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An Incomplete Transition? Explaining the Ongoing Prevalence of Violence against Women in Post-Apartheid South Africa

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An Incomplete Transition? Explaining the Ongoing Prevalence of Violence against Women in Post-Apartheid South Africa

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Abstract:

The international community considers South Africa a regional bastion of democratic, economic and social rebirth. Yet rates of violence against women in South Africa remain endemically high. This paper examines the diffusion of norms of nonviolence and gender equality from the international community into South African law and society and the subsequent feedback of those norms, to measure South Africa's compliance with international human rights standards. Institutions and social processes are modeled at three levels: macro (international), meso (national) and micro (community/individual). The model highlights six ways in which norms are weakened or blocked: accessibility, apparent compliance, institutional weakness, divergent priorities, silencing and norm violation fatigue. Each of these is examined in turn.

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1. Introduction

In the aftermath of large-scale conflicts, justice and reconciliation processes are intended to facilitate the healing of psychological wounds and promote psychosocial recovery, both for individuals and communities. Transitional Justice (TJ) is defined as a “full range of...mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation” (UN Security Council, “The Rule of Law...” p. 4, para 8). Despite relatively recent beginnings¹, TJ now appears to have become an ‘unavoidable step’ in the human rights based approach to post-conflict resolution (Lenzen, 2009, p. 90). TJ functions as a means of addressing past wrongs, but it also has significant long-term benefits, promoting norms of peaceful coexistence and nonviolence that outlast the ‘post-conflict’ period (UN Security Council, “The Rule of Law...” p. 8, para 21).

South Africa is often singled out as one of the first major cases of successful democratic transition, and of a TJ mechanism effectively applied. The work of its TRC² has been described as “momentous” (Tutu, 1999, p. 114) and a “miracle” (Graybill, 2002, p. xiii). In addition to providing an open forum for truth-telling, the climate of optimism felt during the transition period allowed theretofore-marginalised groups to harness the benefits of constitutional reform. As a result of protracted women’s activism leading up to – and during – the transition, women gained one-third of the seats in Parliament and legal protection for gender rights under the newly designed Constitution. Much was also done at the institutional level to promote women’s rights. For example, the Commission for Gender Equality (CGE), the Joint Monitoring Committee on the Quality of Life and Status of Women (JMC), and the Office on the Status of Women (OSW)

¹ Researchers often date the origins of TJ back to the Nuremberg and Tokyo trials following the Second World War – see Sooka, 2009, p. 23; Buckley-Zistel and Stanley, 2012, p. 3; Minow, 1998, p. 27.

² Unless otherwise stated, ‘TRC’ should be taken in this paper to refer specifically to the *South African Truth and Reconciliation Commission*.

were all established to provide women with the opportunity to place their security and rights at the forefront of South Africa's governance agenda. These instruments were believed to have "instilled a dramatic shift in the balance of race and gender appointments in the transforming state" (Meintjes, 2009b, p. 75).

Twenty years after the transition began, those legal and constitutional mechanisms remain in place, and South Africa is seen in the international community as a regional bastion of democratic, economic and social rebirth. At the same time, international law has evolved to enforce greater accountability for violators of international norms of behaviour, including gender-based violence. Yet despite the myriad protections provided by both international and domestic law, women in South Africa continue to experience extremely high rates of peacetime violence. Gender binaries endure in women's lived experiences, to the extent that violence "has come to be perceived almost as normative and to a large extent accepted rather than challenged" (Vogelman and Eagle, 1991, p. 209). Rates of violence against women (VAW) in South Africa have been described as "rampant" (Mogale et al., 2012, p. 581) and occurring at "endemic proportions" (Ross, 2010, p. 70). This suggests that the transition from violence to peace may be incomplete and that underlying gender disparities have proved stronger than political improvements and institutional restructuring.

This paper therefore concentrates on the following research question: *Why, despite a pioneering transition process, the strengthening of international law supporting women's rights, the creation of domestic institutions to support women's security and ever-evolving norms of gender equality at all levels, do incidents of VAW in South Africa continue at such an endemic rate?* In an attempt to answer this question, this paper introduces a model outlining the institutions and social processes operating at three levels: macro (i.e., international), meso (i.e., national) and micro (i.e., community/individual). Potential areas of weakness are identified, as are blockages in the links between each level, which are then used to explain why rates of VAW in South Africa do not reflect global norms of behaviour. The model finds its ancestry in Risse and Sikink's model of the "boomerang pattern" occurring between states and global human rights polity (1999, p. 19). It elaborates on the contextual factors underpinning all levels, as well as the foundational ideology that underpins the model as a whole.

This paper draws upon data obtained from secondary sources, including books and academic papers, reports from international organisations, international research groups, and national institutions. It must be noted that the research in this piece is not parsimonious in nature. Rather, it attempts to reconcile a significant number of observations and explain the implications of post-conflict institutional restructuring and ideological entrenchment. To over-simplify the motivations and repercussions of actions at any one level would be to weaken the model and come at the cost of elucidating how the intricacies within the system “really work” (Checkel, 2001, p. 578).

1.1 Why South Africa?

Prior to the inception of the TRC, TJ was predominantly associated with adversarial legal processes that allowed successor regimes to punish their highest ranked authoritarian predecessors (Macdonald, 2013, p. 27). The legal model was critiqued for, amongst other things, perpetuating marked disconnections between international legal norms and local priorities, customs, and traditions (Shaw and Waldorf, 2010, p. 13). The TRC model therefore “pushed to centre stage considerations of alternative legal mechanisms for dealing with the past” (Bell, 2009, p. 8). As a frontrunner of its time, its significant victories were gauged in conjunction with the understanding that the terrain was uncharted, both for South Africa and the field itself.

Condemnation of the TRC’s insufficiently gendered perspective is far from new³, but the lasting repercussions of this omission can only be evaluated once sufficient time has passed. A strong connection between an underemphasis on gender in the immediate post-conflict agenda, and the space gender occupies in contemporary politics and governance, emerges. Not only does this piece posit that gender concerns are a critical component of any transition from conflict to peace, it suggests that a failure to do this renders a full transition to peace incomplete. Although both national and international newspapers continue to disseminate stories of South Africa’s high rates of VAW, there is danger inherent in considering South Africa’s ‘transition phase’ to be largely accomplished, and failing to see the necessary link between past and present behaviour.

³ See McKay, 2000; Meintjes, 2009a; Ross, 2010; Sigsworth and Valji, 2012; Goldscheid, 2013.

Moreover, comparatively few connections are made between post-apartheid institutional reform and current rates of VAW.

When researchers and practitioners turn their attention to VAW in modern-day South Africa, the narrative tends to centre on local customs and traditions, patriarchy and power as key components of VAW (Shaw and Waldorf, 2010; Moffett, 2009; Sigsworth and Valji, 2012). While these factors are certainly relevant, the model outlined in this paper takes a more integrated approach to VAW. Blockages or weakness in the interactions occurring *between* the international, domestic and community level, are viewed as equally or more relevant than individualised patriarchy.

1.2 Definitions

To conduct a thorough analysis of the framing of VAW in South Africa, some definitions are necessary. The definition of VAW⁴ in this piece is divided into two distinct categories: interpersonal violence and structural violence. Constructing a definition of VAW has proved extremely difficult in the past, even for multilateral, specialist agencies. This is partly because, although prevalent in all societies, VAW manifests and is measured in different ways depending on: cultural norms; the predominant legal process in the country/ies under examination; the theoretical grounding and approach taken by the organisation laying the definition (e.g., public health, criminal justice) and the policy implications at stake for both the parties under examination *and* the organisation itself.

The 1996 Declaration on the Elimination of Violence Against Women (DEVAW) defines VAW as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” (Article 1). This is expanded upon in Article 2, and is said to include:

Physical, sexual and psychological violence occurring in the family and in the general community, including battering, sexual abuse of children, dowry-related violence, rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation, sexual harassment and intimidation at work,

⁴ The term ‘gender-based violence’ may be used at points in this piece. Where used, it should be taken to mean VAW, in the context of this paper.

in educational institutions and elsewhere, trafficking in women, forced prostitution, and violence perpetrated or condoned by the state. (Article 2(a)).

The DEVAW definition has been criticised for not providing a definition of ‘gender’ and for the omission of structural or economic violence (Edwards, 2011, p. 21). This piece therefore considers structural violence as well as personal violence.

The concept of structural violence⁵ was originally conceived by Johan Galtung (1969), and is a broader interpretation of VAW. Galtung’s theory explains the presence of a hierarchy of dominance embedded in institutions that may, however indirectly, *perpetuate* a cycle of interpersonal violence. Galtung distinguishes between macro and micro violence, using the example, “when one husband beats his wife there is a clear case of personal violence, but when one million husbands keep one million wives in ignorance there is structural violence” (1969, p. 171). The breadth of this definition means that structural violence may be committed inadvertently, organisations created with an intention to protect, instead perpetuate a “petrified hierarchical structure” (Galtung, 1969, p. 172). Structural violence may provide a framework for understanding large-scale human rights violations (Ho, 2007) and shows the links between the structural causes of poverty, the underdevelopment of states and the damage to individual capabilities and freedoms (Sen, 1999).

