exclusion*, Routledge: London.

⁹ Sideris T (2005) "You Have to Change and You Don't Know How!: Contesting what it means to be a man in a rural area of South Africa" in G Reid & L Walker (eds) *Men Behaving Differently: South African men since 1994*, London: Routledge.

HIV/AIDS. Working *with* men and boys to tackle the gender underpinnings of these problems is a relatively recent approach. Previously ‘gender work’ tended to imply work with women, while work with men tended to be carried out in isolation of a broader gender context and to preserve patriarchal family structures and values. Examples of the new approach include the implementation and evaluation of Stepping Stones by the Medical Research Council, Sonke Gender Justice’s One Man Can Campaign, the Fatherhood project of the HSRC, and the various organisations implementing the Men as Partners programme.

Evidence is emerging that shows that behavioural interventions carried out with men and boys can transform men’s attitudes and practices.¹⁰ For example, the Medical Research Council’s evaluation of the Stepping Stones initiative implemented in the Eastern Cape showed that men who participated in the intervention reported less perpetration of intimate partner violence, and less transactional sex and substance abuse were reported at 12 months.^{11 12} Elsewhere, in Brazil, *Instituto Promundo*’s intervention with young men on promoting healthy relationships and HIV/STI prevention, showed significant shifts in gender norms at six months and twelve months. Young men with more equitable norms were between four and eight times less likely to report STI symptoms.¹³ Following upon these findings, the World Health Organization recently released a report endorsing the efficacy of working with men to achieve gender equality.¹⁴

There is a need to move beyond such civil society interventions and for change to be brought to scale via government policy. For widespread change to occur, public policy shifts are required. Public policy interventions do not necessarily only encompass creating the space and imperative for large-scale versions of the interventions adopted by civil society, but may also require a re-orientation of society through institutional change. Such a re-orientation can in turn change attitudes and practices. For example, a legal system which does not recognise that married women can be raped by their husbands, nor that men can be raped (this was the law until relatively recently in South Africa) institutionalises deep-rooted harmful notions of gender in society. Changes to such laws can consequently have wide implications.

Many of the public policies identified in this report do not have an explicit focus either on men and boys or on tackling issues of gender equality via interventions brought to scale, but nevertheless have profound implications for masculinities, femininities, and gender equality, because they impact on the institutions which contribute to keeping those norms in place. The purpose of this report is to identify and analyse public policy shifts which may already have an impact on masculinity, gender and health. Further, the report aims to understand the challenges faced in policy implementation, whether these involve or centre on a lack of political will, lack of administrative capacity, lack of liaison and coordination between departments or a lack of resources. Lastly, the report aims to identify where further change may take place.

¹⁰ Earlier work conducted during the 1990s was not necessarily unsuccessful, but tended not to be rigorously evaluated.

¹¹ Jewkes R, Nduna M, Levin J, Jama N, Dunkle K, Puren A & Duvvury N (2008) Impact of Stepping Stones on HIV, HSV-2 and sexual behaviour in rural South Africa: cluster randomised controlled trial *British Medical Journal*, 337a, 2008, 506.

¹² Similarly, research conducted by the Men as Partners (MAP) Network in South Africa indicates that 71% of workshop participants in the study believed that women should have the same rights as men, whereas only 25% of men in the control group felt this way. 82% of the participants thought that it was not normal for men to sometimes beat their wives, whereas only 38% of the control group felt that way.

¹³ Pulerwitz J, Barker G & Segundo M (2004) Promoting Healthy Relationships and HIV/STI Prevention for Young Men: Positive Findings from an Intervention Study in Brazil. *Horizons Research Update*, Washington, DC: Population Council.

¹⁴ World Health Organization (2007) *Engaging men and boys in changing gender-based inequity in health: Evidence from programme interventions*, Geneva: WHO.

PUBLIC POLICY IN SOUTH AFRICA

A “public policy” is a course of action, or inaction, chosen by public authorities to address a given problem or interrelated set of problems¹⁵ but can also be termed a set of laws, regulatory measures, courses of action, and funding priorities concerning a given topic promulgated by a governmental entity.¹⁶ Changes to laws are a strong form of policy change and many of the policy changes identified in this report are embodied in legislation, but others are contained in policies, directives, regulations or plans. Legislation may also be preceded by white papers, green papers and Bills. In South African, legislation is enacted by the national and provincial legislatures. In terms of the South African Constitution, national and provincial legislatures have concurrent legislative competence in a number of key areas, including health services, welfare services, and education.¹⁷ Where there is a conflict between national and provincial legislation, however, and the national legislation provides uniformity by establishing, norms and standards, frameworks, or, key in this context, national policies, then the national legislation prevails.¹⁸

THE ROLE OF THE SOUTH AFRICAN CONSTITUTION IN POLICY

The Constitution guides and shapes all policy. All legislation and other policy is subordinate to the Constitution and must be interpreted in line with the Constitution. Legislation or other policy in conflict with the Constitution has no force or effect. Rights such as the rights to equality (s9), dignity (s10), life (s11), privacy (s14), access to information (s32) and just administrative action (s33) are protected by the Constitution and thus impose obligations on the state. Such rights may only be limited in ways defined by the Constitution. The 1998 case of *Soobramoney*¹⁹ confirmed that socio-economic rights, such as access to health care and emergency medical treatment (s27) children’s right to health care (s28), and the right to housing, also impose obligations on the state. Socio-economic rights may be limited by a lack of resources. The 2000 case of *Grootboom*²⁰ established that the state must take “reasonable legislative and other measures” progressively to realise socio-economic rights.²¹ If the measures fail to meet the standard of reasonableness then the state is in breach of its constitutional obligations. Thus it is that the 2002 TAC²² case established that children’s rights to health care (s28) and the general right of access to health care (s27(1)) obliged government to make Nevirapine available for the prevention of mother to child transmission of HIV, as the court found the restriction to eighteen sites of the supply of a drug that was apparently safe, efficacious and inexpensive was not reasonable. Thus any government policy advancing socio-economic rights must be reasonable in the progressive realization of that right. If it is not reasonable the state can be ordered by a court of law to alter its policy in order to ensure that it is reasonable.

15 Wolf R (2000) *Definition of Policy Analysis*, Voluntary Sector Public Policy Toolbox, School of Policy Studies, Queen’s University.

16 Kilpatrick DG & Ross ME (2001) “Torture and Human Rights Violations: Public Policy and the Law” in ET Gerrity, TM Keane & F Tuma (eds) *The Mental Health Consequences of Torture*, Springer.

17 Schedules 4 and 5, Constitution of the Republic of South Africa Act 108 of 1996.

18 Section 146, Constitution of the Republic of South Africa Act 108 of 1996.

19 *Soobramoney v Minister of Health (KwaZulu-Natal) (R) [1998] JOL 1825 (CC)*.

20 *The Government of the Republic of South Africa and others v Grootboom and others [2000] JOL 7524 (CC)*.

21 Although Irene Grootboom won this case in 2000, when she died in 2008 she still did not have a house.

22 *Minister of Health & others v Treatment Action Campaign & others [2002] JOL 9935 (CC)*.



KEY FOCUS AREAS: MASCULINITIES AND PUBLIC POLICY

This report identifies a number of focus areas in which notions of masculinity are key in South Africa, either because they are causally implicated in the twin epidemics of violence and HIV/AIDS, or because they contribute to gender inequality by reinforcing patriarchal privilege in the family and schools or because men show up unequally as victims in gender statistics relating to homicide, occupational injury and disease and incarceration rates. For each focus area, the gendered nature of the issue or problem is identified and its manifestation in South Africa described. Policies designed to address the problem are then identified and discussed. As noted above, not all policies will be explicitly gendered in content, but all will have some implications for gender or masculinity and consequently for men and boys in society and are thus included in this report. The key focus areas are:

- Men and violence
- Men and HIV/AIDS
- Men and the family
- Boys, men and schools
- Men at work
- Men and risk: alcohol and substance abuse
- Men, crime and punishment.



1. MEN AND VIOLENCE

Violence is one of the key problems facing South Africa and is both a problem *for* men, who are the majority of victims of violence, and *about* men, since men commit the majority of violent acts. Gender is a key factor driving such violence. Constructions of masculinity normalise controlling and violent behaviours of men towards women and, in the case of violence, other men. Men's violence sanctioned by such constructions of masculinity harms both men and women. This chapter considers the role of masculinity and men and the public policy response in relation to the following:

- Homicide and violence
- Firearms
- Sexual violence
- Domestic violence
- Sexual and other abuse of children
- Gangs and organised crime
- Violent masculinities in the media.

Male homicide and violence

The *South African Health Review* reports that in the year 2000, homicide and violence was the second most common cause of premature mortality for men and the seventh for women.²³ Almost all men are killed by other men. Half of all women killed were in intimate relationships with their killers. South African policy responses to such violence have tended to be reactive. Such policies have also tended to be narrowly focused within sectors and there has yet to be explicit acknowledgment in policy that all violence is gendered. At the level of legislation, policy ostensibly aimed at curbing violence is almost entirely focussed on punishment, with the state apparently of the belief that severe punishment can and will operate as a deterrent to violence (see the chapter on *Men, crime and punishment* below).

Firearms, violence and men

Firearms are closely associated with masculinity. In South Africa the history of the armed struggle and South Africa's border wars has meant that not only is firearm-use normalised, many men are familiar with firearms. Worldwide it is primarily young poor socially marginalised men who are killed or injured in gun violence.²⁴ In South Africa about 45% of all murders (of men and women) are committed with a firearm.²⁵ Men are also more likely to commit gun violence: in almost every country, a disproportionate percentage of gun owners and users are men.²⁶ Statistics from situations of war and peace show that:

- Over 90% of firearm-related homicides occur among men;

²³ Ntuli A (ed) (2001) *South African Health Review 2000*, Durban: Health Systems Trust.

²⁴ Buchanan C, Farr V & Flood M (2005) *Women, Men and Gun Violence: Options for Action in Missing Pieces: Directions for reducing gun violence through the UN process on small arms control*, Centre for Humanitarian Dialogue; UN Institute for Disarmament Research; Australian Research Centre in Sex, Health and Society, La Trobe University; and Viva Rio (July).

²⁵ SAPS Central Firearm Register, quoted by Gun Free South Africa on <http://www.gca.org.za/GunsinSA/Statistics/tabid/1134/Default.aspx>, accessed 2 July 2008.

²⁶ Buchanan C et al., op. cit. .

- Boys are involved in 80% per cent of the accidental shootings that kill children in the US and
- Of those who commit suicide with a gun, 88 percent are men.²⁷

Firearms are frequently used to force sexual violence and their availability greatly increases the likelihood of intimate partner violence resulting in homicide. According to a 2004 Medical Research Council (MRC), the number of women fatally shot by their current or former partner rose by 78 percent between 1990 and 1999.²⁸ Among all the female victims of homicide in South Africa in 1999, the MRC found that one in three had been killed with the use of firearm and of those, half were shot by their intimate partner and 71 percent were shot in their own homes. The study also found that in 20 percent of cases, the women were shot with a legally owned weapon.

Compared to the United States, South Africa has relatively strict firearms control laws, which are only gendered in that the majority of applicants are men. The Firearms Control Act 60 of 2000²⁹ imposes limits on the number of firearms and rounds of ammunition that may be possessed legally. The law also creates different categories of firearms licenses based on the reason provided by the licensee for needing a firearm. For example, only one handgun or manually operated shotgun is permitted in terms of a self-defence licence. Whereas firearms licences were previously issued for life, now they are issued for a limited period of five years only. Licences may only be issued to people in possession of a valid competency certificate, and owners must keep their firearms in a safe at home. Those convicted of offences can be declared by a court to be unfit to possess a firearm. Police can also hold a hearing and remove a firearm from someone who is posing a danger or against whom a domestic violence protection order (see Men and Domestic Violence below) has been issued. However, these provisions appear to be under-utilised, except in the Western Cape province.³⁰ An amnesty for the surrender of firearms was also provided for in the Act, and implemented over a three month period in 2005.³¹ By the end of February 2005, more than 16 000 firearms and 300 000 rounds of ammunition had been confiscated or handed in to the South African Police Service.³²

The *Dangerous Weapons Act 71 of 1968*, as amended in 1993, prohibits the possession of weapons and firearm for unlawful purposes. The Act also provides for an increased penalty where firearms are used in the commission of offences involving violence, that is, for the offender to be sentenced for a period of not less than two years, unless the court is of the opinion that there are circumstances which justify the imposition of a lighter sentence.

Over the period 1997 to 2003 the number of firearm-related murders dropped by more than 20%, from 11 163 to 8632.³³ However this reduction preceded the implementation of the *Firearms Control Act* and may instead have been related to ongoing drives by the South African Police Service to reduce the number of firearms in circulation using existing powers, and levels still remain high. Furthermore over the same time period aggravated robbery (which usually implies robbery with a firearm) rose from 73 000 to 133 658, while illegal possession of firearms remained at 14 000 reported cases per year.³⁴ It is unlikely that efforts to control

²⁷ *Ibid.*

²⁸ Mathews S, Abrahams N, Martin LJ, Vetten L, van der Merwe L & Jewkes R (2004) "Every six hours a woman is killed by her intimate partner": A National Study of Female homicide in South Africa, MRC Policy Brief No.5, Cape Town: Medical Research Council.

²⁹ Commenced July 2004.

³⁰ Mistry D et al. (2002) *The role of the CJS in excluding unfit persons from firearm ownership*, Gunfree SA and OSF-SA.

³¹ Declaration of amnesty in terms of section 139 of the Firearms Control Act 2000, 26 November 2004.

³² Firearms Amnesty Update, 1 March 2005. Retrieved from http://www.saps.gov.za/crime_prevention/firearms/media/01032005.htm.

³³ SAPS Central Firearm Register, quoted by Gun Free South Africa on <http://www.gca.org.za/GunsinSA/Statistics/tabid/1134/Default.aspx>, accessed 2 July 2008.

³⁴ Crime in the RSA for the period April to March 1994/1995 to 2003/2004, published by the SAPS. Retrieved from <http://www.saps.gov.za/statistics/reports/>

firearm use will succeed in the absence of changes to societal norms which embrace firearm ownership in the context of a country troubled by high crime rates. In other countries there has success with “buy-back schemes” which have yet to be used in South Africa.³⁵

Sexual violence and men

In South Africa, sex is constructed as a necessity for both men and women. There is a widely held social expectation that a man who wants sex with a woman should be able to persuade her to agree, and he may use a range of tactics, including trickery and moderate physical force. Rape is often justified by invoking beliefs that men cannot control their sexual “urges. Sexual violence in South Africa has reached epidemic proportions. South African rates of sexual violence against women are amongst the worst in the world³⁶ despite low reporting rates: at most one in nine victims report rape and one in twenty reported rapes lead to conviction of the perpetrator.³⁷ A recent survey of 435 men in a Cape Town township revealed that “More than one in five men ...reported that they had either threatened to use force or used force to gain sexual access to a woman in their lifetime”³⁸. A 2006 Medical Research Council survey of 1370 male volunteers recruited from 70 rural South African villages indicated that “16.3% had raped a non-partner, or participated in a form of gang rape; 8.4% had been sexually violent towards an intimate partner; and 79.1% had done neither”³⁹.

Sexual violence is also evident against men and boys. An analysis of the Stepping Stones dataset of 1368 men shows that 3.4% had been “persuaded or forced to have sex when they did not want to” by a man and 9.7% had experienced this by a woman. (unpublished data). A study of school-going boys found that among those aged 18, as many as 44% claimed to have been forced to have sex in their lifetime.⁴⁰ There is also a growing recognition of rape of men in prisons in South Africa. The 2001 Jali Commission’s report states “...if the Department [of Correctional Services] keeps on ignoring the fact that sexual abuse is rife in our Prisons and that there is an extreme likelihood that prisoners who are exposed to violent unprotected sex will in all likelihood contract AIDS, then it is effectively, by omission, imposing a death sentence on vulnerable prisoners”⁴¹.

Changes to the law on rape with important implications for gender have been introduced by the Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007. This law changes the definition of rape so that it is gender-neutral (it recognises that both men and women can be raped) and so that any form of non-consensual penetration of the vagina, anus or mouth (i.e. not only penetration of a vagina by a penis) can constitute rape. Furthermore, the definition of consent has now been changed to “voluntary and un-coerced agreement”: the Act sets out circumstances where consent is understood to be lacking, including situations where the perpetrator abuses a position of power, thus acknowledging the gendered power dynamics under which rape can occur. The law confirms earlier legislation⁴² which established that a

crimestats/2004/_pdf/crimes/rsa_totals03_04_new.pdf. Accessed 15 October 2008.