‘Norms’, for the purposes of this paper, should be understood in the context of constructivist theory, as “collective understandings that make behavioural claims on actors” (Checkel, 1998 p. 327-328). They are more than a mere constraint on behaviour, but influence the *choices* made by actors on a rolling basis. Actors are likely to comply with norms because it demonstrates to their community that “they have adapted to the social environment that they ‘belong’” (Finnemore and Sikkink, 1998, p. 903), be it at a local, national or international level.

1.3 Structure of the Paper

The paper is organized as follows: Chapter Two lends historical context, moving from the apartheid period through South Africa’s transition to democracy, elaborating on the role of the

⁵ Unless specifically distinguished as structural violence, any mention of VAW in this paper should be understood in terms of DEVAW’s definition. While this piece recognises the ever-growing problem of violence against men and the sexual abuse of children, research into these areas is beyond the scope of this paper.

TRC and explaining the role of women during this process. Chapter Three sketches out theories of female agency during times of political transition and theories of VAW during and in the aftermath of conflict, showing some of the gaps in research and limitations in the practical application of theory. Chapter Four provides a theoretical grounding and introduces the tri-level model at the foundation of this piece. It then elaborates on the instruments; contextual factors and ideological underpinnings at play in each level, demonstrating the many layers contributing to acts of VAW in South Africa. Chapter Five presents some of the weaknesses and blockages found in the model, explaining why changes have not been as effective as they could be. Finally, Chapter Six draws conclusions and provides suggestions for further research in this area.

2. Historical Background and Context

The division of South Africa along racial lines is often linked to its colonial history (Sooka, 2009, p. 29) but racial segregation as part of a mandated government regime was officially instated in 1948 when the Afrikaner-led National Party (NP) took power. The NP argued against South Africa as a single, unified state, instead asserting that South Africa's people were divided into distinct categories: White, Black, Coloured and Indian. Groups were split into 'nations', designed to protect White political and economic interests while simultaneously integrating Black and Coloured Africans into the country's economy as a primary source of labour (Thompson, 2001, p. 192). The passing of the *Population Registration Act* of 1950 provided the legal foundation for these distinctions and laid the groundwork for more restrictive policies. That same year, the government enacted legislation to forcibly remove Black South Africans from cities and place them in "homelands" that amounted to thirteen percent of the country's overall land and was barren, unsuitable for farming and unsustainable for protracted living (Group Areas Act, 1950; Jacobs, 1998, p. 71). The 1953 Bantu Education Act created a separate school system for young Black Africans, designed to prepare them for lower class jobs and mould them into "compliant citizens" (Clark and Worger, 2011, p. 55). Job reservation laws ensured that Black South Africans were only eligible for positions that rendered them subordinate to the other ethnic classifications. Black Africans accused of 'terrorism,' loosely defined under Section 6 of the Terrorism Act 1967 as anything with the potential to "endanger the maintenance of law and order", could be detained for up to sixty days without trial and

frequent ‘disappearances’ of police suspects contributed to an overall atmosphere of repression and state supported terror (Thompson, 2001, p. 199).

The national struggle for emancipation from this system began to gain pace during the 1950s. Existing organisations, such as the African National Congress (ANC), newly formed groups, like the Pan-Africanist Congress (PAC) and the United Democratic Front (UDF), centralised their agenda around resisting and protesting apartheid policies. Organised resistance incorporated a variety of different actors, including trade unions, community organisations and even elites. The idea of a ‘binary’ of Black vs. White South Africans oversimplifies these issues and “misses the nuances of the existent divisions in society along ideological, class, ethnic, linguistic, regional, religious and racial lines, all of which were thoroughly gendered” (Meintjes, 2009a, p. 99).

Although apartheid had the side effect of entrenching traditional gender roles across *all* races (Meintjes, 2009a, p. 100), it is critical to point out that black South African women in particular had virtually nonexistent status during this period. For example, they were not allowed to obtain an education, rent or own property, or retain their children after a divorce (Moore, 2005, p. 1472). In short, black women were subordinated even in comparison to their male counterparts and became sufferers of “inequality within inequality” (Sachs, 1990, p. 2). Levels of VAW, particularly rape, during apartheid were high and were used as a means of instilling fear into leaders of female opposition groups, expressing racial as well as male dominance (Armstrong, 1994, p. 36). Although under-investigated at the time, rates of sexual violence are now believed to have cut across racial divides. Afrikaners, but also Xhosa and Zulu men committed VAW, and rape was not restricted to any one group (Armstrong, 1994, p. 36). However, Black women *were* the most likely victims, with victimhood cutting across all age groups and condoned across a variety of power structures including doctors, the police, judiciary and religious institutions (Meintjes, 2009a, p. 99). In addition, rural women were cut off altogether from the law and economy, forced into designated areas and dependent on an informal economy to sustain them (Farr, 2000, p. 102).

Despite the growing power of the resistance movement (and the ANC in particular) women were not initially granted equal status within these groups (Walker, 1991, p. 190). They

were forced instead to form auxiliary civil society movements and mobilise for political change on their own terms (Lodge, 1983, p. 142). The African National Congress Women's League (ANCWL) and the Federation of South African Women (FSAW) were just two of the key organisations growing in numbers and strength through the 1950s. It must also be noted that White women were significantly more active in this resistance movement than Black women (Britton and Fish, 2009, p. 8). Women's activism, however, slowly gained strength and impetus across ethnic groups. Women organised their own protests, of which the FSAW-organised, 20,000 strong march against the *Pass Laws* is the most famous example (Thompson, 2001, p. 209). By the late 1950s, the ANC was forced to give credence and a more meaningful role to female resistance in the wider anti-apartheid movement (Britton and Fish, 2009, p. 8).

Following a brief period in the 1960s when resistance group members were forced underground, internal opposition movements took on new heights throughout the 1970s and 1980s. Black youths who had been denied equal rights to education began to protest apartheid vociferously, re-centralising racial identity politics and opening their ideas up to "an ideological and pragmatic connection to the women's movement" (Britton and Fish, 2009, p. 10). Coordinated, nation-wide campaigns began in the 1980s that, coupled with the crippling power of international sanctions, caused serious damage to the South African economy (Thompson, 2001, p. 232). The economic downturn forced more women into the workforce, allowing them positions of theretofore-unharnessed power (Britton and Fish, 2009, p. 11). Growing international condemnation of the apartheid state also allowed ANCWL and FSAW members in exile to link with international networks, dialoguing with women in other nations and learning how to make the most of the challenges and opportunities inherent in a conflict setting (Britton and Fish, 2009, p. 13).

By the end of the 1980s, the armed conflict between the anti-apartheid movement and the apartheid government had reached a stalemate where neither side could effectively oust the other. The danger of a pyrrhic victory for the ANC was significant (Wilson, 2005, p. 5) and the NP had begun to soften its stance after the downfall of Soviet communism. Tentative talks between the government and the opposition began in the 1980s and were formalized in 1991 under the Convention for a Democratic South Africa (CODESA) talks in Johannesburg.

Concurrent to these processes, women began to return to South Africa from exile with new knowledge, forming networks with the women who had remained to piggyback onto the new national agenda. The Women's National Coalition (WNC) formed in 1992, using the lessons from the 1980s and bringing together 70 women's organisations to identify women's specific priorities through research and activism (Cock and Bernstein, 2001, p. 139). The WNC's focus was to bridge "deep political and religious divides, prevailing cultural and ethnic fractures and pronounced rural–urban divisions" (Britton and Fish, 2009, p. 13).

In 1994, following over forty years of mandated racial segregation, South Africa held its first set of democratic elections and Nelson Mandela was elected president. This marked the beginning of a new phase characterised by the establishment of the rule of law. In 1997 the *Constitution of the Republic of South Africa* came into effect. As part of this new legislation, equality rights for women were granted under The Bill of Rights (Chapter 2, Section 9, Subsection 3) and the state began to implement legislation to address VAW and gender discrimination. Gender activism had also ensured that a national gender machinery (NGM), or cluster of institutions to promote women's equality, was set up. The Commission for Gender Equality (CGE) was established in 1996 and empowered to "take up any constitutional matters that it deemed necessary to promote and protect gender equality" (Meintjes, 2009b, p. 84). The Office on the Status of Women (OSW), established under the Office of the Deputy President (Thabo Mbeki at its inception), was known as "the nerve centre for developing and maintaining the national gender programme" ("South Africa's Report to the AU", 2006, p. 6). The Joint Monitoring Committee (JMC), the 'third arm' in South Africa's gender programme, was designed to monitor progress and assess South Africa's commitment to gender inclusivity on the national – and international – scale. With a growing civil society that favoured gender parity and overtly disparaged VAW ("South Africa's Report to the AU", 2006), it appeared in the immediate post-apartheid period that South Africa had the necessary tools to achieve a transformation in gender constructions and power relations.

2.1 The Truth and Reconciliation Commission

In 1995 the South African Parliament passed the *Promotion of National Unity and Reconciliation Act* to establish a TRC, which began operating in April 1996. The TRC's

narrative was built on *Ubuntu*⁶, national healing and collective memorialisation (Villa-Vicencio, 2009, p. 115). The TRC was intended to serve as a blueprint for the country's new policy of openness, truth, inclusivity, and democracy (Thompson, 2001, p. 274). In the optimistic period following apartheid, the initial goal for the women's movement was to inject women into state institutions (including the TRC) and increase female participation in public and political structures. The TRC was designed not only to protect gender interests across classes, regions, and ideological agendas, but also to ensure that progress "would outlast individual women leaders" (Britton and Fish, 2009, p. 22).

Although not legally binding, the findings of the TRC were internationally seen as a critical step to opening up TJ mechanisms beyond a purely retributive model. However, the TRC arguably faltered in its ability to deliver an open forum that adequately served women's needs for either truth or reconciliation. This was a result of several factors. First, it became clear almost immediately that women were reluctant to come forward in an open forum and discuss details of sexual violation (Graybill, 2012, p. 209; Ross, 2010, p. 70). Second, women became 'conduits' of information relating to male victimhood rather than testifying to their own experiences (Meintjes, 2009a, p. 105). This occurred despite the fact that it was commonly understood that VAW had formed a constituent part of apartheid crime and behaviour. To overcome this, women's groups immediately began to campaign for the inclusion of 'Women Only Hearings', to provide a forum for women to detail the violence that was specific to them and elaborate on experiences of sexual violence (Graybill, 2012, p. 208).

Once 'Women Only Hearings' were established, procedural and cultural constraints to giving testimony became apparent⁷. Victims were hindered by the fact that no perpetrators who had applied for amnesty confessed to having committed rape or serious sexual offences (Graybill, 2012, p. 209). As a result, it was highly unlikely that alleged perpetrators would

⁶ A Xhosa word roughly meaning 'humanism' and describing a connection to other human beings built on meaningful coexistence and empathy.

⁷ In order to testify at the TRC, the victim had to prove that they had suffered a "gross violation of human rights" (Foster, 2006). Proceedings were conducted in an open forum and received extensive media coverage, both domestically and internationally. 'Women Only Hearings' were restricted, as the name suggests, to female Commissioners and select members of the public. However, only three hearings were held, not all regions had access to a Women Only Hearing and the TRC's specialized hearings were not heavily publicized, meaning many women only heard about the hearings once they had been completed (Graybill, 2002).

corroborate the victims' evidence, and there was little chance of apologies being levelled specifically at female victims. There was little incentive for women to speak out about the specificities of their suffering (Dube Testimony, TRC Files, 28 July 1997). Consequently, very few women spoke about rape and even fewer were prepared to name their rapists. Perpetrators, as all aspects of the TRC reflected, were portrayed as having a 'political motivation' for their crimes – meaning the TRC was forced to redefine rape as having this motivation, then immediately grant amnesty to the perpetrators (Krog, 2001, p. 207). This was neither an accurate reflection of all cases of rape, nor was it conducive to mitigating the harms suffered by women who had been violated during the apartheid period.

As one of the first mechanisms to promote truth telling, the South African TRC was unprepared for the possibility that victims would *not* be willing to discuss details of the crimes perpetrated against them. The Commission in its report failed to acknowledge the 'silences' that marked the majority of female experiences during apartheid (Ross, 2010, p. 74). The Commission also assumed that speaking would lead to catharsis, but the open forum meant that women were not given any protection for speaking out. They were also forced to name their perpetrators, laying them open to the potential repercussions of giving testimony. Silence in this case may have indicated "a physiological response to danger" (Ross, 2010, p. 88), but this was under-acknowledged by the Commission. Ross suggests that this failure to recognise pain, particularly the pain of one specific group, was a perpetuation of violence in and of itself (2010, p. 90).

The TRC was designed to promote ethnic unity, but this prioritization had a downside. By not recognising women's suffering during apartheid as a linked element of political violence or a medium through which ethnic tensions could be communicated, the TRC arguably perpetuated the notion that ethnic healing was more important to resolve than gender conflicts. In several of the Women Only Hearings, testimony unconsciously spoke to the interplay between gender and ethnicity. For example, one woman spoke of being picked up by an Afrikaner under the pretence of being protected from Xhosa riots. She was repeatedly raped, threatened, and told "I will take you to the Xhosa and the Xhosa are going to kill you" (Dube Testimony, TRC Files, 28 July 1997). Another woman noted, "when it comes to males, *Whites*, I am very sensitive"

(Matshoba Testimony, 29 July 1997, emphasis added). The complexities of the conflict in South Africa went far beyond the binary of ‘White’ or ‘Black’. Conflating ethnic and gender-based violations meant the rights of women became less important than stylised forgiveness across racial divides (Minow, 1998). Participants subconsciously internalised these aspects as evidenced by how they framed their narratives.

All of these problems encountered by the TRC had longstanding implications for the way in which newly developed groups, institutions, and processes grew in South Africa. The attention afforded to women’s issues at the TRC showed that women were not the focal point of South African reconstruction and when women were considered, their issues were deemed to be stand-alone rather than integrated with men’s issues, questions of ethnic divide or other linked problems. The TRC’s shortcomings are relatively well known, but the longer-term implications of institutional blueprinting and prioritization are key to recognising how the South African government and legal system deal with incidents of VAW. The TRC may not have had the power to change directly long-term policy in South Africa, but its Commissioner described it as “establishing new norms” (Sooka, 2009, p. 34) for the South African nation. One of the overarching arguments of this piece is that those norms were not properly diffused to the population and did not have the sticking power to lead to a full transition to peace. Nor did the TRC set a precedent, legal or otherwise, where women’s testimony was treated with dignity, respect and a gendered perspective independent of ethnic tensions.

3. Reconciling Post-Conflict Female Engagement and Activism with the ‘Continuum of Violence’

The literature on women and post-conflict empowerment, identity, and victimhood contributes a comparatively new piece to post-conflict reconstruction and TJ, reflecting a growing feminist engagement with the field. That said, articulating the ‘feminist perspective’ of post-conflict reconstruction can be particularly difficult, because even within the context of feminism, theories are derived from multidisciplinary research perspectives and diverse cultural, political and philosophical roots (Ni Aolain, 2013, p. 45). This section examines the scholarship

on female post-conflict identity rebuilding and empowerment, before looking at some of the foundations of VAW theory and concludes with an analysis of the research conducted thus far.

It seems intuitive that nation states should want to protect their female citizens from experiences of violence, be it on an individual, community, or statewide level. However, feminist approaches to TJ and international law in post-conflict settings, only emerged in the 1990s (O'Rourke, 2013, p. 11). For TJ, the initial reliance by primarily Western nations on large-scale, legally anchored mechanisms resulted in a "structural incapacity to address gendered violations" (Ni Aolain, 2013, p. 46). At the time of the South African transition, there was very little scholarship to suggest a 'gender balanced' way forward for the TRC or any other TJ mechanisms. Post-apartheid work of South African feminists *forced* a gendered agenda onto the TRC, promoted the idea of 'parallel mechanisms,' and began to name the "array of gendered harms" that women experienced throughout the apartheid period (Ni Aolain, 2013, p. 47). A narrative of African patriarchy and culture justified the approach, rather than recognising it as a wider problem within the field. Feminists contested this notion, pointing out that "ignoring women on the landscape of international politics perpetuates the notion that certain power relations are merely a matter of taste" (Enloe, 1989, p. 3).

Scholars and practitioners have had difficulty explaining what 'conflict' and, more critically, 'post-conflict' mean. The ways in which wars are fought have evolved considerably since the end of the Cold War and inter-state warfare has been largely replaced by insurgency and counterinsurgency. As a result, international humanitarian law has had to keep up with a kind of warfare that became dominant *after* its inception and proliferation. Because of the more 'fluid' nature of insurgencies and counterinsurgencies, the 'post-conflict' period is not as clearly delineated. Tentative peace agreements may belie low-intensity aggression between rival groups and combatants may share territory, so troop 'withdrawal' is also difficult to measure. Collier and Hoeffler (2006) suggest that the post-conflict period should be taken to mean the first decade after the end of conflict (p. 99). The beginning of the post-conflict period is also typically characterised as beginning with the victory of one of the parties or the signing of a peace agreement. That said, Moser (2001) submits that a 'continuum of violence' exists where costs, consequences, and actions rooted in conflict continue to pervade women's lives once the

‘conflict period’ has officially come to an end (p. 49). VAW can play out through expressions of frustration and power once a conflict is officially declared ‘over.’ This not only damages female agency at the individual and community level, but can also undermine the significant gains made at an institutional or even international level.

3.1 More than Victims: Women in Post-Conflict Environments

In the majority of conflicts, women suffer disproportionate harms: they are more likely to be sexually assaulted, they form the dominant refugee demographic and they must often support their families economically, particularly if their husbands are in combat (Schnabel and Tabyshalieva, 2012, p. 14). Women also play a far greater role in conflict than is often recognised; Turshen and Twagiramariya (1998) describe women as making “an unacknowledged, behind-the-lines contribution(s) to the prosecution of war” with a “hidden complicity in the construction of fighting forces” (p. 1). Women’s invisibility has a significant impact on the conflict aftermath, because women have been consistently denied equal access to post-conflict reconstruction processes and/or institutions. When women *are* given access, institutions have, until recently, been unable to move beyond the binary of men as ‘ex-soldiers’ and women as ‘victims.’