³⁵ Buchanan C et al., op. cit. .

³⁶ Jewkes R & Abrahams N (2002) “The epidemiology of rape and sexual coercion in South Africa: An overview”, *Social Science and Medicine*, 55, 7, 1231-1244.

³⁷ Vetten L, Jewkes R, Fuller R & Christofides N (2008) *Tracking Justice: The attrition of rape cases through the criminal justice system in Gauteng, Johannesburg*: Tshwaranang Legal Advocacy Centre.

³⁸ Kalichman SC, Simbayi LC, Cain D, Cherry C, Henda N & Cloete A (2007) “Sexual assault, sexual risks and gender attitudes in a community sample of South African men”, *AIDS Care*, 19, 1, 20-27.

³⁹ Jewkes R, Dunkle K, Koss MP, Levin JB, Nduna M, Jama N & Sikweyiya Y (2006) “Rape perpetration by young, rural South African men: Prevalence, patterns and risk factors”, *Social Science & Medicine* 63, 2949-2961.

⁴⁰ Anderson N & Foster A (2008) “13,915 reasons for equity in sexual offences legislation: A national school-based survey in South Africa”, *International Journal for Equity in Health* 7, 20.

⁴¹ The Jali Commission, Chapter 8, page 43.

⁴² Prevention of Family Violence Act 133 of 1993.

husband can rape a wife but expands the provision gender-neutrally so that any spouse can be raped by his or her spouse. The law also provides for HIV testing of perpetrators and state care for rape survivors.

A key policy response on sexual violence generally is the National Sexual Assault Policy (2005) which has sought to ensure that victims of sexual violence receive appropriate treatment and are not subject to further victimisation when seeking medical attention. This Department of Health Policy outlines the responsibilities of the health sector on rape including the need to provide support for survivors, to meet their medical needs of pregnancy and STI prevention (including providing HIV post-exposure prophylaxis) and the documentation of findings on examination and collection of evidence to assist the courts in the case

Other policy responses to sexual violence include the provision of lengthy minimum sentences for sexual offenders (see the chapter on Men, Crime and Punishment below).

Men and domestic violence

In South Africa domestic violence, which refers to violence between current or ex-spouses or intimate partners, is highly prevalent, with between a quarter and two thirds of women in different studies reporting ever having experienced physical or sexual intimate partner violence.⁴³ An important policy is the *Domestic Violence Act 116 of 1998*, which provides for a broad definition of domestic violence and creates protection orders for which victims of domestic violence⁴⁴ can apply. Such an order interdicts the abuser from carrying out certain acts and may also provide police with a firearm confiscation order. Police are obliged to arrest perpetrators who fail to comply. Research in 2001 however showed that attitudes and perceptions regarding domestic violence continue to affect the extent to which the police are effective in carrying these out.⁴⁵ Subsequently, a Domestic Violence Training Manual was launched in 2004 by the Sexual Offences and Community Affairs Unit of the National Prosecuting Authority. It is unclear whether this manual has yet had an impact.

Inter-sectoral prevention initiatives which focus in particular on the role played by gender norms in encouraging sexual and domestic violence, in particular the 365 Day National Action Plan to End Gender Violence (2007). The plan focuses on prevention, particularly through public education and awareness, using media and communication approaches. The public education component specifically refers to the objective of strengthening “the capacity of men and boys to reduce gender based violence in partnership with women and girls”.⁴⁶ The associated “priority action” is to “train men and boys on legislation, human rights and communication and negotiation skills.” The media and communication component specifically refers to “mainstreaming gender” in all media bodies via the development of gender policies in media houses. In line with these priorities, government’s 2007 16 Days of Activism campaign⁴⁷ emphasised a “Million Man March” for the opening day. Unfortunately, despite significant expenditure on planning meetings, the marches were poorly organised and attended by very few men.

⁴³ Jewkes R, Penn-Kekana L & Levin J (2002) “Risk factors for domestic violence: Findings from a South African cross-sectional study”, *Social Science and Medicine* 55, 1603-1618; Dunkle KL, Jewkes RK, Brown HC, et al. (2001) “Prevalence and patterns of gender-based violence and revictimization among women attending antenatal clinics in Soweto, South Africa”, *American Journal of Epidemiology*, 160, 230-9; Jewkes R, Vundule C, Maforah F & Jordaan E (2001) “Relationship dynamics and adolescent pregnancy in South Africa”, *Social Science and Medicine* 52, 5, 733-744.

⁴⁴ Or anyone with a material interest.

⁴⁵ Mathews S & Abrahams N (2001) *Combining stories and numbers. An Analysis of the Impact of the Domestic Violence Act (No. 116 of 1998) on Women*. Gender Advocacy Programme & Medical Research Council.

⁴⁶ 365 Day National Action Plan to End Gender Violence (2007).

⁴⁷ The South African government has since 1999 runs its own “16 days” campaign, which runs in parallel with the United Nations campaign of the same name.

Sexual and other abuse of children

Childline South Africa quotes international statistics which indicate that one in four girls and one in ten boys have experienced some form of sexual abuse by the age of eighteen and that 80% of child sexual abuse is committed by parents, relatives and family friends, the majority of offenders (93.4%) being male.⁴⁸ Many studies show that violence and abuse in the home – witnessed and experienced by children – is a cause of later violence by adults both against women and against other men, as well as increasing the likelihood that girls will subsequently become victims as adults⁴⁹. Policy dealing with child abuse has struggled to move outside criminal justice and child protection system responses.

The *Domestic Violence Act 116 of 1998* (see above) allows for a child to apply for a protection order without the assistance of a parent or guardian, and for the removal of a perpetrator of abuse from the child's home.

The *Child Care Act 74 of 1983* places an obligation on a range of professionals who work with children to report suspected abuse. The *Children's Act 38 of 2005* expands the list to include a wider range of persons who may come into contact with children, such as child care centre volunteers, homeopaths and even traditional leaders. South Africa's child protection legislation is designed also to protect children from violence or abuse of any kind in the home. Currently, foster placements take place through the provisions of the *Child Care Act 74 of 1983*, however these provisions are **to be repealed** by the *Children's Act 38 of 2005*.⁵⁰ The Children's Act provides that a child is in need of care and protection, *inter alia*, if the child lives in or is exposed to circumstances which may seriously harm that child's physical, mental or social well-being. Educators have legal obligations regarding the reporting of suspected abuse in terms of section 15 of the *Child Care Amendment Act 96 of 1996*, and now the Children's Act.

The Western Cape Education Department has developed the **Abuse No More: Dealing Effectively with Child Abuse policy document** to assist schools, employees and learners in dealing effectively with the problem of child abuse, outlining appropriate responses.

The Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007 (see above) requires that any person who has *knowledge* – as opposed to suspicion – of a sexual offence committed against a child must report this to a police official. It is an offence not to report such knowledge.⁵¹

There are serious problems with the policy reliance on compulsory reporting obligations. South Africa has a shortage of social workers while teachers generally do not have the skills to respond. Furthermore, many professionals are not aware of their obligation to intervene. This is compounded by attitudes supporting the notion of the "privacy of the home", which attitudes themselves have a gendered dimension: homes are viewed as spaces controlled by patriarchal power (whether or not they have a man) which power should not be challenged lightly.

Some social workers also fear that given the complicated nature of most child sexual abuse cases, mandatory reporting may lead to children who disclose feeling they have lost control of the situation and may subsequently be more likely to retract the disclosure.⁵² This is particularly true in cases where the child feels protective of the offender and fears that the offender will be sent to prison.⁵³

⁴⁸ Childline Research, 2005 (unpublished).

⁴⁹ Abrahams N & Jewkes R (2005) "What is the impact of witnessing mother abuse during childhood on South African men's violence as adults?" *American Journal of Public Health* 95, 1811-1816; Jewkes R (2002) "Intimate partner violence: causation and primary prevention," *The Lancet*, 359, 1423-29.

⁵⁰ The date of commencement of child protection provisions the Children's Act has not yet been proclaimed. Other provisions came into operation on 1 July 2007.

⁵¹ Section 54, Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007.

⁵² J Loffell (2008), Johannesburg Child Welfare. National Child Protection Committee Meeting, 30 January 2008, Johannesburg.

⁵³ Summitt RC (1983) "The child sexual abuse accommodations syndrome", *Child Abuse and Neglect*, 7, 177-193; Svedin CG, Back C & Soderback SB (2002) "Family relations,

The ability of the law and policy to do more than respond to transgressions is limited for many reasons, not least the lack of resources and the reluctance to intervene in the 'private' realm. While male perpetrators of sexual abuse are from time to time identified, arrested, charged and found guilty, the bulk of transgressions probably go unnoticed and hence unpunished. Even in its responsive aspect, then, the law has only a limited ability to make a difference. An important consequence of this limitation is that very little work is put into working with boys and men who have been abused. Since those who have been abused often abuse, this is a serious state of affairs. More generally, work with masculinities that raises issues of how boys and men relate to one another and to women remains underemphasised. It finds limited expression in a few schools and in some of the interventions described in this report but much more could and should be done.

Gangs and organised crime

Gangs are a context in which an exaggerated form of masculinity is constructed that is predicted on dramatic displays of power and violence, often against women, but also against other men. Whilst often creating a reign of terror within communities, gangs provide income and self-esteem for their male members and women associated with them, as well as a context of social structure with companionship and support. They have developed as a sub-culture for men who have grown up in severe poverty with low educational attainment and thus have limited access to more traditional avenues through which to experience success as men.⁵⁴

Government's major response to gangs and organised crime, is *The Prevention of Organised Crime Act 121 of 1998*. The legislation contains provisions which criminalize membership and association with the criminal activities of criminal gangs. A "criminal gang" includes any formal or informal ongoing organisation, association, or group of three or more persons, which has as one of its activities the commission of one or more criminal offences, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

This legislation has been criticised for its approach and for failing to be accompanied by other policies designed to meet the need for alternative masculine role models in communities where gangs are common. The gendered nature of gangs needs to be recognised and attempts to reduce gang membership need to include provision of alternative means of realising the self-affirmation and respect that men obtain through gangs.

Violent masculinities in the media

The media perpetuate constructions of masculinity, frequently depicting men engaged in acts of violence and women as sexual objects. Media violence has furthermore been statistically linked to heightened levels of aggression in a number of meta-analyses.⁵⁵ The major policy response in South Africa is the *Film and Publications Act 65 of 1996* which empowers the Film and Publications Board to publish guidelines to determine what is disturbing, harmful and threatening to children and to advise the viewing public about such images and scenes.

family climate and sexual abuse", *Journal of Psychiatry*, 56, 355-362.

⁵⁴ Glaser C (1998) "Swines, hazels and the dirty dozen: masculinity, territoriality & the youth gangs of Soweto 1960-1976", *Journal of Southern African Studies*, 24, 4, 719; Douglas-Hamilton D (1995) "Warriors of the Ghetto: Ganging as a rite of passage", B.Soc.Sci., Honours dissertation, Cape Town: University of Cape Town, Institute of Criminology; Fenwick M (1996) "Tough guy, eh?: the gangster figure in Drum", *Journal of Southern African Studies*, 22, 4; Merton M (2002) "A brotherhood sealed in blood", *Mail & Guardian*, 2-7 August; Pinnock D (1997) *Gangs, rituals and rites of passage*, Cape Town: Sun Press and Institute of Criminology; Sauls H (2000) "Masculinity and violence: Live fast, die young and have a good looking corpse", Masters thesis, Department of Sociology/Anthropology, University of the Western Cape; Simpson G (1992) *Jack-asses and Jackrollers: Rediscovering gender in understanding violence*. Occasional paper written for the Centre for the Study of Violence and Reconciliation; Cooper A. & Foster D (2008) "Democracy's children?: Masculinities of coloured adolescents awaiting trial in post-apartheid Cape Town, South Africa", *THYMOS: Journal of Boyhood Studies*, 2, 1, 3-25.

⁵⁵ Wood W, Wong F & Chachere J (1991) "Effects of media violence on viewers' aggression in unconstrained social interaction", *Psychological Bulletin*, 109, 371-383; Comstock GA (2008) "Sociological Perspective on Television Violence and Aggression", *American Behavioral Scientist*, 51, 8, 1184-1211.

Offences related to child pornography, defined as any image or description of sexual conduct involving persons under the age of 18 years, are also created by the Act.

The Advertising Standards Authority of South Africa (ASA)⁵⁶ administers the **Code of Advertising Practice**, which has provisions against the depiction support or condonation of violence, including gender-based violence. Unreasonable gender stereotyping or negative gender portrayal is also not permitted. Where complaints are received about an advertisement the ASA has the power withdraw the advertisement in its objectionable form. This has unfortunately not always been applied as envisaged. A controversial anti-rape advertisement featuring South African-born, Hollywood movie actress, Charlise Theron, was withdrawn after men complained that it portrayed negative stereotyping of men.



⁵⁶ The ASA is an independent body set up and paid for by the marketing communications industry to regulate advertising in the public interest through a system of self-regulation.



2. MEN AND HIV/AIDS

Constructions of masculinity that are predicated on having multiple partners and controlling women, including determining the timing and circumstances of sex (including condom use), are increasingly recognized as one of the fundamental forces driving the rapid spread of HIV and exacerbating the impact of AIDS. There is also growing evidence to suggest that these ideas of masculinity operate not only to expose men and women to greater risk through men's behaviors, but also to exclude men from prevention, treatment and support initiatives.

Men and HIV prevention

Male control, violence and HIV

The HIV epidemic in South Africa disproportionately affects women. A 2005 national survey showed that 8.2% of men and 13.3% of women over the age of two years were infected⁵⁷. Whilst this reflects the greater biological susceptibility of women to HIV than men, the gender nature of the epidemic is particularly conspicuous when we examine which women are at greater risk of HIV. Young women are much more likely to be infected with HIV than men, with women making up 77% of the 10% of South African youth between the ages of 15-24 who are infected⁵⁸. A study by Dunkle et al. of over 1,350 women in South Africa found that women had a 50% increased risk of having HIV as they had a more controlling partner, after adjusting for sexual risk taking and experience of violence. They also had a 50% increased risk associated with the experience of violence, after adjusting for the sexual risk and controlling partners. Thus both gender inequity generally, manifested in controlling behaviour of male partners, and violent manifestations of this, increase risk of HIV.⁵⁹

Multiple and concurrent sexual partners

Research suggests is one of the most significant factors driving the spread of HIV across sub-Saharan Africa – multiple concurrent sexual partnerships.⁶⁰ Constructions of successful masculinity and femininity in South Africa are predicated in many ways on notions of sexual desirability and success with women and men respectively. The active performance of male and female success thus requires them both to have partners, with desirability proved through new sexual conquests. For example partner concurrency is culturally inscribed in the notion (in some cultural groups) of *khwapheeni / nyatsi* (mistresses) which are relationships which are kept secret from a main partner and in many cases last for years.⁵⁷ Whilst women are generally socially expected to only have one partner after marriage or cohabitation, there is widespread acceptance that men may continue to have other women. Further many men believe that their wife or main partner has no right to question their rights to have other relationships and so

⁵⁷ Shisana O, Rehle T, Simbayi LC, Parker W, Zuma K, Bhana A, Connolly C, Jooste S, Pillay V et al. (2005) *South African National HIV Prevalence, HIV Incidence, Behaviour and Communication Survey, 2005*. Cape Town: HSRC Press.

⁵⁸ Pettifor AE, Rees HV, Kleinschmidt J, Steffensen AE, MacPhail C, Hlongwa-Madikizela L et al. (2005) "Young people's sexual health in South Africa: HIV prevalence and sexual behaviours from a nationally representative household survey", *AIDS*, 19, 1525-1534.

⁵⁹ Dunkle KL, Jewkes RK, Brown HC, Gray GE, McIntyre JA & Harlow SD (2004) "Gender-based violence, relationship power, and risk of HIV infection in women attending antenatal clinics in South Africa", *Lancet*, 1, 363, 9419, 1410-1.