According to scholars, ‘victimhood’ may be understood in a physical sense, through lived experiences of violence, structural removal of rights, or imposition of systematic economic disadvantage (Schirch, 2012, p. 54). ‘Victims’ are portrayed as innocent, psychologically fragile, and inherently deserving of justice imposed on their behalf (McEvoy and McConnachie, 2012, p. 531). This creates connotations of an ‘ideal’ victim and is problematic in developing a holistic understanding of women’s capacity for peacebuilding. An ‘ideal’ victim standard also prevents women from being taken seriously and diminishes the efficacy of activism for women’s rights and security (Ross, 2010, p. 71; Dobash and Dobash, 1998, p. 39). In the contemporary environment, this perception of victimhood may lead to the appropriation of community action and agency. Franke (2005) suggests this may be not only damaging in the short-term but may weaken the likelihood of female empowerment long after the post-conflict period has come to an end (p. 823).

Gender mainstreaming and the promulgation of rights for *both* sexes are critical in the aftermath of conflict. Zuckerman and Greenberg (2004) note, “gender-aware programming, that is, identifying and addressing gender issues...is required in all macro-economic and micro-economic development activities associated with post-conflict reconstruction” (p. 73). The literature also points to an identified need to *sustain* this process. Ni Aolain (2010) suggests that one of the long-term problems created by TJ processes is that “gender can provide an official pretext for regime change...but takes an immediate back seat to ‘real’ politics when the transition actually begins” (p. 214). She links this to the failure of elites (i.e., men) to effectively engage with women “whose cultural and operational norms may vary considerably from the national or international models” (p. 221).

In many ways, conflict may temporarily improve women’s power and hierarchical position. For example, Afshar and Eade (2004) emphasise “the need to cope makes women more independent, more effective, more outward-looking” (p. 4). This suggests a positive aspect of conflict, which is the ability of women to prove their self-determination and agency. This improved position may have benefits that go beyond the conflict period, as each gender places weight on different institutional and governance structures in the post-conflict state. Zuckerman and Greenberg (2003) find that “women and men have been shown to prioritise the rebuilding of different types of infrastructure, due...to their different roles in the gender division of labour and different conceptions of well-being” (p. 78). The authors point out that women tend to place more emphasis on access to health facilities, water and education systems (p. 78). Sorensen (1998, p. vi) and Pillay (2006, p. 5), support this observation, noting that the presence of women at peace talks leads to increased attention on social issues, particularly capacity building and primary education. Involving more women in post-conflict processes has multifaceted benefits for policies and institutions that go beyond gender-parity.

3.2 Theories of Post-Conflict VAW: Causes and Contributory Factors

Research into the causes of VAW is hardly a new endeavour. Since the 1990s, a wave of scholarship has highlighted gender discrimination and culturally ingrained attitudes of female inadequacy and patriarchal power. This attention has, until recently, been heavily concentrated on women in the developed world and has been conducted by primarily white, middle-class

researchers (Johnson and Dawson, 2011, p. 30). It is also a relatively recent endeavour for researchers to examine the causes and contributory factors inherent in *post-conflict* VAW (Sigsworth and Valji, 2012, p. 115). The scope of acts falling under the category of VAW is vast. This definition includes, but is not limited to, ‘bride prices’ (known in South Africa as *lobola*), female genital mutilation (FGM), domestic and intimate partner violence, rape, and forced prostitution. For South Africa in particular, the issue of ‘corrective rape’⁸ is becoming increasingly prevalent.

There are many interrelated theories as to why VAW continues, and possibly even escalates, in the aftermath of conflict. Firstly, it is important to bear in mind that conflict and violence are linked, but may manifest differently; it is possible for conflict to be non-violent, whereas violence “by definition involves the use of force, be it physical or psychological” (Moser and Clark, 2001, p. 6). Secondly, researchers suggest that acts of violence may move both spatially from the private to the public sphere (and back again), and temporally from ‘conflict’ to ‘post-conflict’ periods (Moser, 2001, p. 36). As Sigsworth and Valji point out, conflicts can leave a “legacy of normalized violence” (2012, p. 117) that combines with pre-existing gender hierarchies and results in gender-based violence. Under this definition, VAW becomes synonymous with expressions of recaptured power. This appears to be a recurring theme in VAW studies generally. For example, Charlotte Bunch (1990) grounds her work in an analysis of structurally reinforced power by men over women in human rights law and institutions. In addition, Sigsworth and Valji (2012) suggest that it is this power dynamic that not only keeps women at high levels of risk in the aftermath of conflict, but also prevents them from being able to fulfil their human capability and contribute positively to societal change (p. 119).

The literature also points to the possibility that post-conflict VAW may be used as a medium through which men are able to express grievances that are otherwise not vocalised or resolved. Alternatively, acts of VAW in the aftermath of a conflict may continue to represent a kind of ‘battleground’, where “women’s bodies are used for the symbolic depiction of political purpose” (Handrahan, 2004, p. 437). This not only fits with the masculine socialisation of

⁸ An act of violence intended to ‘cure’ lesbians of their homosexuality, or ‘correct’ what is perceived as deviant sexual behaviour through the use of force (Di Silvio, 2011, p. 1471)

decommissioned soldiers (Rayner, 1997), but also represents VAW as a medium through which deeper grievances are expressed. Researchers thus far have linked this primarily to interplays of ethnic tension (Borer, 2009, p. 1186; Handrahan, 2004). This is also indicative of wider issues: the use of rape as an inherently political tool even on the individual level, and rape as a form of social control over entire groups of women.

3.3 Analysis

It is now recognised that the gender binary of feminized ‘civilian’ and masculinized ‘soldier’ no longer exists (Giles and Hyndman, 2004, p. 5). Instead, men, women, and even children are understood as having an increasing capacity to start or bring an end to conflict, and to take on agency in post-conflict processes. Although the literature indicates that post-conflict studies have moved beyond singular definitions of ‘victim’ and ‘perpetrator’, the grey areas raised are complex and at times, even contradictory. This makes explaining VAW in any general sense, particularly difficult.

Another conclusion to draw from the literature is that VAW is rarely examined as a longer-term result of a social hierarchy that exists beyond the post-conflict period. The field is still so new that the ‘long life’ of violent behaviour is only coming to be understood now. With each ‘wave’ of new understanding, researchers consistently return to a re-examination of the South African post-conflict transition in particular, in an attempt to reconcile ‘older’ TJ models with emerging theorems of TJ as a human rights mechanism (i.e. a tool of mediation and conflict resolution, a means of international intervention, a locally driven process of identity reconstruction, or a hybrid of these options) (Bell, 2009, p. 15).⁹ As the ‘figurehead’ of the second wave (Bell, 2009, p. 8) of transition mechanisms that focused primarily on truth telling, TRCs have, in terms of empowerment for women, thus far been no more successful than purely legal mechanisms. Therefore, getting to the root of the post-conflict dynamic requires a systematic look at the international factors, national institutions, and domestic power dynamics that lead to rampant rates of VAW, long after the official ‘end’ of conflict.

⁹ See also Goldscheid, 2013, Sigsworth and Valji, 2012, Graybill, 2012 and Ni Aolain et al, 2011.

4. Explaining VAW in Post-Apartheid South Africa

It is difficult to obtain accurate estimates of the rates of VAW in *any* society. This difficulty may result from the overlap between VAW and other crimes, for instance murder, burglaries or other forms of serious assault (Hamber, 1999, p. 116; Human Rights Watch, 1995, p. 22). Crimes may also be unreported or underreported (Jewkes and Abrahams, 2002, p. 1232), which in turn leads to inaccurate national crime statistics. At the psychological and personal level, cultural norms create a reticence on the part of women to come forward and account for acts of violence committed against them. Particularly in the aftermath of conflict, mistrust in institutions and social protections may linger (Zuckerman and Greenberg, 2004, p. 79). The struggle for rights for all citizens may have come at great cost and the expectation of having to constantly struggle to bring about change, remains. For South Africa this struggle is particularly prominent in townships and rural areas, which have higher rates of violence (Wood and Jewkes, 1997, p. 41) and remain comparatively isolated from reform agendas (Human Rights Watch, 1995, p. 25).

South Africa's statistics have historically focused on 'stranger rape' as the predominant form of VAW, which led to the exclusion of equally important acts of violence, including intimate partner violence, rape committed by the police and other authority figures, 'corrective' rape and violence as a form of ethnic dominance and control (Jewkes et al., 1999, p. 3). Moreover, the dearth of community-based data on the prevalence of rape has rendered the scale of even the most recognised forms of VAW under-reported, under-analysed and under-punished (Jewkes et al., 1999, p. 3; Jewkes, 2002, p. 1423). As the country transitioned out of apartheid, more and more statistics were released about South Africa's ever-growing rates of VAW and the media began to draw attention to the issue (Human Rights Watch, 1995, p. 50). There was increasing social pressure from the international community (Human Rights Watch, 1995, p. 122) and from within the country (Abrahams, Jewkes and Laubsher, 1999, p. 3) for South Africa to comply with international human rights standards and provide protections for all its citizens, including women. Although peacetime VAW can be difficult to control (it is usually committed by private, 'non-state' actors), it was nevertheless the South African state's responsibility to

reduce gender discrimination and encourage its citizens to comply with international norms of gender equality and nonviolence (Brysk, 2013, p. 259).

4.1 The Model

In order to gauge states' compliance with international human rights, scholars assess the ability of human rights norms to diffuse from the international into the national arena, evaluating the ways in which international norms are amalgamated into the domestic agenda and their permanence once the two have been merged.¹⁰ Existing theories of norm diffusion have their roots in both international relations and law. These theories have evolved to incorporate the changing modes and typologies of conflict (Risse and Ropp, 2013, p. 3). However, within international relations opinions differ as to the function of international norms. Neoliberals see norms as a tool of 'utility maximisation,' using them to realise their material interests (Savery, 2007, p. 2). In contrast, constructivists have determined that a purely economic incentive is not sufficient to guarantee state compliance with international norms (Risse and Sikkink, 1999, p. 6). To counteract the neoliberal view, constructivists adapted an understanding of state behaviour that was driven by social relations and expectations of behaviour at the international level, and concluded that the relationship between states and norms was mutually reinforcing, by supporting one another "in a dynamic process of iteration" (Savery, 2007, p. 3).

Constructivist theorists suggest that states that follow this mode of compliance are likely to encourage adherence to international norms at the domestic level in order to integrate with surrounding states, as well as avoid being perceived as a 'rogue nation' (Savery, 2007, p. 3). In the long run, this builds up networks *between* actors, delineates boundaries and provides a measure of 'inclusion' and 'exclusion' between groups of 'violators' and 'compliers'. Such networks can exist between states, or any group that "facilitates collective action and cooperation, exercises influence or serves as a means of international governance" (Hafner-Burton, Kahler, and Montgomery, 2009, p. 5). Power within networks is determined by the "structural position in a field of connections to other agents as well as actor capabilities or attributes" (Kahler, 2009, p. 3). Socialisation is aided by the shaming of gross violations of

¹⁰ See Checkel, 1997; Keck and Sikkink, 1998; Finnemore and Sikkink, 1998; Risse, Ropp and Sikkink, 1999; Savery, 2007 and Risse, Ropp and Sikkink, 2013 for further information.

human rights, and using the combination of domestic ('from below') and international ('from above') advocacy and activism to clarify the behaviour that political leadership may follow without alerting the international community to norm violations (Risse and Sikkink, 1999, p. 18). Despite recognition of the mutually reinforcing relationship between the domestic and international levels, early constructivists emphasised norm development at the international level that diffused down into state practice (Checkel, 2001, p. 557) rather than the flow of norms from the domestic level up. However, modern constructivists recognise the feedback of norms from the domestic into the international arena (O'Faircheallaigh, 2013, p. 9) and this paper also recognises that norm diffusion may be mutually reinforcing and flow in both directions.

In their seminal work, *Activists Beyond Borders*, Keck and Sikkink (1998) developed a model known as 'The Boomerang Pattern', which provided a visual representation for the way in which non-governmental organisations (NGOs) of the developing world could work with international NGOs to address and correct human rights violations occurring in their countries (p. 13). Risse, Ropp and Sikkink (1999) used this model as a basis for their own diagram of 'The Boomerang Effect', which demonstrated the way in which social movements at the domestic level united with transnational networks to "bring pressure 'from above' and 'from below' to accomplish human rights change" (p. 18). These models have been praised for their explanatory power and application beyond human rights networks (Bassano, 2014, p. 24).

The models used in this piece pay homage to Keck and Sikkink's 1998 model and Risse, Ropp and Sikkink's 1999 model, but diverge in their *three* level interplay and inclusion of the small-scale processes happening at the community level that prevent the feedback of norms 'from below'. Keck and Sikkink (1998) identify domestic NGOs as key actors searching out international allies (p. 12) in order to put pressure on states that violate human rights norms. However, other, smaller-scale agents may also impact the way human rights are understood, the extent to which compliance is secured and the nature of feedback to the international community. The experiences at the individual and household level are key to measuring whether compliance is the norm, or violations are occurring. Furthermore, studies of VAW in South Africa are increasingly concentrating on small communities and individual experiences (Jewkes, 2002; Mathews et al., 2004; Dunkle et al., 2007; Wubs et al., 2013). The Figures in this piece have

therefore been developed to reflect the importance of micro level actors in the global ‘network’ (Keck and Sikkink, 1998, p. 5). Table 1 supplements and expands upon the information in each Figure, highlighting lists of actors, contextual factors and ideological underpinnings that occur at each level.

Table 1. Key Agents, Contextual Factors and Ideologies in the Boomerang Pattern.

LEVEL	AGENTS	CONTEXTUAL FACTORS	IDEOLOGICAL UNDERPINNINGS
MACRO	International Law International Norms & Custom Multilateral Agencies	Intersectionality Power	-
MESO	Domestic Law Domestic Custom NGOs and Opposition Groups	Intersectionality Power	Embedded Patriarchy
MICRO	Domestic Custom Private Sphere (Household)	Intersectionality Power	Embedded Patriarchy Constructed Victimhood

The lists noted here are not exhaustive and may be altered to apply to other contexts, states and issues. As reflected in both Table 1 and Figures 1 and 2, the model consists of three levels: macro, meso and micro. The macro level represents international actors (i.e., international law, international customs, international nongovernmental organisations and agencies). The meso level is focused on the domestic level (i.e., domestic law, custom, institutions, including the TRC, and NGOs). Finally, the micro level describes the community, reflecting the agents within households and the private sphere. Domestic custom spans both the meso and micro levels and is critical to an understanding of the interplay between the two. Contextual factors, in this case intersectionality and power, reinforce the behaviour of actors. Finally, ideological underpinnings affect both the context in which the instruments at each level work and the running of the instruments themselves.

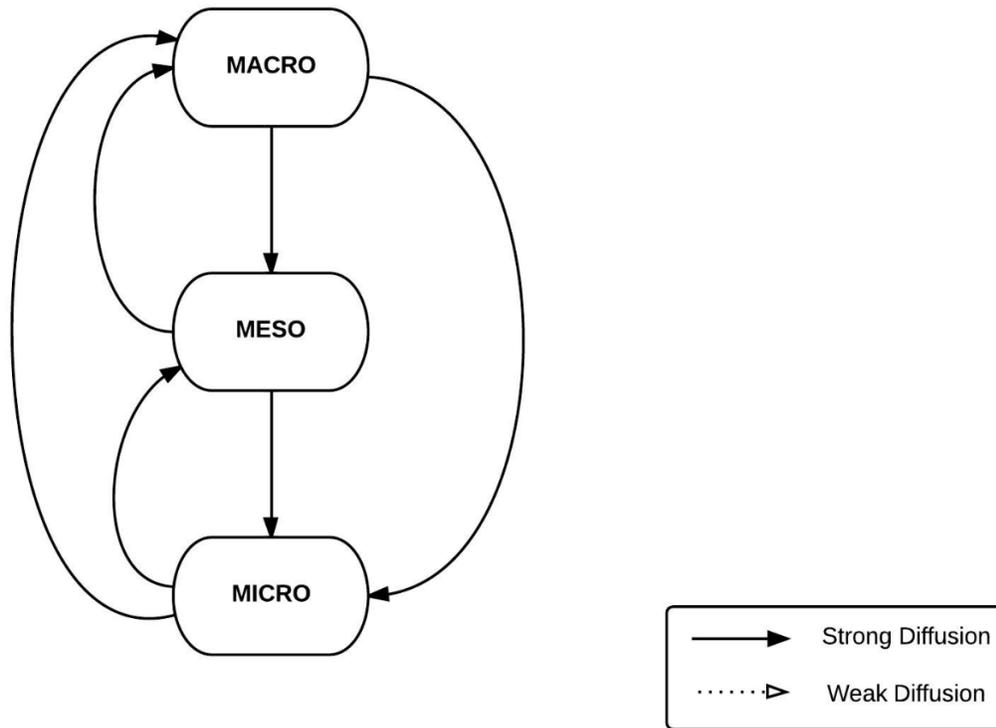


Figure 1. Tri-Level Boomerang Pattern.

Figure 1 has been developed for this piece to indicate a tri-level boomerang pattern working to optimum efficiency – norms diffuse from the macro level directly to the micro level through INGOs and international law. Norms here also flow through the meso level. They form a key part of domestic law and custom that is set by state institutions and, where the state has not done so effectively, by other actors (i.e. domestic opposition groups and NGOs). The response being fed back to the international community, both via the meso level *and* directly from the micro level, is one of compliance. The “dynamic linkages” between the domestic and international levels are mutually reinforcing (Risse and Sikkink, p. 18).