⁶⁰ Shelton J, Halperin D, Nantulya V, Potts M, Gayle H & Holmes H (2004) "Partner reduction is crucial for balanced 'ABC' approach to HIV prevention", *British Medical Journal*, 328, 891-4.

doing is a frequent context of violence against women. Research has demonstrated that men are more likely to practice safer sex with casual sexual partners than they are with their regular partners.⁶¹

Men and condom use

Studies show that men with more patriarchal attitudes toward gender roles and relations are more likely to have more negative attitudes toward condoms and to use condoms less consistently.⁶² Research found women who experienced forced sex were nearly six times more likely to use condoms inconsistently than those who did not while women with inconsistent condom use were 1.6 times more likely to be HIV infected than those who used condoms consistently.⁶³ A 2001 study of men’s attitudes towards condom use in South Africa reported that some men associate male condoms with discomfort, distrust in relationships, undesired interruption of sexual intercourse, and death of female sexual partners. Among obstacles to condom use are a lack of knowledge about the correct use, myths and misunderstandings about their importance in preventing the spread of HIV, and general reluctance to introduce condoms into sexual relationships.⁶⁴

Men and HIV testing

Constructions of masculinity encourage men to see active health-seeking as a sign of weakness and being found to be chronically ill with AIDS as a flaw and sign of emasculation. Research reveals that men are significantly less likely than women to use voluntary counselling and testing (VCT) services. A recent national study of VCT services found that men accounted for only 21 per cent of all clients receiving VCT.⁶⁵ This is of concern because the HSRC’s 2005 *South African National HIV Prevalence, HIV Incidence, Behaviour and Communication Survey* indicates that people who know their status are much more likely to use condoms.

Variable	Did you or your partner use a condom the last time you had sex?					
	HIV+			HIV-		
	Yes %	No %	I do not know/cannot remember %	Yes %	No %	I do not know/cannot remember %
Know HIV status	66.2	32.4	1.5	50.8	48.6	0.7
Don't know HIV status	26.2	73.8	0.0	35.0	63.0	2.0

Figure 1: HSRC 2005 National HIV Prevalence, HIV Incidence, Behaviour and Communication Survey

⁶¹ Shisana O et al., op. cit.

⁶² Noar SM & Morokoff PJ (2001) "The Relationship between Masculinity Ideology, Condom Attitudes, and Condom Use Stage of Change: A Structural Equation Modeling Approach", *International Journal of Men's Health*, 1, 1.

⁶³ Pettifor AE, Measham D, Rees HV & Padian NS (2004) "Sexual power and HIV risk, South Africa", *Emerging Infectious Diseases*, 10, 11, 1996-2004.

⁶⁴ Parker W, Nkosi Z, Birdsall K & Hajjiyiannis H (2004) *Breaking the Barriers: An Analysis of Condom-related Calls to the National AIDS Helpline, CADRE*, Retrieved from <http://www.cadre.org.za/files/CANCondom.pdf>.

⁶⁵ Magongo B, Magwaza S, Mathambo V & Makhanya N (2002) *National Report on the Assessment of the Public Sector's Voluntary Counselling and Testing programme*, Durban: Health Systems Trust.

HIV prevention policy

The HIV & AIDS and STI Strategic Plan for South Africa 2007-2011 (2007 NSP) recommends that there be a greater emphasis on strategies designed to influence behaviour rather than simply raise awareness, and to emphasize positive messaging that it is possible to live a fulfilled life with HIV/AIDS. At the same time, the plan emphasizes to a greater degree the importance of gender issues:

“There is some evidence that cultural attitudes and practices expose South Africans to HIV infections. First, gender inequalities inherent in most patriarchal cultures where women are accorded a lower status than men impact significantly on the choices that women can make in their lives especially with regards to when, with whom and how sexual intercourse takes place. Such decisions are frequently constrained by coercion and violence in the women’s relationships with men. In particular, male partners either have sex with sex workers or engage in multiple relationships, and their female partners or spouses are unable to insist on the use of condoms during sexual intercourse for fear of losing their main source of livelihood.

“Second, there are several sex-related cultural beliefs and behavioural practices such as rites of passage to adulthood especially among male youth, rites of marriage such as premarital sex, virginity testing, fertility and virility testing, early or arranged marriages, fertility obligations, polygamy, and prohibition of post-partum sex and also during breastfeeding, and rites related to death such as levirate (or spouse inheritance) and sororate (a widower or sometimes a husband of a barren woman marries his wife’s sister) are also believed to spread HIV infection.”⁶⁶

The content of strategies designed to address these attitudes have yet to be clarified. Policy has thus far focussed on ensuring access and increasing distribution of condoms.

However legislation does exist which addresses some of the prevention issues raised here. With regard to condom use, the Sterilisation Act 44 of 1998 recognises that “women and men have the right to be informed of and to have access to safe, effective, affordable and acceptable methods of fertility regulation”. The National Contraception Policy Guidelines (2003) provide that male condoms should always be in stock at all health facilities, and that effective, safe, permanent male sterilisation procedures should be made accessible to and promoted for men who are certain that they do not wish to have more children.⁶⁷ The guidelines provide that curricula for service provider training and retraining should include: “Values clarification, anti-bias training and the development of client centred approaches of care, to help ensure that providers uphold clients’ rights, and provide services to all people, irrespective of age, race, sex, social status and disability, in a respectful, understanding, and non-judgmental manner.”⁶⁸ The Children’s Act of 2005 states that any child from the age of 12 who requests condoms should be given them and is entitled to confidentiality.

The 2007-2011 NSP draws attention to the need to improve condom distribution: “Male Condom accessibility, judged according to the quantity of condoms procured and distributed, has significantly improved during the NSP 2000-2005. Condoms are being distributed increasingly via non-traditional outlets, but the number of condoms handed out at these venues remains low compared to overall distribution.” The 2005 HSRC study reports that “Male condom distribution by the Department of Health has increased markedly – from 267 million in 2001 to 346 million in 2004” with 367 million available in 2006 and 401 million in

⁶⁶ National Strategic Plan 2007, 34-35.

⁶⁷ Ibid, 27.

⁶⁸ Ibid, 29.

2007⁶⁹. However, overall condom availability remains relatively low per person. In 2005, the male condom distribution rate was 8.8 per man per year.⁷⁰

The NSP proposes to significantly increase the availability of condoms to 100 condoms per male over the age of 15 by 2011. In addition, the NSP lists specific groups to be reached. These include “higher risk occupational groups including uniformed services, mining industry, long distance transport services, agriculture industry and the hospitality industry”. It also commits to ensuring “access to VCT and access to male condoms, lubricants, STI symptom recognition and access to PEP and STI treatment,” for men in prisons and draws attention to the condom needs of “men who have sex with men and transsexuals”, and “sex workers and their clients” and to workplaces in general. The NSP contains a number of key recommendations for government departments, including that departments review the approach and content of the Abstain, Be faithful, Condomise (ABC) strategy behind the design of Information, Education and Communication materials (IEC).⁷¹

Some participants in consultative workshops have pointed out that current condom policy neglects the realities of the sexual lives of men who have sex with men, specifically with regard to the lack of policy on distributing water-based lubricant with condoms.⁷² Whilst the NSP states that female condoms should be promoted and distributed through public health facilities, this has not yet been implemented.

The policy approach towards prevention and VCT highlighted in the 2007-2011 NSP included Information, Education and Communication (IEC), VCT, treatment-related preventions e.g. treatment of sexually transmitted infections (STIs) and the use of barrier methods. Voluntary Counselling and Testing (VCT) was one of the key prevention strategies used in 2000 - 2005 period. But the 2007-2011 NSP notes that the implementation of these programmes tended to be vertical, with capacity deficits evident in their implementation, which it maintains is reflective of the health system or lead agency’s weaknesses rather than a weakness in the strategic framework.

Thus the 2007-2011 NSP requires a policy where HIV testing is offered by health providers to specified groups of people attending health services, as well as the identification of new strategies for the provision of counselling and testing outside of health facilities. The NSP does not stipulate in detail what form VCT should take, for example, whether it should be completely voluntary and/or whether there should be incentivised testing.

It has recently been argued that there should be an international reorientation of HIV testing policies based on the realities that more than one person is engaged in a sexual encounter, and that sexual rights are realized only if each person respects and protects the rights of the other.⁷³ The core premise is that everyone needs to know his or her own HIV status to protect the health and rights of the partner(s) in order to make informed sexual and reproductive decisions. Everyone has a corresponding obligation to respect his or her partner’s need to know and right to decide. There have therefore been calls for better health sector support for disclosure and expanded actions to achieve gender equality and protect human rights, in order to create an environment in which more and more people respect the mutual rights and responsibilities of sexual partners.⁷⁴ As there are divergent views on the issue, it is recommended that further research and consultation on the issue in the South Africa context should be pursued.

⁶⁹ Shisana et al., *op. cit.*, and personal communication with John Wilson 13 November, 2007.

⁷⁰ Barron P, Day C, Monticelli F, Vermaak K, Okorafor O, Moodley K & Doherty T (2006) *The District Health Barometer 2005/06*, Durban: Health Systems Trust.

⁷¹ *National Strategic Plan 2007*, 45.

⁷² *Policy approaches to working with men to achieve gender equality: National Consultative Meeting, September 17-18, 2007, Birchwood Conference Centre, Gauteng*

⁷³ Dixon-Mueller R & Germain A (2007) “HIV Testing and the Mutual Rights and Responsibilities of Partners”, *Lancet*, 1 December 2007.

⁷⁴ *Ibid.*

Men, treatment and treatment policy

The effects of male socialisation, in which health seeking behaviours are often taken to be a sign of weakness, are also evident in treatment uptake. Research on the uptake of antiretroviral therapy (ART) in Khayelitsha reveals that 70 per cent of those accessing treatment were women.⁷⁵ In Johannesburg General Hospital, one study found that women accessing ARVs “outnumbered men by a ratio of 2 to 1.”⁷⁶ Men are also likely to access antiretroviral therapy (ART) later in the disease progression than women, and consequently access care with more compromised immune systems.⁷⁷ Studies show that these gender discrepancies in ART uptake are not a function of the higher infection rates amongst women. An analysis of the Actuarial Society of South Africa’s 2003 survey found that even though 43 per cent of HAART eligible patients were expected to be male, based on epidemiological estimates, only about 36 per cent of the patients accessing HAART turned out to be men.⁷⁸ Similarly, in the private sector, despite only 33 per cent of workers being women, 60.5 per cent of the patients accessing a private sector HAART roll-out programme were women.⁷⁹ Natrass cites the result of a 2004 survey of 566 Khayelitsha residents that showed that two-thirds of respondents agreed or agreed strongly with the statement that, “men think of ill-health as a sign of weakness which is why they go to a doctor less often than women”.⁸⁰

Men’s low utilisation of HIV services mirrors men’s low utilization of all health services. Data from the 1998 *Demographic and Health Survey* (DHS) shows statistically significant differences between men and women’s utilization of all health services across all racial groups.⁸¹ Men’s lower than expected use of ART also reflects the fact that many reproductive health services do not address men’s HIV, STI and other sexual and reproductive health needs. Most VCT services, for instance, are offered in antenatal clinics which are not welcoming or equipped to deal with men.⁸² Antenatal clinics do not attempt to reach male partners with VCT services.

Current policy in the form of the **Primary Health Care Package** provides only that “The staff are adolescent friendly with friendly communication so as to be accessible and acceptable to shy patients whether male or female”⁸³ There are specific references to men’s sexual and reproductive health in terms of testicular and prostate cancers. Dr Francois Venter, head of the South African HIV/AIDS Clinician’s Society makes the point that government has a critical role to play in increasing men’s utilization of HIV services. “The work being done by NGOs... is making a difference in terms of how men now relate to the pandemic, but this exercise should not fall squarely on the shoulders of civil society groups,” Venter said. “The government seriously needs to consider new approaches if it is to attract more men to its ARV programme.”⁸⁴

⁷⁵ Coetzee D, Hildebrand K, Boule A et al. (2004) “Outcomes after two years of providing antiretroviral treatment in Khayelitsha, South Africa”, *AIDS*, 18, 6, 887-95

⁷⁶ Hudspeth J, Venter WDF, Van Rie A, Wing J & Feldman C (2004) “Access to, and early outcomes of a public South African antiretroviral clinic”, *The Southern African Journal of Epidemiology and Infection*, 19, 2, 48-51.

⁷⁷ Ibid.

⁷⁸ Natrass N (2006) *AIDS, Gender and Access to Antiretroviral Treatment in South Africa*, Centre for Social Science Research Working Paper No.178, Cape Town: University of Cape Town.

⁷⁹ Nachega J, Hislop M, Dowdy D, Lo M, Ormer S, Regensberg L, Chaisson R & Maartens G (2006) “Adherence to Highly Active Antiretroviral Therapy Assessed by Pharmacy Claims Predicts Survival in HIV-Infected South African Adults”, *Journal of Acquired Immune Deficiency Syndromes*, 43, 1, 78-84. Cited in Natrass N, op. cit.

⁸⁰ Beck D (2004) “Men and ARVs: How does being a Man affect Access to Antiretroviral Therapy in South Africa? An Investigation among Xhosa-Speaking Men in Khayelitsha”, Centre for Social Science Research Working Paper No. 80, Cape Town: University of Cape Town. Cited in Natrass N, op. cit.

⁸¹ Natrass N, op. cit.

⁸² Kunene B (2003) “Involving Men in Antenatal and Postnatal Care: The Men in Maternity Project in South Africa”, University of Witwatersrand, presented at the IGWG Reaching Men to Improve Reproductive Health For All, Washington, 2003.

⁸³ Department of Health (2000) *The Primary Health Care Package for South Africa – a set of norms and standards*, Department of Health, Pretoria, March 2000, 4.2.

⁸⁴ “South Africa: A battle of the sexes over national ARV programme,” *PlusNews Special*, 2006, UN Office for the Coordination of Humanitarian Affairs.

Men, masculinity, male circumcision and policy

Two decades of observational studies and meta-analyses have suggested a link between male circumcision and increased protection against HIV transmission,^{85,86} and a number of studies indicated high levels of potential acceptability.^{87,88,89,90} Three experimental studies on male circumcision were undertaken in Orange Farm, near Johannesburg in South Africa, Rakai, Uganda and Kisumu, Kenya.^{91,92} The studies found that men in the intervention arm were nearly two thirds less likely to become infected with HIV as those not circumcised. The investigators concluded that male circumcision,

“provides a degree of protection against acquiring HIV infection, equivalent to what a vaccine of high efficacy would have achieved. Male circumcision may provide an important way of reducing the spread of HIV infection in sub-Saharan Africa.”⁹³

It is thought that the mechanism is physical, through the removal of the vulnerable inner foreskin during circumcision, rather than behavioural. In some countries, news of the probable protective effect of circumcision led to sudden waiting lists for circumcision.⁹⁴ But concerns have been raised about whether publicity about the results might lead to “disinhibition”, with men misinterpreting the results and reaching the conclusion that the increased protection offered by circumcision allowed for more risky sexual behaviour—especially less consistent condom use and more concurrent partners.⁹⁵ Studies of disinhibition amongst circumcised men in Kenya current suggest that this is not occurring.

Notions of masculinity may affect the successful inclusion of safe circumcision in an HIV-prevention initiative, because of surgical inadequacies of some traditional circumcision, discrimination against medically-circumcised men and the perception of circumcision as a cultural practice.⁹⁶ In March 2007, the WHO and UNAIDS jointly issued a set of recommendations on male circumcision which included guidance on how best to integrate male circumcision into other HIV services. The relevant section reads:

“Male circumcision should never replace other known methods of HIV prevention and should always be considered as part of a comprehensive HIV prevention package, which includes: promoting delay in the onset of sexual relations, abstinence from penetrative sex and reduction in the number of sexual partners; providing and promoting correct and consistent

⁸⁵ Weiss HA, Quigley MA & Hayes RJ (2000) “Male circumcision and risk of HIV infection in sub-Saharan Africa: A systematic review and meta-analysis”, *AIDS*, 14, 2361-2370.

⁸⁶ Fink AJ (1986) “A possible explanation for heterosexual male infection with AIDS”, letter in *New England Journal of Medicine*, 315, 1167.

⁸⁷ Kebaabetswe P, Lockman S, Mogwe S, Mandevu R, Thior I, Essex M & Shapiro RL (2003) “Male circumcision: an acceptable strategy for HIV prevention in Botswana”, *Sexually Transmitted Infections*, 79, 214.

⁸⁸ Lagarde E, Taljaard D, Puren A, Rain-Taljaard R & Auvert B (2003) “Acceptability of male circumcision as a tool for preventing HIV infection in a highly infected community in South Africa”, *AIDS*, 17, 89.

⁸⁹ Halperin DT, Fritz K, McFarland W & Woelk G (2005) “Acceptability of Adult Male Circumcision for Sexually Transmitted Disease and HIV Prevention in Zimbabwe”, *Sexually Transmitted Diseases*, 32, 4, 238-239.

⁹⁰ Mattson CL, Muga R, Poulussen R, Onyango T & Bailey RC (2004) “Feasibility of medical male circumcision in Nyanza Province, Kenya”, *East African Medical Journal*, 81, 5, 230.

⁹¹ Scott BE, Weiss HA & Viljoen JI (2005) “The acceptability of male circumcision as an HIV intervention among a rural Zulu population, KwaZulu-Natal, South Africa”, *AIDS Care* 17, 3, 304.