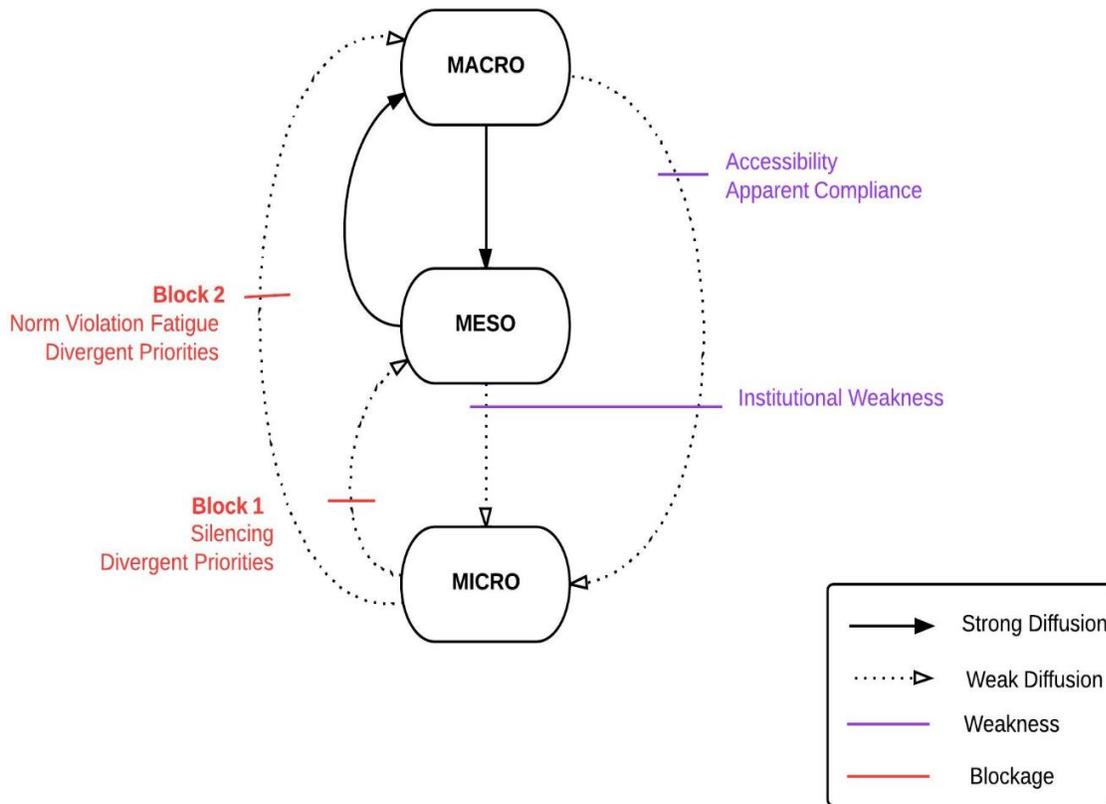


Figure 2. Tri-Level Boomerang Pattern Applied to Post-Apartheid South Africa.

Figure 2 (also created for the purposes of this piece) serves to illustrate how the model may be applied to explain why VAW in contemporary South Africa is an ongoing problem that, despite the presence of strong domestic law and institutional commitment to its eradication, is a persistent problem that has not yet been fully addressed. Figure 2 reflects a number of weaknesses and blockages that hinder the norm of gender equality and nonviolence from becoming mutually and positively reinforcing. These weaknesses and blockages will be discussed in detail later in the piece.

4.2 Instruments

4.2.1. Macro Level

As a functioning democracy and ‘compliant state’, South Africa’s duty to protect the bodily integrity of its citizens and to investigate and prosecute abuses where they occur, is no

longer debatable in the post-apartheid setting. That said, it is only possible to understand South Africa's transition and the development of its feminist agenda once the 'global gender framework' has been outlined and recognised

Following the Second World War and the establishment of the United Nations (UN) under the *UN Charter*, essential human rights were codified, beginning with the *Universal Declaration of Human Rights*. The Declaration, which was ratified in 1948 and came into full force in 1976 laid down that human rights applied to all citizens equally and without discrimination. This included women across the world. South Africa, though it abstained from signing in 1948, affirmed its commitment under the ANC government in 1994 to "ensuring a full and equal role for women in its economy and society" (ANC Reconstruction and Development Programme, 1994, Section 1.4.6). The role of the international community in imposing sanctions as a tool to encourage South Africa's compliance with international human rights must also be credited as having a significant impact on South Africa's transition. The economic weakness of the state following protracted sanctions, hastened the negotiation process between the ANC and the NP in the early 1990s (Barratt, 1992, p. 15). Although these measures were not directly targeted at improving women's rights and security, they demonstrated a commitment on the part of the international community to ensure long-term, overall compliance with international human rights.

The movement towards acknowledging women's security and human rights was reinforced by South Africa's ratification of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) in 1995. In its initial report to the General Assembly in 1998, the South African government acknowledged the parallel importance of tackling gender inequality alongside post-apartheid reconstruction (1998, p. 4) and highlighted the post-apartheid constitutional reform that placed women in twenty five percent of its government (1998, p. 5). CEDAW was described as a means for the international community to help South Africa to structure legal protections for women (Milani, Albert and Puroshotma, 2004, p. 47).

CEDAW was not originally drafted with the intent of addressing VAW, as this was not a high priority on the international agenda at the time (Bynes and Bath, 2008, p. 519). This absence led women's human rights advocates to lobby for VAW to be included under the remit

of a stand-alone, normative instrument. In 1992 the CEDAW Committee drafted a general recommendation (No. 19) specifying that gender-based violence and discrimination directly infringed on and nullified women's human rights and fundamental freedoms (General Recommendation No. 19, 11th Session, 1992, Art. 7). In response to this lobbying, the draft Declaration on the Elimination of Violence Against Women (DEVAW) was developed. DEVAW recognised the existence of VAW in myriad forms, but gave particular credence to sexual and domestic violence as a hindrance to women's social, economic and political equality. It called on states to enact structural reforms to discourage traditional practices countenancing gender-based violence (Article 4), to refrain from engaging in any action that involves VAW (Article 4(a)), to strengthen sanctions against countries practicing VAW (Article 4(d)) and to work wherever possible to foster gender equality (Article 3).

Having codified the existence of VAW, the right for women who had experienced violence to then rely on the *enforcement* of the law was codified under Article 26 of the *International Covenant on Civil and Political Rights* (ICCPR), which guaranteed "effective protection against discrimination on any ground". The UN Human Rights Committee is compelled by its own mandate to monitor states' compliance with the ICCPR, which South Africa ratified in 1998. South Africa is therefore bound by several multilateral treaties to investigate violations when they occur and take steps to bring perpetrators to justice. The key point illustrated here is that, after a slight 'false start', the concept of VAW was *clearly established* and violence of this type was considered by a significant majority of the international community to represent a violation of human rights at the international level by the time South Africa was moving out of apartheid and into a phase of compliance.

More recent examples of the modern world's commitment to combating VAW are represented by UN Security Council Resolutions and an increase in regional cooperation and instruments to supplement CEDAW and DEVAW. *Resolution 1325* (31 October, 2000) is most important to note, because it emphasised the importance of involving women and girls in the post-conflict process and integrating a gender perspective into peacebuilding operations. An Africa-based instrument for promoting women's empowerment was laid out in the 2004 *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*. By

demonstrating concern for the epidemic of VAW (Preamble, para 10) and taking regional ownership of solutions to the problem (Article 4), signatory governments (including South Africa) demonstrate to the international community that they have pledged to keep VAW in a prominent position and devote time and resources to its eradication. These steps taken together indicate that the evolving international and regional consensus on the primacy of human rights and rights for women in particular, is well established. Abuses by private actors are no longer tolerated and states are to fight all forms of discrimination and violence against women by adopting national legislation and creating institutions to enforce norms of behaviour.

Finally, underpinning these multilateral instruments is the work of international nongovernmental organisations (INGOs), of which women's human rights groups play a particularly significant role. By 2007 there were roughly 50,000 nonprofit (NPOs) organisations operating officially in South Africa, with 100,000 unregistered NPOs running concurrently ("The South African Nonprofit Sector", 2013), all dealing with a wide range of issues. This statistic spans a range of organisations, from community-based, grassroots bodies, up to international NGOs with satellite operations in South Africa. This reflects growth on the domestic level but may also indicate the level of interest and investment in NGOs in post-apartheid South Africa and the overall upswing in the number of INGOs (and indeed, human rights networks in general) from the 1980s onwards (Boli and Thomas, 1999, p. 20). The proliferation of INGOs investigating and bringing attention to VAW, speaks to the convergence of two separate groups: women's networks and human rights networks (Keck and Sikkink, 1998, p. 167).

Presently, there are a multitude of women's rights INGO networks and campaigns, some of the more prominent are: Amnesty International's Stop the Violence Against Women Campaign; UNiTE and the International Day for the Elimination of Violence Against Women (from which the Africa branch has been a particularly active offshoot); Human Rights Watch, The Nobel Women's Campaign to Stop Rape and Gender Violence in Conflict; the annual V-Day campaign; The African Women's Development Fund and FEMNET. These organisations are explicit about engaging in "accountability politics" (Keck and Sikkink, 1998, p. 193) and actively reach out for new nodes to add to their networks. An Amnesty International Document evaluating the success of its 'Stop the Violence Against Women Campaign' noted that this

international network-building not only increased the credibility of the work done by Amnesty International and its partners (at the macro level), but also contextualised its fieldwork, giving its work a greater likelihood of being successful at the micro level (Wallace and Baños, “A Synthesis of the Learning...” 2010, p. 19). The networks are evidently growing, but so too is the emphasis on the collective power and adaptability of those networks.

The macro level sets the standards for international law and norms. In the case of VAW, this reflects “a growing genre of global governance” (Brysk, 2013, p. 260) where it is largely assumed that the international community is invested in women’s rights and actively protecting women from harm. Anti-VAW narratives are well versed at the international level and the human rights of women represent an integral part of universal human rights and democracy (UN Report, ‘15 Years...’ p. 3). The macro level is also a major source of opprobrium should large-scale norm violations occur. The macro level does have its own limitations, particularly its inability to *enforce* norms (Brysk, 2013, p. 264). However, in South Africa’s case, the weaknesses and blockages in norm diffusion are usually generated by and have the greatest impact at the meso and micro levels.

4.2.2. Meso Level

The previous section asserts that women’s INGOs, international, and regional treaties have established a foundation for anti-VAW norms that were just beginning to strengthen as South Africa began its transition to democracy. As previously noted, institution building was a predominant form of post-apartheid development, allowing South African women of all ethnicities the opportunity to reframe their mobilisation and rights under the banner of the new state. Institutional reform was encouraged by the TRC (Emmanuel, 2007, p. 156), driven in the long-term by the Constitution and enforced by the courts using two national laws designed to protect women against all forms of violence: the *Domestic Violence Act (1998)* and the *Criminal Law (Sexual Offences and Related Matters) Amendment Act (2007)*.

The new Constitution was designed to reverse the inequality and questionable legal precedent established by apartheid and hailed as a ‘building block’ for gender equality in South Africa. It was drafted with ‘never again’ in mind and intended to provide equality for all peoples

and preserve a domestic standard of human rights (Tutu, 1999). The obligation to comply with international legal standards was clear, as the Constitution espoused ideas “borrowed from Western Europe and the United States, modified by South African experience” (Thompson, 2001, p. 257). The document contains a Bill of Rights and strongly advocates for economic rights for all, as well as political and civil liberties and guaranteed women proportionate representation in Parliament (Chapter 4, Section 46). That said, the Constitution was not actually as women-friendly as female activists might have hoped for. For example, non-sexism is not defined or even mentioned after a brief nod in Article 1(b), nor is consideration given to women or groups who are particularly vulnerable to violence. Although designed to be neutral, it was critical to the women’s movement that the Constitution be ‘gendered’ sufficiently to lend protection and significance to their activism – a move which was arguably not that successful (Meintjes, 2009a, p. 104).

Customary law¹¹ has also had a significant impact in the post-apartheid period, both on institutions themselves and the ability of institutions to perpetuate norm diffusion down to the micro level. In South Africa traditional law is often placed in opposition to the ‘official’ Roman/Dutch legal mix of the modern system. Many pre-apartheid, and even pre-colonial, customs that disadvantage women remain prevalent in the country. Some of the most troubling of these are the *lobola* (a bride price for women), a lack of recognised ‘status’ for women (that is, viewing women as the property of men), property transfers to male heirs, and education rights, which are seen as being exclusively in the purview of men. What is more, the Constitution recognises the power and longevity of customary law and provides that the organs of the state must apply it if it is appropriate to do so (South African Constitution, Article 211(3)). Customary South African law at the community level has been accused of being primitive, sexist, brutal, corrupt or patronage-based – or any combination of these (Jacobs, 1998, p. 79). In contemporary, rural South Africa, chiefdoms are personality-driven and disparities in gender equity *between* communities are becoming increasingly evident (Jacobs, 1998, p. 80). On the other hand, the way in which individual judges from the ‘Western’ legal system recognise and deal with customs

¹¹ There is no singular definition of customary law, but for the purposes of this piece it should be taken to mean a set of rules and traditions observed by the indigenous people of South Africa and forming an essential part of their culture (Bavinck, 2013, p. 20). The Constitutional Court guaranteed the continued existence of customary law in its *Certification* judgment. See *Certification of the Constitution of the Republic of South Africa*, 1996 (CCT 23/96).

and traditions in the courtroom, has just as much potential to change the way in which the micro level see their customs, as the chiefdoms.

South Africa's attempts to merge customary and more 'Western' models of conflict resolution date to the immediate post-apartheid period. Tutu argued that restorative justice in the form of a TRC, was an effective means of balancing traditional African jurisprudence with Western, modern and more legally oriented mechanisms (Tutu, 1999, p. 54). Today, it is plausible that the gap between the two legal frameworks is not as insurmountable as might be expected (Bereat, 1991, p. 101). The South African Constitutional Court in *Dikoko v. Mokhatla* (2006) agreed that modern-day restorative mechanisms "harmonise" with traditional forms of dispute resolution (para 68) and that courts could effectively use both customary and codified law to secure an effective and fair outcome for both parties (para 69).

In a Cape of Good Hope provincial court decision *Mabuza v. Mbatha* (2003), the court found that customary law had evolved with South Africa's changing socio-economic circumstances and was an appropriate tool to regulate marriage, as long as the customs continued to comply with the Constitution's equality clause. In the Constitutional Court case of *Shilubana and Others v. Nwamitwa* (2008), which concerned the passing down of a community chieftainship to a woman, the court recognised that it was possible for customary law to advance to a point of promoting gender rights and equality. The Court noted, "the value of recognising the development by a traditional community of its own law is not here outweighed by factors relating to legal certainty or the protection of rights" (para 84). These cases demonstrate that reconciliation between the two legal systems is, in some cases, possible. That said, this 'merging' of two legal systems would not apply to all laws, crimes or dispute resolution mechanisms. As the earlier section on the TRC demonstrates, cultural values and traditionally engrained norms may have a detrimental impact on justice mechanisms and this potential must be carefully assessed on a case-by-case basis. Although high-level South African legal institutions thus far are attempting to strike a balance between the two forms of law, this does not guarantee their compatibility when dealing with issues of VAW.

After the implementation of the Constitution, the courts in South Africa arguably shouldered the biggest burden not only in calming the politically charged environment through

the firm hand of the law, but in enabling all South Africans to enjoy their constitutional rights (Sachs, 1990, p. 3). The Courts now have two major pieces of law to work with to support victims of DV and sexual violence: the *Domestic Violence Act No 116 (1998)* and the *Criminal Law (Sexual Offences and Related Matters) Amendment Act (2007)*. Both pieces of legislation represent significant growth – before the implementation of the former law, there was no recognised crime of intimate partner or domestic violence. Previously, the most accessible charge was assault, which was rarely handed down (Human Rights Watch, 1995, p. 62). Despite the changes, Mogale et al. (2012) identify several significant gaps. Weaknesses in legislative management mean that ineffective institutions undermine the efficacy of the laws, a lack of service provision in the public health sector means that ongoing transgressions are allowed to occur, and finally, the lack of budget to enforce the two acts means that there is once again a gap between intentions and institutional ability (p. 588; Matthews et al., 2004).

The prevailing strength of traditional attitudes towards VAW counterbalances the diffusion of norms down to the micro level, serving as a hindrance to women's ability to use the legal system effectively. A prime example of the failure of the legal system is represented by President Jacob Zuma's (elected in 2009) rape trial in 2006, which has been thoroughly analysed elsewhere (see Ross, 2010 in particular). Zuma was Deputy President at the time of his trial and drew on narratives of power and ties with his Zulu heritage (Ross, 2010, p. 71). He also re-framed his accuser as a 'temptress' to gain sympathy for his side of the story (Ross, 2010, p. 72). The silencing of Zuma's accuser has been directly linked to the power dynamics and silencing experienced at the TRC. Ross (2010) argues that the stereotypes of female victims of sexual violence were largely the same in both the TRC and the Zuma trial, and that these prevented both Zuma's accuser and women at the TRC from testifying to their suffering and relying on the law (p. 81). All of these factors undermine the impartial and forward-thinking power of the South African post-conflict democracy. These weaknesses in the system reflect Galtung's structural violence, exacerbating the risk of rendering the population less receptive to South Africa's modern legal system.

Reparations¹² have formed a critical component of modern postconflict processes and are said to have a “transformative potential of remedy” (Ni Aolain, 2011, p. 187) through the economic empowerment they can bring to victims. However, reparations have benefits beyond economic gain – they may also bring about “the potential for social advancement and the accrual of means” (Ni Aolain, 2011, p. 188). The South African TRC Report classified reparations as “essential to counterbalance amnesty” (TRC Final Report, 1998, Volume 5, Chapter 5, p. 170), found them essential to national healing (TRC Final Report, 1998, Vol. 5, Chapter 5) and handed over the task of implementing reparations to the South African government. For the potential recipients, reparations represented economic benefit as well as reconciliation and apology. VAW is commonly recognised, not only as a correlate of poverty, but as a *cause* of underdevelopment – the problem is self-perpetuating without intervention (Sen, 1998, p. 14) and it was critical that all groups be allowed access to economic turnaround, as well as the symbolic importance of apology. Yet despite these provisions, the government of South Africa delayed and continues to put off the payment of reparations. By failing to follow through on this promise, the South African government has committed to the *idea* of gender equality but not to action that will bring this equality to fruition. On the one hand, the government portrays itself on the global level as a democratic state that has laid its past to rest and committed to forgiveness and the restoration of dignity (Simcock, 2011, p. 240). On the other hand, the government’s promises of reparations to individual citizens have gone unfulfilled, showing the lack of regard that the state has for the needs of the micro level.

South Africa’s modern policing has come a long way over the last two decades. However, since the point of transition they represent a major institution that has picked up the ‘blueprint’ of constraints against women, begun by the TRC. Women can face tremendous obstacles in coming forward to recount incidents of rape to the police (Human Rights Watch, 1995, p. 91). Particularly prior to the democratic transition police were heavily concentrated in ‘White areas’, with the rare police presence in ‘Black areas’ working as a means of political

¹² Reparations can take many forms – the ICTJ defines them as anything that “seek to recognize and address the harms suffered by victims of systematic human rights violations” (ICTJ website) and return the recipient to the ‘status quo’ of their life before conflict (Ni Aolain et al, 2011, p. 189). They can encompass anything from financial compensation, promise of non-recurrence of violence, formal apologies, memorialization or the implementation of social services such as healthcare or education reform. At the time of the South African TRC, economic reparations were considered the most popular option.

control, rather than an impartial piece of the justice system or deterrent against criminal activity (Human Rights Watch, 1995, p. 93). Police were less likely to come across incidents occurring in high-risk communities, and the expectation was that the police were a source of power and control, not of support and regulation.