⁹² Mattson CL, Bailey RC, Muga R, Poulussen R & Onyango T (2005) “Acceptability of male circumcision and predictors of circumcision preference among men and women in Nyanza Province, Kenya”, *AIDS Care*, 17, 2, 182.

⁹³ Auvert B, Taljaard D, Lagarde E, Sobngwi-Tambekou J, Sitta R, et al. (2005) “Randomized, controlled intervention trial of male circumcision for reduction of HIV infection risk: The ANRS 1265 trial”, *PLoS Medicine* 2, 11, e298.

⁹⁴ Timberg C (2006) “In Swaziland, Science Revives an old Rite – Circumcision Makes a Comeback to Fight AIDS in Virus-Ravaged African Nation”, *Washington Post*, December 26.

⁹⁵ Cassell M, Halperin D, Shelton J & Stanton D (2005) “HIV and risk behaviour: Risk compensation: the Achilles’ heel of innovations in HIV prevention?” *British Medical Journal*, 332, 11.

⁹⁶ Vincent L (2008) “Boys will be boys: traditional Xhosa male circumcision, HIV and sexual socialisation in contemporary South Africa”, *Culture, Health and Sexuality*, 10, 5, 431-46.

use of male and female condoms; providing HIV testing and counselling services; and providing services for the treatment of sexually transmitted infections".⁹⁷

Male circumcision was not addressed in the **2000-2005 NSP**. The **2007-2011 NSP** notes only that a mechanism is needed to determine how best to translate recent evidence about the impact of circumcision on prevention into policy and programmes. Current policy is consequently focused on ensuring that circumcision is carried out ethically and with minimum harm to those being circumcised, particularly in respect of traditional circumcision. For example the *Children's Act 38 of 2005* and the **Regulations governing private hospitals and unattached operating theatre units** which allows circumcision to be carried out in unattached operating theatre units.⁹⁸

Attempts have been made to regulate traditional circumcision, The *National Health Act 61 of 2003* provides that the Minister may prescribe conditions under which the circumcision of a person as part of an initiation ceremony may be carried out.⁹⁹ The date of commencement has yet to be proclaimed and the Minister has yet to prescribe such conditions. Provincial legislation on traditional male circumcision exists in some provinces. The *Free State Initiation School Health Act 1 of 2004*, the *Application of Health Standards in Traditional Circumcision Act 6 of 2001 (Eastern Cape)* and the *Northern Province Circumcision Schools Act of 1996* all provide *inter alia* for registration of traditional circumcision practitioners. This is an arena of struggle concerning the status and powers of traditional authorities. Despite such regulation, boys continue to die or be hospitalised as a result of inappropriately administered traditional circumcision practices.¹⁰⁰

The AIDS pandemic has focused policy and implementation on men, sexuality and health and increasingly gendered understandings have meant that men are included along with women in approaches to reproductive health issues. On the other hand, constructions of masculinity which compound many health problems (account for men's reluctance to seek medical and psychological assistance, contribute to HIV transmission) continue to escape official attention. This is partly to do with essentialised ideas about men (that they are the same, all behave in the same way) and partly to do with the necessarily slow and painstaking nature of masculinity work.

⁹⁷ «New Data on Male Circumcision and HIV Prevention: Policy and Programme Implications», WHO/UNAIDS Technical Consultation Male Circumcision and HIV Prevention: Research Implications for Policy and Programming, Montreux, 6-8 March 2007.

⁹⁸ Annexure A, GNR.158 of 1 February 1980.

⁹⁹ Section 43 National Health Act 61 of 2003.

¹⁰⁰ See for example, *Daily Dispatch*, "Boy, 16, dies after botched circumcision" <http://www.dispatch.co.za/article.aspx?id=219565>.



3. MEN AND THE FAMILY

The (heterosexual) family is the primary arena for the gender socialization of children. Gender-specific roles and behaviours are encouraged by the modelling provided by mothers and fathers in their behaviours within the family, in parents treating boys and girls differently, and in different social pressures being brought to bear on boys and girls within families. Consequently policy interventions which seek to enable more equitable constellations of gendered power within families may have profound long-term implications for gender equality and in particular for how men understand their roles in families – and consequently in society. Current gender norms, while supporting men’s power, at the same time operate to exclude men from emotional closeness in families and circumscribe their role to one of “provider”. Policy interventions can seek to free men from that constricting role and create space for them to take on different forms of masculinity.

Men as husbands and marriage as an institution

Ways in which the law treats marriage can have profound implications for gender relations. Until relatively recently all (white) marriages¹⁰¹ (unless the parties contracted otherwise) were “in community of property” – all assets and liabilities were shared “in community” with spouses co-owners in half shares of the joint estate. The *Matrimonial Property Act 88 of 1984*, abolished the marital power held by the husband in all such marriages. Marital power implied a husband’s power to enter into contracts for the joint estate without his wife’s consent or even knowledge, as well as power over her person. The abolition of marital power was a powerful policy change, acknowledging a shared burden of financial responsibility among husband and wife in the marriage.

By contrast in terms of the *Black Administration Act 38 of 1927*, black marriages under apartheid were automatically out of community of property (unless the parties declared otherwise) but with the retention of marital power i.e. the husband managed both his estate and that belonging to his wife. Black civil marriages automatically dissolved any prior customary marriages, leaving a “discarded spouse” whose marriage has been unilaterally terminated. The *Marriage and Matrimonial Property Law Amendment Act 3 of 1988* took away the distinction between black and white marriages and prohibited a husband of a customary marriage from contracting a civil marriage with another woman during such customary marriage.

Today there are three possible marital regimes for new civil marriages – in community of property (excluding marital power) which is the automatic regime, out of community of property, or the accrual system. Under the accrual system each spouse’s estate is administered separately; however, the accrual to the marriage within each estate is shared amongst the spouses on dissolution of the marriage. This is viewed as a particularly fair system unlikely to prejudice either party, because only what is accrued during the marriage is shared. Marriages out of community of property are automatically subject to accrual unless that is expressly excluded in an ante-nuptial contract (ANC).

However South Africa also recognises customary marriages. The *Recognition of Customary Marriages Act 120 of 1998* expressly provides for the equal status and capacity of the spouses in a customary marriage and for the property regimes outlined above to be applicable to new

¹⁰¹ All people classified as black under apartheid were married out of community of property.

customary marriages. Customary marriages concluded before the Act can on application of both spouses have the regime changed, otherwise the marriage remains governed by customary law (out of community of property without the accrual system). The Act allows for a husband to have more than one wife, seeking only to ensure that adequate provision is made for the wives of such a marriage via a court order.¹⁰² Marriages which do not seek such an order are voidable. A husband seeking a second marriage must make application to a court to determine a contract regulating the property consequences of the marriages. The existing spouse(s) and prospective spouses must be joined to the proceedings.¹⁰³ Jacob Zuma, the

president of the majority party in Parliament, is South Africa's most famous polygamist.

While legal recognition of polygamy seems to affirm patriarchy in traditional society, on the other end of the scale the legalisation of same-sex marriage is challenging norms of marriage and gender in South Africa. The right to equality and prohibition of unfair discrimination on the basis of sexual orientation is provided for in the South Africa Constitution.¹⁰⁴ A number of court judgments have provided meaning to this equality provision.¹⁰⁵ In particular the court ruled in October 2006 that the current law on marriage discriminated unfairly against lesbians and gay men.¹⁰⁶ The *Civil Union Act 17 of 2006* was subsequently passed which allows persons of the same sex to enter into a civil union either by way of a marriage or a civil partnership.¹⁰⁷ Homophobia however remains prevalent in South African society, as evidenced during the Parliamentary hearings held prior to the passage of this Act. This may be related to the profound challenges such marriages make to accepted gender norms in society.

Men as fathers

In many different cultures, being female is associated with care for others, while being male is not. Women are generally held to higher standards of family responsibility than men. A daughter who neglects her parents, a wife who leaves a husband, a mother who abandons a child – all are considered more culpable than a son, husband or father who does the same.¹⁰⁸ On the other hand, the law holds fathers responsible for the financial provision of their children and wives. Gender norms governing interpretation of appropriate behaviour for women and men in families are closely linked to socially constructed concepts of familial altruism and individual self-interest.¹⁰⁹ At the same time men are socially expected to provide the financial means for their families. High rates of unemployment in South Africa imply that many men are excluded from this role and consequently may be excluded or voluntarily exclude themselves from their families because they cannot participate in the way in which masculinity dictates.

Richter identifies a number of direct and indirect ways in which father involvement

¹⁰² Section 7(6) *Recognition of Customary Marriages Act 120 of 1998*: A husband in a customary marriage who wishes to enter into a further customary marriage with another woman after the commencement of this Act must make an application to the court to approve a written contract which will regulate the future matrimonial property system of his marriages.

¹⁰³ Section 7(8) *Recognition of Customary Marriages Act 120 of 1998*.

¹⁰⁴ Section 9, *Constitution of the Republic of South Africa Act 108 of 1996*.

¹⁰⁵ The Constitutional Court confirmed in 1998 that the common law offence of sodomy is inconsistent with the Constitution of the Republic and invalid: **National Coalition for Gay and Lesbian Equality and Others v Minister of Justice and Others 1998 (6) BCLR 726 (W)**;

¹⁰⁶ **Minister of Home Affairs and Another v Fourie and Another**.

¹⁰⁷ Section 1 and section 4, *Civil Union Act 17 of 2006*.

¹⁰⁸ Badgett *MVL & Folbre N (1999) "Assigning care: Gender norms and economic outcomes"*, *International Labour Review*, 138.

¹⁰⁹ *Ibid*.

improves outcomes for children.¹¹⁰ Men are better paid than women and bring more income into the family. Men's status in the community allows them to access and share resources and it allows them to protect their children. Data also indicate a strong relationship between household expenditure and father involvement irrespective of racial group with fathers present in only 38% of households spending less than R 400 per month compared with 93% father presence in households with a monthly expenditure totalling over R 10,000.¹¹¹

When fathers live with their children "it confers social value on the children" especially in societies like South Africa where most children grow up without a father in the home. Fathers and step-fathers who live with their children are also likely to spend more money on them than they would if they lived apart.¹¹² In healthy relationships, women who live with partners "report being less stressed about childcare". Men's involvement is however not automatically positive. Many men commit violence against women. Time-use studies show men spend only "a tenth of the time, compared to women, performing childcare tasks for children under seven years of age".¹¹³

Richter concludes, "Despite widespread father absence and neglect, we should not make the mistake of underestimating the actual and potential contribution, interest and impact of non-resident and low-income or unemployed fathers and, in doing so, marginalize them further...The concept needs to be fostered that increasing men's exposure to children, and encouraging their involvement in the care of children, may facilitate their won growth, bring them happiness and gratification, and foster a more nurturing orientation in general".¹¹⁴

A survey conducted by the Kaiser Foundation in HIV-positive households reports that "in more than two thirds of households women or girls were the primary caregivers. Almost a quarter of caregivers were over the age of 60 and just over two thirds of these were women".¹¹⁵ However, Montgomery et al.'s qualitative study of households affected by HIV/AIDS in KwaZulu-Natal describes a "disjuncture" in the field between "how men's activities are *talked about* and what some men are observed to be *doing* for their own or other households" (italics in original text). Their study revealed that men were involved in care giving activities, and that they "care for patients and children, financially support immediate and extended family members and are present at home, thereby enabling women to work or support other households". However, they write that these activities were seldom acknowledged by community members or by the field workers conducting research who continue to hold the perception that "men are not caring for their families because they are **irresponsible** and profligate". They conclude by calling for more research on men's roles in the family and argue that this has the potential to "inform the development of new programmatic approaches that might feasibly engage men's concerns and needs, and more effectively involve men as actors in community coping strategies".¹¹⁶

This section considers the engagement of policy with men as family members in the following way:

- Men and reproductive health
- Men and acknowledgement of paternity

¹¹⁰ Richter L. (2005) "The importance of fathering for children", in L. Richter & R. Morrell (eds) *Baba: Men and fatherhood in South Africa*, 13-25.

¹¹¹ Desmond C & Desmond C (2006) "HIV/AIDS and the crisis of care for children", in Richter L & Morrell R, op.cit., 229.

¹¹² Richter L. (2005) "The importance of fathering for children" in Richter L & Morrell R, op.cit., 55-56.

¹¹³ Budlender D, Chobokoane N & Mpetsheni Y (2001) *A survey of time use: How South African women and men spend their time*, Pretoria: Statistics South Africa. Cited in Richter L & Morrell R, op. cit.

¹¹⁴ Richter L. (2005) "The importance of fathering for children" in Richter L & Morrell R, op.cit., 55-56.

¹¹⁵ Henry Kaiser Family Foundation (2002) *Hitting Home, How Households Cope with the Impact of the HIV/AIDS Epidemic. A Survey of Households Affected by HIV/AIDS in South Africa*, The Henry Kaiser Family Foundation, Social Surveys, Memory Box Project.

¹¹⁶ Montgomery CM, Hosegood V, Busza J & Timaeus IM (2006) "Men's involvement in the South African family: Engendering change in the AIDS era", *Social Science and Medicine*, 62, 2415.

- Men and the obligation to maintain children
- Men and parental rights
- Men as heirs.

Men and reproductive health

It is unsurprising that most men in South Africa are not actively involved in the reproductive health care with their partners and do not typically participate in contraception or antenatal care consultations with them. Most are also absent during labour and delivery¹¹⁷. This in turn decreases the likelihood that men will know how to provide emotional and practical **support** and it reduces the chances that men will learn of other health care services from which they might benefit. In the context of sexual and reproductive health, some analysts have argued that men are “the forgotten clients”¹¹⁸. Ultimately the lack of involvement of men in reproductive health sets the stage for reduced lifelong involvement of men in families’ lives and in their own reproductive health. Policy which acknowledges and encourages men’s involvement at this stage could thus be key in changing notions of men’s involvement in families.

South African policy has not developed far in this regard. The *Sterilisation Act 44 of 1998* recognises that both “women and men have the right to be informed of and to have access to safe, effective, affordable and acceptable methods of fertility regulation”.

The **Policy Guidelines for Youth and Adolescent Health (2001)** addresses sexual and reproductive health, being particularly concerned with preventing unwanted teenage pregnancy, providing safe termination of pregnancy, and prevention and treatment of sexually transmitted diseases. The purpose of policy guidelines is to guide policy developments at various levels. However the intervention strategies listed in the policy guidelines do not include specific reference to men and boys.

By contrast the **National Contraception Policy Guidelines (2003)**, which provide the policy framework for the provision and use of contraception, has reference to men in the foreword written by the Minister of Health: “For the first time this policy recognises the importance of involving men in this critical area.”¹¹⁹ The guidelines provide that curricula for service provider training and retraining should include: “Values clarification, anti-bias training and the development of client centred approaches of care, to help ensure that providers uphold clients’ rights, and provide services to all people, irrespective of age, race, sex, social status and disability, in a respectful, understanding, and non-judgemental manner.”¹²⁰

The **Maternal, Child and Women’s Health (MCWH) Committee Policy Proposals (1995)** stipulate that the goal for maternal, child and women’s health policy should be, *inter alia*, to “achieve optimal reproductive and sexual health (mental, physical and social) for all women and men across the life-span of individuals.” In the underlying philosophy statement, the policy acknowledges that “Men also have a particular role to play in women’s reproductive health because in many cultures they are the decision-makers and they control access to resource needed for health-care.”

¹¹⁷ Mullick S, Kunene B & Wanjiru M (2005) “Involving men in maternity care: Health service delivery issues”, *Agenda Special Focus*, 126.

¹¹⁸ Mehta M, Peacock D & Bernal L (2004) “Men As Partners: Lessons Learned from Engaging Men in Clinics and Communities”, in S Ruxton (ed) *Gender Equality and Men*, Oxford: Oxford.

¹¹⁹ *National Contraception Policy Guidelines (2003)*, page 1.

¹²⁰ *National Contraception Policy Guidelines (2003)*, page 29.

Men and acknowledgement of paternity

Policy in South Africa has increasingly recognised the desirability of including men as fathers, beginning with provisions for establishing paternity. By law, a notice of birth is given under the surname of either the father or the mother of the child concerned or the surnames of both the father and mother joined together as a double barrelled surname.¹²¹ A child of unmarried parents is still ordinarily registered under the surname of the mother, but at the joint request of the mother and of a person who acknowledges himself in writing to be the father of the child (and enters the prescribed particulars regarding himself upon the notice of birth in the presence of the relevant home affairs officials) the child can be registered under the surname of the person who has acknowledged himself as father.¹²² Acknowledgment of paternity does not imply the father's surname must be used, however. The mother's surname may still be used, by consent of the parents.¹²³

Men and the obligation to maintain their children

Acknowledgment of paternity is important because in South African law the biological father of a child, whether married or unmarried, has a duty by law to maintain his child in proportion to his means. This is a principle well established in South African common law and has not been altered legislatively and is indeed confirmed in the *Maintenance Act 99 of 1998*¹²⁴. Maintenance may be automatically deducted from a person's salary,¹²⁵ and any debt owing to them can be attached for payment of maintenance.¹²⁶ If maintenance is not paid, a magistrate can order seizure of property belonging to the person who is supposed to pay.¹²⁷ The *Maintenance Act* also provides for the criminalization of those persons who are under a duty to support another person, who fail to pay court-ordered maintenance.¹²⁸ Such a person is liable on conviction to imprisonment for up to one year or to a fine.¹²⁹ These provisions reflect many of the changes to maintenance law suggested by the South African Law Commission (via Issue Paper 5) in response to the high rate of default amongst those under a duty to pay maintenance (frequently men). In Umlazi, Durban, for example, only 7 000 out of 67 000 people ordered by the courts to pay maintenance complied in 2002.¹³⁰

While the changes to the law made by the 1998 Act have ameliorated some of the practical problems and provided for more means of collection of payments, this “underlying attitude “ has not been addressed in a comprehensive way:

“ ... Complaints range from the treatment, attitudes and facilities encountered at maintenance courts by persons wishing to lay complaints, to the seeming impunity with which persons manage to evade their legal duty to maintain their dependents, even where maintenance orders are in force. The underlying problem seems to be a social attitude that there is no responsibility upon persons to support their dependents, especially where children are brought up in single-parent households. The low measure of social disapproval with

¹²¹ Section 9(2) Births and Deaths Registration Act 51 of 1992, as amended by Births and Deaths Registration Amendment Act 1 of 2002.

¹²² Section 10(1) Births and Deaths Registration Act 51 of 1992, as amended.

¹²³ Section 10(2) Births and Deaths Registration Act 51 of 1992, as amended.

¹²⁴ Section 15 Maintenance Act 99 of 1998.

¹²⁵ Section 28 Maintenance Act 99 of 1998.

¹²⁶ Section 30 Maintenance Act 99 of 1998.

¹²⁷ Section 27 Maintenance Act 99 of 1998.

¹²⁸ Section 31 Maintenance Act 99 of 1998.

¹²⁹ Section 31 Maintenance Act 99 of 1998.

¹³⁰ Richter L & Morrell R (2006) *Baba: Men and Fatherhood in South Africa*, Cape Town: HSRC.

which a non-custodial parent's failure to support his or her children is met (especially if the non-custodial parent is the father) is indicative of this attitude. This attitude has pervaded not only society in general but also the administration of the maintenance system.”¹³¹

This system of maintenance developed during a period in which unmarried fathers had few rights in relation to their children and divorced fathers were usually denied custody of their children, reinforcing the notion of fathers as providers rather than carers.

Men and parental rights

However the law now expressly recognises unmarried fathers' rights (where these are in the best interests of the child) and custody is no longer awarded by default to the mother. These changes have been wrought over time, but have been crystallised in the *Children's Act 38 of 2005* which now provides that fathers who demonstrate involvement in their children's lives acquire full rights and responsibilities.¹³² Prior to this Act the law could be summed up as implying that unmarried fathers have responsibilities (in the form of maintenance obligations toward their children) but not rights.

At the same time the legislation now stipulates that married fathers of children, whether married to the mother of the child at the time of the child's conception, birth or after birth of the child, automatically have full rights and responsibilities in relation to the child. The law provides for parental right and responsibility agreements to be drawn up. On divorce the courts no longer award automatically award custody to a mother by default, but must make such decisions based on what is in the best interests of the child.¹³³ Most divorce orders now also provide for generous amounts of access to be exercised by a non-custodial parent, and joint custody has also become more common, as the best interests of the child is the guiding principle rather than parental rights.

Other policy also acknowledges the role of fathers as carers. An example is the **Guidelines for Early Childhood Development (ECD) Services (2006)** which reiterate provisions contained in the United Nations Convention on the Rights of the Child, in particular, that: “Both parents share responsibility for bringing up their children. They should always consider what is best for each child. Governments should help parents by providing services to support them.”¹³⁴ In Gauteng, programmatic implementation of policy has included the **Best Father Award**, which is a programme for children and their fathers run in partnership with ADAPT, and pursued as a pilot project in Alexandra.

Another example is the **Kangaroo Mother Care (KMC) Policy and Guidelines for the Western Cape Province (2003)**, which describes a policy intervention which encourages the role of fathers in caring for the low birth rate infant by providing that “support KMC givers, especially the father, should be involved in KMC training as early as possible, together with the mother, while the infant is still in the Neonatal Unit”.

Men as testators and heirs

Historically, laws of inheritance in South African have privileged men. The South African law of inheritance may be divided into testate (the deceased had a valid will at the time of death) and intestate (no will by the deceased) succession. Both the African customary law of intestate succession and the Roman Dutch law of intestate succession are subject to the Constitution. The African customary law of succession is marked by male domination. Women

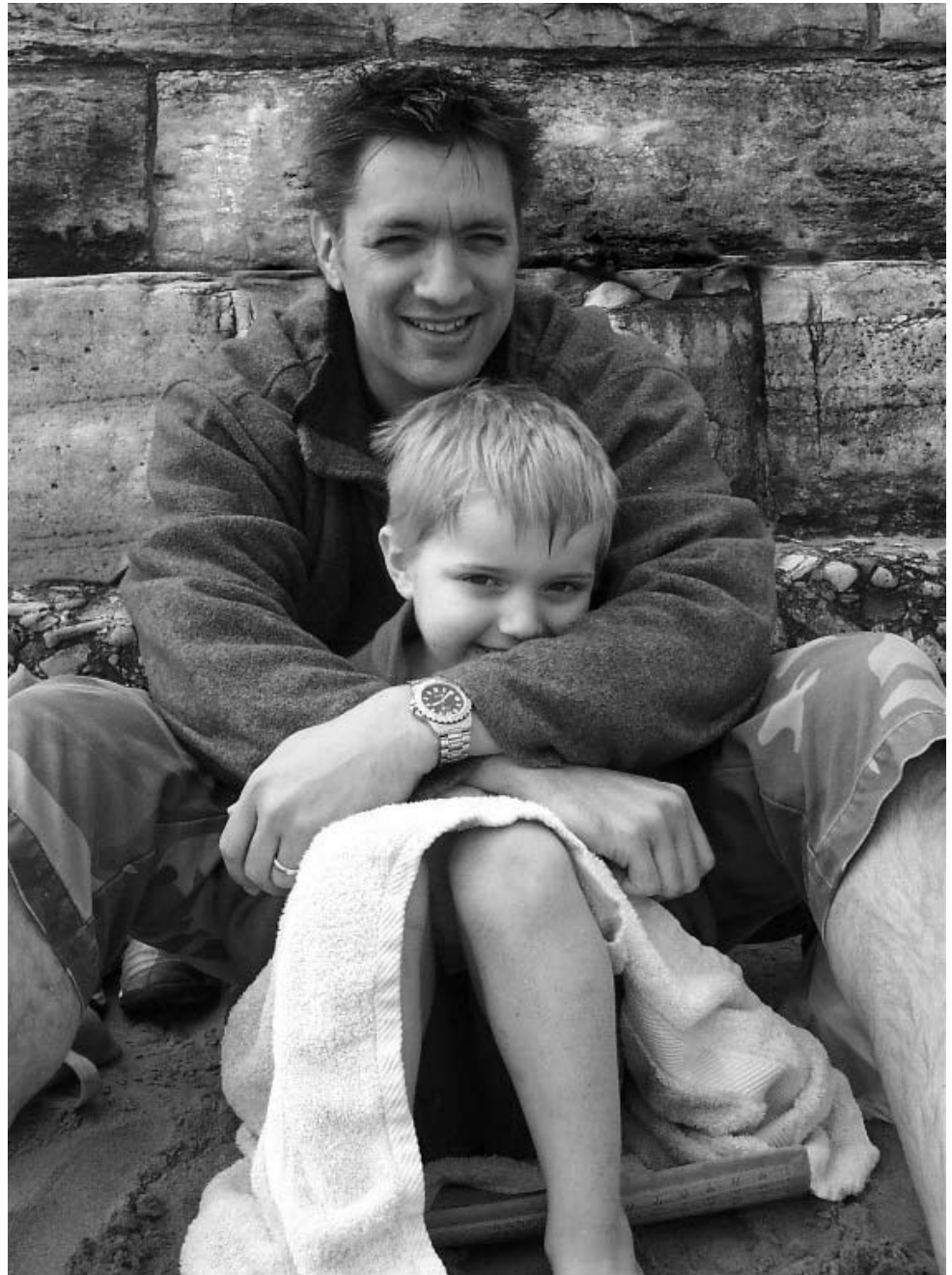
¹³¹ South African Law Commission, Issue Paper 5, Project 100, Review of the Maintenance System, 1997 paragraph 2.9

¹³² Section 21 Children's Act 38 of 2005.

¹³³ See *Madiehe (born Rathhogo) v Madiehe [1997] 2 All SA 153 (B)* for early case law on the point.

¹³⁴ Guidelines for Early Childhood Development (ECD) Services (2006), page 16.

traditionally do not participate in the intestate succession of the deceased's estate, save in relation to household personal property. Only a male who is related to the deceased through a male line, qualifies as an intestate heir. In October 2004, the Constitutional Court confirmed that this rule of male primogeniture as it applies in the African customary law of succession was unconstitutional, and upheld related constitutional challenges to section 23 of the *Black Administration Act 38* of 1927, and regulations promulgated in terms of that section and section 1(4)(b) of the *Intestate Succession Act 81* of 1987.¹³⁵ However nothing in the law prevents a testator from explicitly favouring his male descendants.



¹³⁵ *Bhe and Others v Magistrate, Khayelitsha and Others CCT49/03; Shibi v Sithole and Others CCT69/03; South African Human Rights Commission and Another v President of the Republic of South Africa and Another CCT50/03; CCT49/03; CCT69/03; CCT50/03.*



4. BOYS, MEN AND SCHOOLS

Schools, like families, are one of the primary arenas in which children are socialised and masculinities and femininities shaped. The **gender composition and hierarchy** of teaching staff also influences the gender perceptions of young people which is among the reasons why the teacher corps in South Africa has been subjected to demographic gender transformation designed to promote women into more senior positions. South African schools are a microcosm of South African society and within them are found violence, sexual abuse, HIV/AIDS, and gangs. However at the same time schools have long been a crucial site of social engineering and in the recent past, this has involved a series of gender interventions which include attempting to ensure that the content of educational materials does not reinforce gender stereotypes.

The first and foundational response of the post-apartheid state to gender issues in schools was the establishment by the Minister of Education of the **Gender Equity Task Team** (GETT) in 1996. The terms of reference of the Task Team were “to investigate and advise the Department of Education on the establishment of a permanent Gender Equity Unit in the Department.” The GETT recommended the establishment of a permanent Gender Equity Unit with the Department of Education in cooperation with the Provincial Departments of Education, through the Heads of Education Departments Committee (HEDCOM) the Gender Equity Unit, to advise the Director-General on all aspects of gender equity in the education system. In particular it was to:

- Report on imbalances in enrolments, dropouts, subject choice, career paths and performance
- Identify means of correcting gender imbalances
- Advise on the educational and social desirability and legal implications of single sex schools
- Propose guidelines to address sexism in curricula, textbooks, teaching and guidance
- Propose affirmative action strategies for increasing the representation of women in professional leadership and management positions, and for increasing the influence and authority of women leaders.
- Propose a strategy to counter and eliminate sexism, sexual harassment and gender violence throughout the education system.
- Develop close relations with the organized teaching profession, organized student bodies, the Education Labour Relations Council, national women’s organizations and other organizations whose cooperation would be essential in pursuing the aims of the unit.

In South Africa there is now the anomalous situation that schooling outcomes increasingly appear to favour girls rather than boys. Gender is also explicitly addressed in the curriculum. Despite these changes, constructions of masculinities and femininities in schools are complicit in the crime and violence experienced in schools, and a high rate of teenage sexual activity and pregnancy, and HIV (in girls).

Schooling outcomes by gender

Department of Education Gender Parity Index (GPI) shows a GPI in 2001 of 1.00 indicating that school-aged boys and girls have equal access to the school system.¹³⁶ Such data cannot however capture the different experiences of boys and girls in schools (see inter alia *crime and violence in schools* below) and among school going children of different race, class and demographic characteristics. Dissimilarities in outcomes for boys and girls now frequently favour girls, but the picture is complex. A smaller proportion of girls are enrolled in primary school compared to boys, yet by secondary school 90% of girls and only 81% of boys are enrolled¹³⁷ More girls write and pass their Senior Certificate Exam, but the percentage of boys passing is higher than the percentage of girls. Even though a smaller proportion of girls are enrolled in primary school, as indicated previously, more boys repeat both primary and secondary grades.¹³⁸ Furthermore, the number of girls entering higher education consistently (and increasingly) exceeds that of the number of boys.

REPLY:

The number of first-time entering, undergraduate students, in public higher-education institutions between 2000 and 2006 is provided in the table below.

Year	Female	%	Male	%	Total
2000	51 830	52.9	46 120	47.1	97 950
2001	58 613	53.9	50 132	46.1	108 745
2002	66 273	53.8	56 813	46.2	123 086
2003	69 803	53.7	60 135	46.3	129 938
2004	75 221	53.2	66 068	46.8	141 289
2005	71 177	54.1	60 301	45.9	131 478
2006 ^(A)	71 048	55.2	57 707	44.8	128 755

(A) The 2006 data is preliminary as it has yet to be audited.

Source: Minister of Education Parliamentary Reply¹³⁹ .

There is little doubt that educational attainment for girls has implications beyond education by closing the gender power differential between men and women, and this is manifest in the fact that education reduces women's and girls' risk of HIV infection, decreases the likelihood that women will engage in risky sexual behaviours, enhances their ability to discuss HIV with a partner, discuss condom use, and negotiate sex with a partner.^{140, 141, 142, 143}

However some suspicion has been voiced by the ruling party that the success of girls in

¹³⁶ Department of Education (2003) "Education Statistics in South Africa, At A Glance in 2001", June.

¹³⁷ Ibid.

¹³⁸ Unterhalter E (2005) "Gender equality and education in South Africa: Measurements, scores and strategies", in L Chisholm & J September (eds) *Gender Equity in South African Education 1994-2004. Conference Proceedings*, Cape Town: HSRC Press.

¹³⁹ Written reply to Parliamentary Question, National Assembly, Question 272, Internal Question Paper 28 /08/2007 (INTERNAL QUESTION PAPER 29-2007).

¹⁴⁰ Wolff B, Blanc AK & Gage AJ (2000) "Who decides? Women's status and negotiations of sex in Uganda", *Cult Health Sex* 2, 303-22.

¹⁴¹ Fylkesnes K, Musonda RM, Sichone M, Ndhlovu Z, Tembo F & Monze M (2001) "Declining HIV prevalence and risk behaviours in Zambia: Evidence from surveillance and population-based surveys", *AIDS* 15, 907-16.

¹⁴² Gregson S, Terceira N, Kakowa M, et al. (2002) "Study of bias in antenatal clinic HIV-1 surveillance data in a high contraceptive prevalence population in Sub-Saharan Africa", *AIDS*, 16, 643-52.

¹⁴³ Silveira MF, Beria JU, Horta BL, Tomasi E & Victora CG (2002) "Factors associated with risk behaviors for sexually transmitted disease/AIDS among urban Brazilian women: A population-based study", *Sexually Transmitted Disease*, 29, 536-41.

schools and their improved access to higher education, as an obvious manifestation of greater rights and opportunities for empowerment of women, is in itself implicated in the current wave of gender violence by men against women, fuelling a backlash of men resentful and lost in the creation of a new gender order.¹⁴⁴ This phenomenon is possible and has been identified in other countries, and it has been asserted that: “The scale of contemporary violence points to crisis tendencies ... in the modern gender order.”¹⁴⁵ However, there is no evidence that gender-based violence rates have increased in the country since 1994, which was the start of concerted policy efforts to empower women. Nonetheless it’s important to be aware that that achieving “gender equity by numbers” may have had unintended consequences, which further suggests that gender equity policy needs be accompanied by policy which seeks to re-shape constructions of masculinity and femininity in society. Policy has attempted to achieve this in schools via gender education in the National Curriculum.

Gender in the curriculum

The major policy response in explicitly shaping gender is the Curriculum which teachers must teach. The introduction of Curriculum 2005, and later, the Revised National Curriculum Statement, make explicit the need for eradicating gender stereotypes in teaching materials, classroom practice and school experience.¹⁴⁶

The current **National Curriculum Statement Policy Guidelines** (Life Orientation) (Grades 10 – 12), lists under learning outcome: personal well-being (Grade 10), describing the concepts ‘power’ and ‘power relations’ and their effect on relationships between and among genders, including power, power relations, masculinity, femininity and gender, stereotypical views of gender roles and responsibilities, influence of gender inequality on relationships and general well-being (e.g. sexual abuse, sexually transmitted infections including HIV and AIDS). The current **National Curriculum Statement Policy Guidelines** (Life Orientation) (Grades 10 – 12) has similar requirements. Unfortunately, many learners drop out of school before Grade 10 or have become established in sexual relationships before reaching this stage in their education. Thus it is argued that these important matters should be addressed in an earlier Grade.

The major challenge is for educators to implement policy and strive, in a gender-sensitive way, to reach the goals of the new Curriculum. In terms of the **South African Qualifications Act 55 of 1995** accredited tertiary institutions design their own approved courses for teacher training for life orientation so there is little control over their content. Given that teachers are a product of a society that is marked by deeply entrenched patriarchal attitudes, it seems unreasonable to expect teachers to be inherently able to teach gender-equity in the classroom without intervention to change their own gender attitudes. The problems are compounded by illness and low morale amongst many teachers. In 2003/4, resignations accounted for 53% of the teacher attrition rate.¹⁴⁷ Rates of absenteeism are rising and this is associated with high levels of HIV infection. Overall, 12.7% of all educators are HIV positive.¹⁴⁸ Furthermore teachers must operate in schools which reflect the broader climate of crime and violence in South Africa. Thus teachers’ ability to teach the curriculum, as well as the extent of the impact of such teaching, is likely to be limited.

¹⁴⁴ Umrabulo Special 51st National Conference Edition No. 16, August 2002, African National Congress, <http://www.anc.org.za/ancdocs/pubs/umrabulo/umrabulo16/target.html>, accessed 29 September 2008.

¹⁴⁵ Connell RW (2001) “The social organisation of masculinity” in S Whitehead & F Barrett (eds) *The masculinities reader*, Malden, MA: Polity Press.

¹⁴⁶ Morrell R (2005) *Gender equality in Secondary Schooling and FET colleges*, unpublished report.

¹⁴⁷ Mobile Task Team (MTT) (2005) *Teacher Attrition and Mortality in South Africa – A study into gross educator attrition rates and trends, including analysis of the causes of these by age and gender, in the public schools system in South Africa, 1997/8-2003/4*, Education Labour Relations Council, 14.

¹⁴⁸ HSRC (2005) “HIV prevalence among South African educators in public schools”, Fact Sheet 6

Crime and violence in schools

In June 2006 the Minister of Education reported that 702 children had been killed in South African schools in the preceding six months alone.¹⁴⁹ A report released by the South African Human Rights Commission on violence in schools confirms that “schools have become unsafe places for substantial numbers of learners.”¹⁵⁰ The report also suggested that the schools were the most likely place where children would become victims of crime including sexual violence, assault and robberies.

A study conducted to examine the prevalence of bullying among adolescents from Cape Town and Durban found 36.3% of students were affected by or involved in bullying, 8.2% as bullies, 19.3% as victims and 8.7% as bully-victims (those that are both bullied and bully others). Male students were most at risk of both perpetration and victimization, with younger boys more vulnerable to victimization.¹⁵¹

Sexual violence is another form of violence present in schools. There are many difficulties about trying to quantify sexual violence in schools.¹⁵² Human Rights Watch and the Medical Research Council have both documented extensive sexual abuse and harassment of girls by both teachers and other students, documenting cases of rape, assault, and sexual harassment of girls committed by both teachers and male students.^{153,154} Sexual violence in society generally is common and disproportionately affects young, black women of school-going age. This trend appears to be the case in the whole of the continent of Africa.¹⁵⁵

Unterhalter notes that “the high levels of sexual violence reported in schools is one feature of ways in which participation in education is not a simple process of enrolment and retention and passing exams. Sexual violence in school intersects with political and cultural forms of subordination.”¹⁵⁶

As a national policy response to crime and violence the Department of Education with the provincial departments has begun to establish a system of crime reporting in schools. The Hlayiseka – early warning system – is intended to enable school officials, learners and parents to report and manage incidents of crime and violence at schools. As the system is adopted in schools it will be their responsibility to keep a register of incidents and to provide the register to the respective provincial education department. The provincial education departments will keep a record of crimes committed at schools and use the records to facilitate the planning and organisation of interventions by the province, region or district.

Policy stipulates that school governing bodies have a duty to ensure safe schools in terms of the *South African Schools Act 84 of 1996*, consequently they are duty bound to have a plan in place to deal with any threat to safety.¹⁵⁷ According to Morrell, the most wide-reaching intervention has been the introduction of Codes of Conduct by schools. All schools are obliged to formulate codes of conduct and then to handle issues such as school discipline by referring to the code.¹⁵⁸

The **National regulations for safety measures at public schools**¹⁵⁹ appear to focus

¹⁴⁹ Parliamentary Question 352 Internal Question Paper 01-11-2006 (Internal Question Paper No. 37-2006).

¹⁵⁰ http://www.sahrc.org.za/sahrc_cms/downloads/Background%20Info_Violence_Schools.pdf.

¹⁵¹ Liang H, Flisher A & Lombard C (2007) “Bullying, violence, and risk behavior in South African school students”, *Journal of Child Abuse and Neglect*, 31, 2, 161-171.

¹⁵² Morrell R, *op. cit.*

¹⁵³ Human Rights Watch (2001) *Scared at School: Sexual Violence Against Girls in South African Schools*, New York: Human Rights Watch.

¹⁵⁴ Jewkes R, Levin J, Bradshaw D & Mbananga N (2002) “Rape of girls in South Africa”, *The Lancet*, 359, 319-320.

¹⁵⁵ Hallam R (1994) *Crimes without punishment: Sexual harassment and violence against female students in schools and universities in Africa*, London: African Rights.

¹⁵⁶ Unterhalter E (2005) “Gender Equality and Education in South Africa: Measurements, scores and strategies”, in L Chisholm & J September (eds) *Gender Equity in South African Education 1994-2004: Perspectives from Research, Government and Unions: Conference Proceedings*, Cape Town: HSRC Press.

¹⁵⁷ Section 8 Schools Act.

¹⁵⁸ Morrell R, *op. cit.*

¹⁵⁹ Government Notice 22754 12 October 2001.

on prohibiting dangerous objects and drugs on school premises, allowing searches, and requiring visitors to schools to identify themselves. The **National regulations relating to safety measures at independent schools** are almost identically worded.¹⁶⁰ Some provinces have their own security policies, for example the **KwaZulu-Natal Education Department Security Policy**.

There has been some emphasis on specialised training of teachers in dealing with sexual violence. The Gender Equity Directorate of the Department of Education has published a pamphlet on gender-based violence which provides advice and contact details. A **School-based Module on Managing Sexual Harassment and Gender-Based Violence** has also been developed. The Module is divided into 8 workshops covering aspects such as: gender violence and sexual harassment, homophobia, abuse of learners, school policy on sexual harassment, school management teams and sexual harassment, gender and HIV/AIDS, counseling and healing. The module was designed serve as a handbook for both learners and educators. The Module was sent out to schools in March 2002 but there is no evaluation of how extensive the rollout of this initiative has been nor how effective it has proved to be.

Morrell notes that while most of the measures taken in the education system have been designed to prevent violence rather than to assist victims, and while there is obvious good sense in the maxim 'prevention is better than cure', the lack of counseling services for victims is cause for concern.¹⁶¹

Policy has also responded to teachers who commit sexual violence and harassment in schools. The *Employment of Educators Act 76 of 1998* requires provincial departments of education to dismiss any educator found guilty of having a sexual relationship with a learner of the school where he or she is employed,¹⁶² while *South African Council for Educators (SACE) Act, No. 31 of 2000* directs the chief executive officer to remove the name of the educator from the register if the educator was found guilty of a breach of the code of professional ethics. The SACE code of professional ethics provides that "an educator: ... promotes gender equality .. refrains from any form of sexual harassment (physical or otherwise of learners) ... does not abuse the position he or she holds for financial, political or personal gain .."¹⁶³

The South African Council for Educators (SACE) reports that for the period 2005 to 2007 there were twenty cases involving unprofessional conduct towards learners. Sixteen cases related to unprofessional sexual conduct towards learners, and all were found guilty and dismissed. In four cases the educators were found guilty of assault, and two were dismissed while the other two were fined and continue to be in the employ of their respective provincial education department.¹⁶⁴ These measures should be seen in perspective. There are over 300 000 teachers in South Africa. What evidence is available suggests that sexual liaisons are fairly common though no national survey exists to quantify the exact extent of this phenomenon. In reality, very few teachers are brought to book which suggests that there is widespread tolerance for teachers having relationships with students and a reluctance to proceed with disciplinary action against them.

¹⁶⁰ *Government Gazette* 26663 20 August 2004.

¹⁶¹ Morrell R, *op cit*.

¹⁶² *The Employment of Educators Act, No. 76 of 1998 via the Education Amendment Act of 2000. "Section 17. Serious misconduct.—(1) An educator must be dismissed if he or she is found guilty of— (a) theft, bribery, fraud or an act of corruption in regard to examinations or promotional reports; (b) committing an act of sexual assault on a learner, student or other employee; (c) having a sexual relationship with a learner of the school where he or she is employed; (d) seriously assaulting, with the intention to cause grievous bodily harm to, a learner, student or other employee; (e) illegal possession of an intoxicating, illegal or stupefying substance; or (f) causing a learner or a student to perform any of the acts contemplated in paragraphs (a) to (e).*

¹⁶³ Article 3, SACE Code of Professional Ethics.

¹⁶⁴ *Parliamentary Question 663, Internal Question Paper 09/05/2008 (Internal Question Paper 12-2008).*

Teen sexual activity and pregnancy

Adolescence now and historically has been seen as a time of sexual experimentation (and practice) for both men and women. The median age for sexual debut for South African male and female youths is 17,¹⁶⁵ while 28% of females aged 15 to 19 reported more than one sexual partner in the last year, 45.2% of male youths the same. In a large study conducted to examine knowledge of sexual risks amongst adolescents, 49% of nearly 18,500 learners from across South Africa indicated that they were sexually experienced. Half indicated that they had used a condom during their last sexual experience.¹⁶⁶

These trends are reflected in the high rate of teen pregnancy in South Africa. The national percentage for women aged 15-19 who have ever been pregnant is 27%.¹⁶⁷ In a study using 2001 data from KwaZulu-Natal found that 32% of 14–19-year-olds who had ever been pregnant were currently attending school.¹⁶⁸ In several qualitative studies, it was also found that girls who had dropped out of school due to pregnancy were less likely to return to complete their matriculation.¹⁶⁹ At the same time women often get pregnant after they have started failing at school and after they have dropped out of school – achieving school girls are much less likely to have a pregnancy and to carry it to term.¹⁷⁰

There have been several policies with explicit focus on teen pregnancy, but these do not focus on male partners' role. This may be because they are frequently much older than their teenage female partners, and thus not in school or may reflect an inclination to see pregnancy (and infants) as the responsibility of women and mothers alone. The *Health Policy Guidelines for Youth and Adolescent Health (2001)* address sexual and reproductive health are particularly concerned with preventing unwanted teenage pregnancy, providing safe termination of pregnancy, and prevention and treatment of sexually transmitted diseases.

However **Draft Guidelines for the Prevention and Management of Learner Pregnancy in Public Schools** published in April 2006 by the National Department of Education are very conservative in tone and focus on encouraging abstinence in learners under the age of 16 and ensuring that pregnant learners are not expelled or discriminated against and receive adequate care and support. The prevention component of the guidelines states that “pregnancy preventative programmes, emphasising abstinence, such as contained in the Life Orientation Learning Area and HIV and AIDS programmes should be in place in schools”. In 2007 the Department published the **Measures for the Prevention and Management of Learner Pregnancy**, repeating the approaches contained in the 2006 draft.

HIV in schools

A study on the impact of caring provided by teachers to their students due to AIDS indicates that “teachers in schools with the least resources are frequently those required to provide the

¹⁶⁵ Shisana O, Rehle T, Simbayi LC, Parker W, Zuma K, Bhana A, Connolly C, Jooste S, Pillay V et al. (2005) *South African National HIV Prevalence, HIV Incidence, Behaviour and Communication Survey, 2005*, Cape Town: HSRC Press, 1-156.

¹⁶⁶ Kushlick A & Rapholo G (1998) *Baseline survey into HIV/AIDS knowledge, attitudes and related life skills*. Researched for the National Life Skills Task Team, Braamfontein: Community Agency for Social Enquiry.

¹⁶⁷ Department of Health (2004) *The 2003 South African Demographic & Health Survey*, Retrieved from <http://www.doh.gov.za/facts/sadhs-f.html>

¹⁶⁸ Hallman K & Grant M (2003) “Disadvantages and youth schooling, work, and childbearing in South Africa,” Paper presented at the Annual Meeting of the Population Association of America, Minneapolis, 1–3 May.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

most demanding forms of support and care to learners” and points out that in the schools they studied, “the work of caring does not seem to be confined to women teachers. Male teachers, in our study, do emotional work”. They argue, “...the state provides neither adequate staff to deal with the challenge of care, nor the training necessary to support teachers who find themselves at the frontline”. The authors insist that “much more recognition must be given to teachers for providing care...in schools” and call for “professional counsellors to be employed in each school”¹⁷¹.

The National Education Department published **The HIV/AIDS Emergency. Guidelines for Educators** in 2000, which encourages condom use and availability in schools and encourages educators to talk to learners about sexuality. The guidelines however underline that “male educators have a particular responsibility to end the practice of demanding sex with female educators or learners”.



171 Bhana D, Morrell R, Epstein D & Moletsane (2006) “The hidden work of caring: teachers and maturing AIDS epidemic in diverse secondary schools in Durban”, *Journal of Education*, 38.



5. MEN AT WORK

Employment trends remain highly gendered. Women have a larger share of formal employment in the SA labour market but men are still better paid and still are more likely to be employed than women.¹⁷² While gender equality has made strides in the tertiary sector, men tend to be employed in sectors requiring dangerous work, often away from home (such as mining and construction) while women tend to dominate in employment such as domestic work in private households (see table below¹⁷³). This has gendered implications for, amongst other issues, occupational health.

Table 6: Changes in employment by sector and gender, 1995 and 2005

	1995			2005			Average annual growth rates		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
	'000s	'000s	'000s	'000s	'000s	'000s	%	%	%
Primary Sectors	1 400	277	1 677	996	340	1 336	-3.3	2.1	- 2.2
	83.5 %	16.5%	100.0%	74.6%	25.4%	100.0%			
Agriculture	978	258	1 236	608	317	925	- 4.6	2.1*	- 2.9
	79.1%	20.9%	100.0%	65.7%	34.2%	100.0%			
Mining and Quarrying	422	19	441	388	23	411	- 0.8	1.9*	- 0.7*
	95.7%	4.3%	100.0%	94.4%	5.6%	100.0%			
Secondary Sectors	1 467	499	1 968	2 047	694	2 741	3.4	3.3	3.4
	74.5%	25.4%	100.0%	74.7%	25.3%	100.0%			
Manufacturing	976	461	1 437	1 113	593	1 707	1.3*	2.6*	1.7*
	67.9%	32.1%	100.0%	65.2%	34.8%	100.0%			
Utilities	74	10	85	77	23	100	0.3*	8.8*	1.6*
	87.1%	11.8%	100.0%	76.8%	23.2%	100.0%			
Construction	417	28	446	858	77	935	7.5	10.7	7.7
	93.5%	6.3%	100.0%	91.7%	8.2%	100.0%			
Tertiary Sectors	2 823	2 876	5 700	3 990	4 202	8 195	3.5	3.9	3.7
	49.5%	50.5%	100.0%	48.7%	51.3%	100.0%			
Wholesale and Retail Trade	920	748	1 668	1 543	1 480	3 024	5.3	7.1	6.1
	55.2%	44.8%	100.0%	51.0%	48.9%	100.0%			
Transport, Storage and Communication	406	71	477	491	125	616	1.9*	5.8	2.6*
	85.1%	14.9%	100.0%	79.7%	20.3%	100.0%			
Financial and Business Services	318	262	581	739	556	1 296	8.8	7.8	8.4
	54.7%	45.1%	100.0%	57.0%	42.9%	100.0%			
Community, Social and Personal Services	1 080	1 095	2 175	1 000	1 192	2 192	- 0.8*	0.8*	0.1*
	49.7%	50.3%	100.0%	45.6%	54.4%	100.0%			
Private Households	99	700	799	217	850	1 067	8.2	2.0	2.9
	12.4%	87.6%	100.0%	20.4%	79.6%	100.0%			
Total	5 798	3 717	9 515	7 055	5 242	12 301	2.0	3.5	2.6
	60.9%	39.1%	100.0%	57.4%	42.6%	100.0%			

Source: OHS 1995, LFS 2005:2 (Statistics SA)

Notes: Other and unspecified categories have been omitted from the table

* Not significant at the 5% level.

¹⁷² Posel D & Casale D (2002) "The continued feminisation of the labour force in South Africa: An analysis of recent data and trends", *SA Journal of Economics*, 70, 156-184; Casale D & Posel D (2005) "Women and the economy: How far have we come?", *Agenda*, 64, 21-29.

¹⁷³ Table reproduced from "Women in the South African Labour Market 1995-2005", Department of Labour. Retrieved from <http://www.labour.gov.za/documents/useful-documents/labour-market-research-and-statistics/labour-market-research-women-in-the-south-african-labour-market-1995-2005>

Men and occupational health

Worldwide, men are over-represented in nearly all forms of injury. This is related both to their gender and their class position. There is a notable intersection between the gendered division of labour and occupational risk of injury that is exemplified in relation to men and road traffic accidents (truck drivers, taxi drivers), men and falls (construction industry), and men and other accidents at work (the more serious injuries happen in more industrial settings). Masculinity has been equated with a willingness to do the dangerous jobs that 'lesser' men would be afraid of doing, and this often operates together with the forces of class and location.¹⁷⁴ Policy which encourages both men and women to engage in all occupations is important in removing employment barriers for women, as well as reducing the extent to which gender segregation in employment reinforces damaging notions of gender. In South Africa men are clearly over-represented in employment sectors where injury and disease are likely e.g. construction and mining. (see table above.) Mining in particular, which is 95% dominated by men, is a particularly risky occupation, encompassing disease risk (silicosis, tuberculosis) as well as high risk of injury. These trends reinforce notions of men's lives as more dispensable. Policy which seeks to ensure the safety of all employees and reduce deaths and injuries ensures that all lives are valued equally.

There are two broad types of types of occupational health and safety legislation and policy in South Africa. Occupational health legislation establishes procedures, structures and standards to protect workers from injury and diseases at work (*Occupational Health and Safety Act 85 of 1993 (OHS)*), and generally seeks to prevent injury and ill health. Compensation legislation (*the Compensation for Occupational Injuries and Diseases Act 130 of 1993*) by contrast comes into effect when prevention fails and workers are injured or suffer from occupational diseases.

¹⁷⁴ WHO (2002) *World Report on Violence and Health*, Geneva: World Health Organization.

Men, work and family responsibility

Constructions of masculinity and femininity in South Africa encourage women to be primary caregivers of children – even if they are employed – and men to be providers. Employment law entrenches those norms. While the law does now provide for some acknowledgment that men too have rights and responsibility to family in terms of “family responsibility leave”, only women appear to be eligible for maternity leave of up to four months, prior to, during and post-birth.¹⁷⁵

The *Basic Conditions of Employment Act 75 of 1997* provides for “family responsibility leave”¹⁷⁶ of three days paid leave per year which applies to an employee who has been in employment with an employer for longer than four months and who works for at least four days a week for that employer. The employee is entitled to leave when their child is born, sick,, or in the event of the death of their spouse or life partner, or parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling. An employer must pay an employee for family responsibility leave. The Act provides by contrast that women are entitled to four month’s unpaid maternity leave, with maternity benefits payable by the state to those who are contributors to the Unemployment Insurance Fund (UIF) under the *Unemployment Insurance Act 63 of 2001*.¹⁷⁷ This entrenches notions of women as primary caregivers and risks marginalising efforts to increase men’s involvement in care work.

¹⁷⁵ Section 25 *Basic Conditions of Employment Act 75 of 1997*.

¹⁷⁶ Section 27 *Basic Conditions of Employment Act 75 of 1997*.

¹⁷⁷ Section 24 *Unemployment Insurance Act 63 of 2001*.



6. MEN AND RISK: ALCOHOL AND SUBSTANCE ABUSE

Patterns of drinking are embedded in the social, cultural and gender relations of a given society. Whilst in African traditional society both men and women drink alcohol, a competing Christian-influenced value system has constructed drinking as socially acceptable primarily for men. In some parts of society, alcohol use has taken on a symbolic role as a marker of gender difference, most notably in the male dominated spaces of bars and shebeens. Alcohol consumption has long been used by men as a way of expressing masculinity. Consequently, today men are likely to drink more heavily than women and more likely to be habitual heavy drinkers according to the 2002 World Health Report.¹⁷⁸

Alcohol consumption is in turn a further risk factor for gender-based violence and for the sexual disinhibition that contributes to the spread of HIV/AIDS.¹⁷⁹ In a study of women abused by their spouses, 69% identified alcohol/drug abuse as the main cause of conflict leading to the abuse.¹⁸⁰ Studies in South Africa have drawn a correlation between alcohol consumption and unprotected casual sex particularly in spaces associated with alcohol consumption such as shebeens or taverns.¹⁸¹ A qualitative study by Morajele et al. in taverns and bars in Gauteng suggests a relationship between the use of alcohol and risky sex, especially among casual sexual partners.¹⁸² Studies show that adolescents who do consume alcohol are more prone to “violence, vehicular accidents, uncontrolled sexual behavior and its consequences and drinking to stupor/coma.”¹⁸³

Furthermore, men’s vulnerability to chronic disease is significantly worsened by their level of alcohol and tobacco consumption. In most societies, both smoking and drinking are heavily gendered behaviours, as is evident from the messages about and images of masculinity that are used to market alcohol and tobacco. More than 25 per cent of all South African men currently smoke. Smoking alone may account for more than 30 per cent of deaths as a result of coronary heart disease. In South Africa, 40 per cent of men and 15 per cent of women consume alcohol.¹⁸⁴ This widespread alcohol consumption is rising, especially in the adolescent community.¹⁸⁵

¹⁷⁸ WHO (2002) *World Health Report 2002*, Geneva: World Health Organization.

¹⁷⁹ Shisana O & Simbayi L (2002) *Nelson Mandela/HSRC study of HIV/AIDS: South African national HIV prevalence, behavioral risks, and mass media household survey 2002*. Cape Town: Human Sciences Research Council.

¹⁸⁰ WHO, “Global Alcohol Consumption”, http://www.who.int/substance_abuse/publications/en/GlobalAlcoholafro.pdf accessed 2 November, 2007.

¹⁸¹ CADRE (2007) *Concurrent Sexual Partnerships Amongst Young Adults in South Africa: Challenges for HIV prevention communication*, Johannesburg: CADRE.

¹⁸² Morajele NK, Kachieng’a MA, Mokoko E, Nkoko MA, Parry CDH, Nkowane AM, Moshia KM & Saxena S (2006) “Alcohol use and sexual behaviour among risky drinkers and bar and shebeen patrons in Gauteng province, South Africa”, *Social Science and Medicine*, 62, 2006a, 217-227.

¹⁸³ Odejide AO (2006) “Status of Drug Use/Abuse in Africa: A Review”, *International Journal of Mental Health Addiction*, 4, 91.

¹⁸⁴ Shisana O, Rehle T, Simbayi LC, Parker W, Zuma K, Bhana A, Connolly C, Jooste S, Pillay V et al. (2005) *South African National HIV Prevalence, HIV Incidence, Behaviour and Communication Survey, 2005*, Cape Town: HSRC Press.

¹⁸⁵ Parry CDH, Myers B, Morajele NK, Flisher AJ, Bhana A, Donson H & Plüddemann A (2004) “Trends in adolescent alcohol and other drug use: findings from three sentinel sites in South Africa (1997-2001)”, *Journal of Adolescence*, 27, 4, 429-440.

Alcohol policy

Current policy responses to alcohol use focus on controlling, regulating and disincentivising the use of alcohol and treating alcohol abuse. The Department of Health's Mental Health & Substance Abuse Committee Report (1995) recommended the establishment of an inter-sectoral structure to facilitate co-operation between health and welfare sectors in the substance abuse area and the re-establishment of the Drug Advisory Board. At the same time the Department of Health's report 'Towards a national health system' (1995) provided guiding principles for policy formulation in the mental health and substance abuse area.

The Road Traffic Amendment Act 21 of 1998 makes provision for the mandatory testing of vehicle drivers for drugs including alcohol. The legally acceptable blood alcohol level has been reduced from 80 mg to 50 mg of alcohol per 100 ml of blood. Despite this strict regulation there is widespread tolerance for drinking and driving in South Africa. The Administrative Adjudication of Road Traffic Offences Act 46 of 1998 provides for a demerit system in terms of which those guilty of various road offences including driving under the influence accumulate points toward the ultimate loss of their drivers' licences. The system was introduced in the local government areas of Tshwane (Pretoria) and Johannesburg only in early 2008 and it remains to be seen whether it will have any impact, given that unlicensed driving is not uncommon in South Africa.

The Department of Welfare's National Drug Master Plan (1999) was formulated by a committee on which the Department of Health served. The plan recommends a broad strategy for integrating the efforts of various government departments and civil society in addressing substance abuse is set forth and identifies the following as priorities: crime, youth, community health and welfare, research and information dissemination, international involvement, and communication.

A Central Drug Authority (CDA) comprising both governmental appointees and experts from the non-governmental sector was established in 2000, in terms of the Prevention and Treatment of Drug Dependency Act 20 of 1992 (as amended in 1999), whose duty it is to give effect to the National Drug Master Plan, as adopted by Cabinet. The CDA must review the plan every five years, amend and submit it for approval to Cabinet where necessary. The current National Drug Master Plan 2006 – 2011 seeks to introduce measures to

- reduce the demand for alcohol, tobacco and other drugs
- reduce the social health and economic costs associated with substance abuse in South African society
- reduce substance abuse-related mortality and morbidity
- improve access to substance abuse information and effective interventions including treatment
- reduce the supply of illicit substances (and unregulated alcohol and tobacco).

In particular the plan recommends community-based prevention of substance abuse programmes which focus both on supply and demand. Specific interventions by sector departments include, for example, in Education, implementing the Policy Framework on the Management of Drug Abuse in all Public Schools and Further Education and Training Institutions, which provides that substance abuse should form part of the Life Orientation Curriculum. The Plan also makes provision for the establishment of provincial substance abuse forum and Local Drug Action Committees (LDAC).

Another strategy used by the government to control the use of alcohol and indirectly raise

revenue to meet some of the social costs associated with alcohol use is that of excise taxes on alcohol products (Customs and Excise Act 91 of 1964). Currently (2007-8) there is a total tax burden (excise duty plus VAT) of 23 percent, 33 percent, and 43 percent, respectively, on wine products, malt beer and spirits.

Regulation of outlets selling alcohol to the public remains the key form of regulatory control by government. The Liquor Act 53 of 1989 was replaced by the Liquor Act 59 of 2003 (commenced August 2004) which establishes the National Liquor Authority and regulates the manufacture and distribution of alcohol and prohibits the sale of alcohol to a minor. The 1989 Liquor Act provisions relating to licensing remain in effect in those provinces that have not yet enacted and promulgated their provincial legislation. Similar aims are clear in other provincial legislation. However, only Gauteng and Eastern Cape provinces have promulgated their provincial legislations. The 1989 Act remains in force in all the other provinces in respect of the regulation of micro manufacturing and retail sale of liquor and methylated spirits.

Tobacco policy

Profound legislative changes have occurred since 1994 in relation to tobacco, in contrast to the comparatively more tolerant legislative attitude to alcohol. Amendments¹⁸⁶ to the *Tobacco Products Control Act 83 of 1993* have resulted *inter alia* in the prohibition and restriction of smoking in public places, the prohibition of the advertising and promotion of tobacco products; the prohibition of advertising and promotion of tobacco products in relation to sponsored events, and the prohibition of the free distribution of tobacco products and the receipt of gifts or cash prizes in contests, lotteries or games. Excise taxes on tobacco products (*Customs and Excise Act 91 of 1964*) are also applicable.

These twin strategies of strict tobacco control legislation and rapidly increasing excise taxes has been remarkably successful. As van Walbeek notes.¹⁸⁷

'Between the early 1990s and 2004 aggregate cigarette consumption in South Africa decreased by more than a third and per capita cigarette consumption decreased by about half. Smoking prevalence decreased from 32 per cent in 1993 to 24 per cent in 2003. The average number of cigarettes smoked by smokers decreased from 229 packs in 1993 to 163 packs in 2003. Africans, males, young adults and poorer people experienced the most rapid decreases in smoking prevalence, while the decrease was less pronounced among whites, females, and older and more affluent people.'

¹⁸⁶ In particular the Tobacco Products Control Amendment Act 12 of 1999.

¹⁸⁷ Van Walbeek C (2005) 'The Economics of Tobacco Control in South Africa', Doctoral thesis, Department of Economics, University of Cape Town.



7. MEN, CRIME AND PUNISHMENT

Constructions of masculinity in South Africa and elsewhere frequently encourage the taking of risks, which may include the risk of breaking the law. Indeed for many men growing up in gang communities, “doing time” is itself a rite of passage to manhood (see *Gangs and organised crime* above). Some gender experts have decried the failure of a “gender blind criminology” to “understand how boys’ and men’s pursuit of masculinity is implicated in their involvement with crime.”¹⁸⁸ Ironically punishments meted out to boys and men – such as corporal punishment and incarceration – may serve to exacerbate rather than reform the notions of masculinity underpinning the criminality of such offenders. In South Africa penal policy is focussed almost entirely on long sentences for serious offenders, leaving less serious offences unaddressed. While policy mentions alternative sentencing, restorative justice and rehabilitation, the beginnings of the widespread implementation of such wider ranging policy is only just beginning for children, while policy in relation to adults is stagnant.

Corporal punishment

South Africa has a long history of corporal punishment of boys, in the form of corporal punishment in the home, and schools as well as the courts. Corporal punishment of children has been linked to adult violence.¹⁸⁹ The high incidence of corporal punishment of children in South Africa is cause for concern.¹⁹⁰ A 2004 Save the Children qualitative research involving 410 boys and girls aged 6-18 years from four provinces in South Africa found that children of all ages and income categories experienced corporal punishment both at home and in school.¹⁹¹

The first national survey of attitudes to child rearing and the use of corporal punishment by caregivers was undertaken in 2003, as part of the South African Social Attitude Survey (SASAS), and out of a representative sample of 2,497, some 952 parents with children were surveyed specifically on corporal punishment. More than half (57%) of parents reported using corporal punishment, most commonly on children aged 3 years, with 33% using severe corporal punishment (beating with a belt or stick), most commonly on 4-year-olds. Of those who had smacked their children in the past year, 30% were men and 70% were women, with fewer younger than older parents using corporal punishment. The study concluded that the strongest predictor of severe corporal punishment was an attitude supportive of the use of physical punishment.¹⁹²

Legislation has now outlawed all corporal punishment save for that carried out in the home. Corporal punishment by the state as a punishment is in conflict with the constitutional rights and the Constitutional Court declared juvenile whipping to be unconstitutional in June 1995, while *The Abolition of Corporal Punishment Act 33 of 1997* repealed all legislation that authorised the imposition of corporal punishment by courts, including courts convened by traditional leaders. The **Regulations Promulgated under the Child Care Act 74 of 1983**

¹⁸⁸ Sabo D, Kupers TA & London W (2001) *Prison Masculinities*, Philadelphia: Temple University Press.

¹⁸⁹ Strauss MA (1996) “Spanking and the Making of a Violent Society,” *Pediatrics*, 98, 4, October, 837-842.

¹⁹⁰ Pete SA (1994) “Spare the rod and spoil the nation?: Trends in corporal punishment abroad and its place in the new South Africa,” *South African Journal of Criminal Justice*, 7, 3, 295-306.

¹⁹¹ Clacherty G, Donald D & Clacherty A (2005) *South African Children’s Experiences of Corporal Punishment*, Pretoria: Save the Children Sweden.

¹⁹² Dawes A et al. (2004) *Partner violence, attitudes to child discipline & the use of corporal punishment: A South African national survey*, Cape Town: Child Youth & Family Development, Human Sciences Research Council.

were amended during 1998 to prohibit corporal punishment of children in the residential care system. The regulations also prohibit foster parents from using physical punishment upon children in their care.

In schools and educational institutions the *National Education Policy Act 27 of 1996* outlawed corporal punishment in educational institutions, the *Adult Basic Education and Training Act 52 of 2000* made corporal punishment a disciplinary offence in adult education centres the *Further Education and Training Act 16 of 2006* has a similar provision for tertiary institutions), while the *South African Schools Act 84 of 1996* made its administration in schools a criminal offence punishable by the same sentences applied for assault. However in practice corporal punishment persists in schools.¹⁹³

Attempts by government to outlaw corporal punishment in the home via the *Children's Amendment Bill (B19B-2006)* met with strong public resistance, possibly due to the widespread nature of its use and the belief in its efficacy. The provision was subsequently withdrawn from the Bill in late 2007. These public attitudes probably account for its persistence in educational institutions despite its abolition in law.

Incarceration

In the United States it has been argued that the prison system does “little to stop, correct, or help those imprisoned” but instead “reproduces destructive forms of masculinity ... and ... exacerbates class, race and gender antagonisms, thereby creating more toxic confrontations between elite males and lesser status males and females” inside and outside of prisons.¹⁹⁴ “Prison is a rare homo-social setting in which hegemonic masculinity is reproduced in conjunction with, and against, subordinated masculinities.”¹⁹⁵ The same can be argued in South Africa. Indeed the phenomenon of South African inmates reproducing and exaggerating the gendered society outside creating a “heterosexual diad”. New inmates in particular are at risk of being treated as “feminine” which exposes them either to rape or to consensual “wife” relationships and thus subordinate and vulnerable positions within prison.¹⁹⁶

The enforced hyper-masculinity of the prison system is not only counterproductive in the rehabilitation of prisoners, but with the eventual release of prisoners back into the community this prison culture is released back upon society. Indeed Australian commentators have also noted that “the functioning of prisons may be actively and significantly counterproductive to their proclaimed task—the reduction of crime”.¹⁹⁷

South Africa has 237 prisons and currently has the ninth largest prison population in the world. As of 2008, South Africa has over 160 000 prisoners in prisons and a further estimated 50 000 in police cells. The occupation rate in prisons is at an average of approximately 140 per cent.¹⁹⁸ Men make up nearly 98 per cent of the incarcerated population.¹⁹⁹ High levels of overcrowding reduce the ability of prisons to practice rehabilitative work, or to control prison rape and other phenomena with their roots in masculinity. Consequently the ability of prisons to engage positively with men in prison is severely compromised.

Yet policy still attempts to do so. The *White Paper on Corrections in South Africa (2005)*

¹⁹³ Morrell R (2001) “Corporal Punishment and Masculinity in South African Schools”, *Men and Masculinities*, 4, 2, 140-157; Morrell R (2001) “Corporal Punishment in South African Schools: a neglected explanation for its persistence”, *South African Journal of Education*, 21, 4, 292-299; Porteus K, Vally S & Ruth T (2001) *Alternatives to corporal punishment: Growing discipline and respect in our classrooms*, Sandown: Heinemann.

¹⁹⁴ Sabo D et al., *op. cit.*

¹⁹⁵ Davies K (2002) “Book Review of *Prison Masculinities*” (by Don Sabo, Terry A. Kupers, Willie London), *Gender in Society*, 16, 6, 960-962, Sage Publications, Inc.

¹⁹⁶ Gear S & Ngubeni K (2002) *Daai Ding: Sex, Sexual Violence and Coercion in Men's Prisons (Johannesburg, Centre for the Study of Violence and Reconciliation; Gear S (2007) “Behind the bars of masculinity: Disappearing victims, disqualifying desire and prefiguring perpetrators in South African men's prisons”, *Sexualities*, 10, 2.*

¹⁹⁷ Seymour K (2003) “Imprisoning Masculinity”, *Sexuality and Culture*, 7, 4 / December 2003, Springer, New York.

¹⁹⁸ South African Department of Correctional Services Basic Information (2008) “Incarceration Levels”, available on <http://www.dcs.gov.za/WebStatistics/> accessed 2008.

¹⁹⁹ South African Department of Correctional Services Basic Information (2007) “Inmates Gender Breakdown”, available on <http://www.dcs.gov.za/WebStatistics> accessed 2007.

is focussed on rehabilitation and restorative justice. In terms of this policy Department of Correctional Services (DCS) personnel currently present restorative justice programmes at about 20 prisons –and have identified 36 correctional centres that will be used as centres of excellence to create an opportunity for the accelerated expansion of restorative justice programmes within DCS.²⁰⁰ Pressure of numbers on DCS has led to DCS proposing the *Correctional Services Amendment Bill 32 of 2007*, which *inter alia* seeks to limit sentencing plans (programmes for rehabilitation) to those sentenced to more than two years' imprisonment.

Current levels of overcrowding and understaffing, coupled with an increase in the number of long sentences (see below), are impeding the ability of DCS to implement the vision of the legislation and the White Paper. This suggests that alternatives to incarceration are urgently required in South Africa, alongside the challenge of making prisons more humane. Unfortunately South African sentencing policy is currently chiefly promoting long prison terms.

Sentencing

The Criminal Law Sentencing Amendment Act 105 of 1997 provides for lengthy incarceration penalties for sexual offences and other crimes of violence. The Act prescribes life imprisonment for aggravated murder and rape where the perpetrator is HIV-positive, disabled or under the age of 16, and ten years' imprisonment for other kinds of rape unless the court finds substantial and compelling circumstances justifying a deviation.

Research has shown that the legislation has raised the average sentence for rape from 2-3 years to 7 years²⁰¹ and the number of persons sentenced to life imprisonment in prison reached 8489 by August 2008, up from 443 in 1995.²⁰² There is no evidence that the change in sentencing has had any effect on rates of rape (reported rape remains constant) and the conviction rate for reported rape has declined. Some of the identified reasons for this trend are an increased tendency among accused to plead “not guilty” in view of the severe penalties, an increased unwillingness among some officials to pursue cases which they perceive to be “not real rape” worthy of lengthy sentences, and, sometimes, an unwillingness on the part of the rape survivor herself to contemplate “being responsible” for sending the rapist, often a partner, friend, or family member, to prison for extended periods.²⁰³

The legislation has reinforced the widespread imposition of lengthy periods of incarceration for all offenders encouraged by the increase in the sentencing jurisdiction of the regional courts from ten years to 15 years for all offences via the Magistrates Amendment Act 66 of 1998 and in late 2007 via the Criminal Law (Sentencing) Amendment Act 38 of 2007 to life imprisonment for minimum sentencing offences. The policy reliance on long sentences ignores the inevitable consequences of prison overcrowding, which in turn leads to worsened prospects for rehabilitation, and more frequent early releases. Less obvious consequences have been an increased burden on the criminal justice system and a reduced capacity of the system to increase the number of cases with which it engages appropriately; instead there is an ever increasing rate of withdrawals, now at approximately 50% of all cases enrolled, with higher rates for sexual offences.²⁰⁴ Many of these offenders will spend an average of 170 days

²⁰⁰ P27 Prisons Transformation Project, Centre for Conflict Resolution

²⁰¹ O Donovan M & Redpath J (2006) *The impact of minimum sentencing in South Africa*, Open Society Foundation South Africa.

²⁰² <http://www.dcs.gov.za/WebStatistics/>.

²⁰³ O Donovan M & Redpath J, *op. cit.*

²⁰⁴ Karth et al. (2007) *Between a rock and a hard place: bail decisions in South Africa's three South African courts*, Open Society Foundation South Africa

awaiting trial in prison only to have the matter withdrawn. 205

This implies that an ever decreasing number of those who commit crimes are sentenced ever more harshly, while an increasing proportion escape having their criminality addressed in a positive way.²⁰⁶ This conundrum can only be escaped by recognising a broader range of ways to respond to offenders, determined not by a one-size-fits-all sentencing approach but a more nuanced one which takes into account the risk posed by each offender. While there is some policy support for these notions, poor implementation and the now entrenched culture of long sentences as well as pressure on the system, operate against the widespread implementation of such alternatives.

The number of men affected by such change would not be trivial – each year the police service makes approximately 1.2 million arrests, mostly of men.²⁰⁷ Given that South Africa has about 10 million adult men this suggests a high proportion of men are brought into contact with the criminal justice system each year.

Alternative sentencing and restorative justice

“Alternative sentencing” is the term used to embrace sentences which are not incarceration or fine-based. Correctional supervision is currently the only formal way in terms of the *Criminal Procedure Act 51 of 1977* in which a court may impose alternative sentencing.²⁰⁸ Correctional supervision without prior imprisonment can only be imposed after a report from a probation officer or correctional official has been placed before the court and the correctional supervision must be for a fixed period of not more than three years.²⁰⁹ Correctional supervision forms only a small percentage of sentences handed down by the courts.²¹⁰

Alternatives to prosecution and sentence are also possible via the *Probation Services Act 116 of 1991*, as amended. The Act provides for diversion and defines diversion as ‘diversion from the formal court procedure with or without conditions’ while a ‘diversion programme’ means ‘a programme within the context of the family and community— (a) in respect of a person who is alleged to have committed an offence; and (b) which is aimed at keeping that person away from the formal court procedure’,²¹¹ and provides for diversion of offenders. In practice these provisions are generally employed to the extent of about 20 000 per year, predominantly for young offenders, compared to approximately 330 000 prosecutions annually.²¹²

Restorative justice can be implemented as an alternative to incarceration, or applied during incarceration. Legislatively, the *Probation Services Amendment Act 35 of 2002* was the first piece of South African legislation to mention restorative justice specifically. The Act empowered probation officers and assistant probation officers to undertake activities and programmes in this regard. Unfortunately this Act is relevant only to offenders who have already been sentenced.

Yet some ten years ago the *National Crime Prevention Strategy (1996)* introduced concepts

²⁰⁵ Figure released by the Minister of Correctional Services, 2008

²⁰⁶ According to data obtained from the Department of Correctional Services, the number of sentenced admissions to prisons per quarter has dropped from around 44 000 in 2003 to 24 000 in 2008

²⁰⁷ SAPS Annual Report 2006-07.

²⁰⁸ Section 276(1)(h) provides for correctional supervision, while section 276(1)(i) provides for a period of imprisonment from which a person may be placed on correctional supervision by the Commissioner or the Parole Board.

²⁰⁹ Section 276A(1)(a) & (b).

²¹⁰ Karth et. al., op. cit. .

²¹¹ Section 1, Probation Services Act 116 of 1991.

²¹² NPA Annual Report 2006-07.

of restorative and rehabilitative work into criminal justice policy, matched in the *White Paper on Social Welfare (1997): Crime Prevention through Development and Restorative Justice*, while the *White Paper on Safety and Security: In Service of Safety 1999–2004* deals broadly with social crime prevention addressing the social, economic and environmental factors that are conducive to crime. These were however overtaken by the policy developments on long sentences mentioned earlier.

More recently restorative justice has featured in recent policy emanating from the Department of Justice and Constitutional Development (DOJCD) via community courts which form part of the National Prosecuting Authority's *2020 Crime Prevention and Community Justice Strategic Delivery Plan* which aims to mainstream the positive aspects of "community court" practices, such as restorative justice, alternative dispute resolution, and alternative sentencing into the wider court system. At the same time the *Service Charter for Victims of Crime (2004)* specifically refers to restorative justice and the importance of placing victims at the centre of the system. There also exist recent *Guidelines for Restorative Justice for Prosecutors (2006)* which suggest offences suitable for restorative justice and outline processes for prosecutors to follow.²¹³ Unfortunately in practice restorative justice is rare in South Africa, mostly due to massive pressure on the system and resource constraints. None of the policy documents mentioned thus far have the status of law and the majority of offenders do not come into contact with restorative processes.

Alternative justice for children

Stalled by the more punitive approach alluded to above, the *Child Justice Bill 49 of 2002*, has been in the Parliamentary system since 2002 has only just been passed by the National Assembly and is expected to go through the upper house (National Council of Provinces) by the end of 2008. The Bill is grounded in restorative justice principles and seeks to integrate restorative approaches into the handling of child offenders. The Bill seeks to create a separate justice system for children embodying children's international law and constitutional rights, including the principle that imprisonment should be a measure of last resort. Most young offenders in South Africa are boys.

The Bill's detailed provisions aim to create the context for community and victim involvement, protect young people after arrest, provide diversion programmes that teach offenders different values and alternative role models, and provides for restorative justice for victims, offenders and the community.²¹⁴ Diversion refers to the practice of referring an accused person away from the criminal justice system to an appropriate programme prior to conviction and sentence, with withdrawal of the charge usually contingent on completion of the programme. The Bill will require the Department of Social Development to execute the bulk of the work in the child justice system and promotes new integrated approaches to replace fragmented practices.²¹⁵ The *Child Justice Bill* provides a model for how the entire criminal justice system might be reformed.

213 National Prosecuting Authority (2006) *Guidelines for Restorative Justice for Prosecutors*, p2, available on www.npa.gov.za.

214 Pinnock D, *Mail & Guardian* 3 October, 2006.

215 *South Africa's Child Justice Bill* originated in a 1997 Issue Paper of the South African Law Reform Commission. This was followed by a Discussion Paper in December 1998 and an extensive consultation process. A draft *Child Justice Bill* was produced in 2000, and a *Child Justice Bill* introduced in Parliament in August 2002.



CONCLUSION

This report has provided an overview of policy in South Africa as it relates to men and gender equity. Whilst the bedrock of this area of policy in South Africa is the Constitution which enshrines the right to gender equity, the pathways through which this is translated into public policy are complex. In reviewing policies from a masculinities perspective it is clear that policy generally (whether this is conscious or not) confronts issues that involve and are often an effect of particular constructions of masculinity and the actions that flow from these constructions AND that policy all too frequently engages with problems in a way that perpetuates the very constructions of masculinity that have given rise to the social problems in the first place. Put another way policy seldom explicitly engages with masculinity and generally deals with boys, men and males in an essentialised way. This means that boys, men and males are generally understood as belonging to one biological category and that those belonging to this category are likely to think and act 'the same'. Notable examples of this approach are in the realms of firearms, alcohol and crime. At times policy makers do not grasp how gendered are their own approaches, for example the current sentencing policy which mandates long-term imprisonment, and do not appreciate the gendered consequences of the policies that they bring into being. This is only surprising because of South Africa's explicit commitment to gender equality and a pervasive public concern with gender equality.

There have however been some profound changes with important explicit implications for gender and gender relations. However such changes sometimes serve only to highlight where further reform is required. One example is the change to family law which now provides both rights and obligations for unmarried fathers in respect of their children. At the same time, maternity leave is still the preserve only of mothers. Another example is the reform to the law on rape which now acknowledges male rape. On the other hand, there is no official recognition of the epidemic of male rape in prison and hence no policy to address it or interventions to deal with it. Other policies acknowledge that gender is a cause of certain problems, but do not provide guidance on how to address the problem in a gendered way. The latest national strategic plan on HIV /AIDS, for example, acknowledges the importance of gender issues but has not yet developed specific policy responses and interventions.

The report also reveals ultimately conflicting policies emerging from departments which approach a problem with different perspectives or concerns. An example of this is the conflict in the current approach of the Departments of Health, Education and Justice on teenage pregnancy. While the approach of Health is focused on providing information and health services for young people, Education is more conservative in tone and emphasizes abstinence, and Justice has sought to criminalise consensual underage sex for both girls and boys equally and demanded mandatory reporting by providers of reproductive health services.

Some policies suffer from implementation problems – while sexual violence in schools and harmful gender stereotyping often emanates from teachers themselves, these same teachers are expected to provide guidance to learners on these issues. Similarly the police service is expected to implement domestic violence legislation, yet attitudes underpinning such gender violence – and incidents of gender violence by police officers – are rife within the police service itself. In the same vein those implementing health policies frequently have attitudes inimical to the policies they are required to implement, particularly with respect to abortion and HIV/ AIDS. Inadequate attention to such problems is paid in both the development and implementation of policy with such issues frequently being ignored until

they become a problem.

One of the key messages of this review is that masculinities often become evident in law and policy when these instruments engage with the criminal, anti-social or destructive behaviours of men. Public policy is thus generally geared to limit, constrain or punish men's behaviour. Much less often is policy framed as providing an opportunity to change constructions of masculinity in a positive way as part of a broader social project of building gender equity in society through constructive engagement with men and boys. Parts of civil society in South Africa have developed interventions that are ground breaking in the developing world in their focus on men and gender equity. A key challenge is to translate these examples from their specific contexts into a broader policy arena and to multiply such interventions across sectors in a way that can take their impact to scale. This process needs to be supported by institutional change effected by legislation, which can have a profound impact on the way in which gender is understood, since institutional contexts have a complex and far reaching impact on the way masculinities are constructed.