The institutional transition to impartiality and dealing with *all* vulnerable groups took time and had a specific impact on women. Human Rights Watch noted that women had difficulty navigating a system where rape was considered “a ‘natural’ masculine response in a situation where “a woman does not say ‘no’ clearly enough and...the woman must have done something to provoke the attack” (Human Rights Watch, 1995, p. 91). The definition of rape was, in the immediate aftermath of apartheid, ‘culturally subjective’ and fraught with traditional underpinnings (“A State of Sexual Tyranny”, 2008, p. 17). As a result, the South African Police Service (SAPS) found it difficult to counteract the ‘status quo’ of dealing with the specificities of gender-based violence (Roederer, 2005, p. 93). In more recent times, SAPS has focused on developing its training to allow its officers to deal more effectively with instances of VAW and a general shift in police behaviour has been noted (“A State of Sexual Tyranny”, 2008, p. 8). The successful results of ‘service transformation’ will take some time, but strengthening protections against and responses to VAW at the policing level are slowly building momentum.

Women-centric institutions and NGOs, as in the macro level, supplement the critical framing role played by human rights and justice-focused instruments working at this level. The WNC was the biggest, but NGOs in post-conflict South Africa also served as a crucial means of filtering information both down into local communities and up into the international community. The institutional foundation based on gender rights was strong, because the CGE, OSW and JMC were expected to work collaboratively to ensure the continued support of women’s rights and security. Despite these lofty goals, several issues arose for these institutions almost immediately following their creation. None of the organisations had sufficient financial backing to fulfil its mandate, overlap in directives meant that each entity was forced to ‘guard its territory’ and bickering led to conflict within each organisation, particularly the CGE (Meintjes, 2009b; Seidman, 2007). These tensions served as a distraction from the work conducted and affected their ability to feed norms down to the micro level. When a coherent and inclusive group *was*

mobilised (as with the WNC) women's voices were dismissed, categorised as an 'indulgence' or as the 'inappropriate' demands of privileged White women (Cock and Bernstein, 2001, p. 145).

Seidman (2007) cites 2001 as the turning point for the CGE, noting that the transition from activist group to established institution took just over half a decade (p. 32). Women's institutions have moved from working in total opposition to government to supporting the government, but continuously challenging it to become more gender-inclusive and more focused on issues that impact women. The only drawback thus far lies in the ability of women's NGOs and institutions to mobilise *collectively*. There were, and continue to be, so many NGOs establishing themselves in South Africa's new democracy that it is impossible to track the mandates and work of each one, particularly if they are small-scale and unregistered ("The South African Nonprofit Sector", 2013). The OSW in its 2006 report cited this as a continuing problem, recognising sixty NGOs participating in South Africa's NGM, with no coordinating or umbrella body to centralise their goals ("South African Report to the AU", p. 6).

4.2.3. *Micro Level*

In a 1995 study, Human Rights Watch found that 32,107 cases of rape had been reported to the police, a 16% increase on the previous year (p. 51) and a 243% increase from rates of reporting in 1980 (p. 51). However, despite the increased reporting rate, Human Rights Watch suggested that reporting was not increasing *in proportion* to rates of violence, but rather was trying and failing to keep pace with a huge increase in rates of VAW (p. 51). By the time the TRC was up and running in 1997, Rape Crisis reported that a woman was being raped in South Africa every 36 seconds (Ross, 2010, p. 70). Even into the 2000s, rates of rape were staggeringly high: by 2007, figures had reached 88,784 cases, with only 7% of those cases ending with a successful prosecution (Mogale et al., 2012, p. 581). A retrospective, nation-wide study of female homicides conducted in 1999 showed that a woman in South Africa was killed by her intimate partner every six hours (Mathews et al., 2004, p. 1). The correlation between rates of rape and HIV are also well documented. While rates of infection have dropped from 540,000 new infections in 2004 to 370,000 in 2012, women and children are disproportionately likely to contract HIV and this is often linked to sexual assaults. In fact, one in seven of the cases in which women aged 15–26 contracted HIV, was associated with intimate partner violence (UN

Aids Report 2012, p. 70). These figures indicate an ongoing series of problems that have not been sufficiently impacted by the development of the international justice system, nor post-apartheid institution building.

For rural women the situation is more serious as they are disproportionately affected by gender-based violence and the resultant health problems, such as HIV/AIDS, other sexually transmitted diseases, unwanted pregnancy and psychological trauma (Amnesty International, 2009, p. 12). Their ability to seek help through the police or other institutions is also greatly reduced by logistical difficulties as well as ideological blockages (Jewkes et al., 2009). However, it is extremely difficult to gauge with any accuracy how the rural/urban divide leads to an increase in VAW. For example, it could be the influence of traditional leadership, particular economic deprivation, or any number of factors. Mathews et al. (2004) suggest that South African township and rural studies of VAW tend to concentrate on very small areas, rendering the results almost impossible to generalise. Because of the economic deprivations, lower levels of education, health problems, and propensity towards traditional values often experienced in rural communities, as well as the intersectional nature of these issues, it is difficult to prioritize which issues to address first (Rumbold, 2008, p. 24).

Newspaper stories detailing South Africa's continued inability to overcome the problem of VAW abound in the era of 'instant news'. A particularly well-known 2009 article in *Time World* blasted "South Africa's Rape Crisis: 1 in 4 Men Say They've Done It". Media attention to the issue has been compounded by the incidence of high-profile cases such as the aforementioned rape trial of President Jacob Zuma in 2006 and the alleged murder of Reeva Steenkamp by boyfriend Oscar Pistorius in 2013.¹³ A survey taken by Sky News in a township near Johannesburg found that 73% of the men surveyed confessed to having raped a woman ("Shocking Attitudes to Rape", 2013). Noticeable differences between NGO, media, and SAPS commissioned statistics on rates of VAW, suggest that no single body is able to secure an accurate picture of *true* rates of violence 'on the ground'. That said, most studies thus far have

¹³ In the early hours of 14 February 2013, Oscar Pistorius is alleged to have shot his girlfriend of three months, Reeva Steenkamp. Pistorius claims that he thought Steenkamp was an intruder, the Prosecution contends domestic homicide. The trial began on 3 March 2014 and was ongoing as of the time of writing.

been small-scale and short-term, making it difficult to gauge the link between attitudes to violence generally and violence within the home (Wubs et al., 2013).

Statistics on battery and intimate partner violence (IPV) in South Africa are even more difficult to quantify than sexual violence because IPV takes place predominantly within the private domain, in an ideological context that views the violence as a private matter to be reconciled between individuals. The relationship between high levels of adversity, both in childhood and adulthood, and the prevalence of IPV in South Africa are well documented (Jewkes et al., 2009; Mathews et al., 2011). The public/private divide is an oft-cited reason for women's reluctance to come forward. Jewkes and Abrahams (2002) found strong discrepancies between 'legal' and 'social' definitions of rape and sexual assault (p. 1232). The authors contend that sexual coercion within marriage is one of the most underreported forms of violence; the belief that a man may legally rape his wife pervades the social strata (p. 1232). This is best summed up by a participant in one study who stated, "I do not believe in democracy in the home" (Abrahams et al., 1999, p. 23).

The public/private divide is hardly unique to South Africa, but it does have clear implications for an understanding of non-consensual sex in the country. As VAW continues to take place in the 'public' domain through performative 'jackrolling' (gang rape of a single woman, also known as 'streamlining'), corrective rape of homosexual or transgender women, 'curative' rape (also known as the 'virgin myth', a belief that consensual, force, or coerced sex with a virgin female can 'cure' a man of HIV) and prostitution, IPV is more likely to be relegated to the background of the overall picture of VAW.

The most applicable domestic customs come in the form of 'rape myths' that implicitly blame women *and* pigeonhole men into a 'typical rapist' category.¹⁴ Beneath these myths lies the expectation that the rapist and the victim belong to a specific social class within South African society. For example, Moffett (2009) notes that rape as framed by the South African government

¹⁴ Victim blaming narratives are common justifications for rape. Examples of justifications and excuses include, but are not limited to, the need to 'exert manpower' ('Men's Shocking Views', Sky News, September 2013), dismissal of sexual overtures by women leading to frustration ('Men's Shocking News', September, 2013), the aforementioned need to 'teach' lesbians how to 'love' men (Sigsworth and Valji, 2012, p. 123), pride (Moffett, 2009, p. 161), and the subversive influence of alcohol and drugs (Jewkes and Abrahams, 2002, p. 1234).

“is an attack on Black men, which can be demonstrated by such talk of rape being racist” (2009, p. 165). The notion of an expected or ‘typical’ rapist belies the reality that men in every class of South African society have the potential to commit acts of VAW (2009, p. 65) and in a society shaking off the shackles of institutionalised racism, it is extremely dangerous. Very few studies analyse the perpetrators of rape in South Africa, or their motivations, in any great depth, concentrating instead on the phenomenon of rape myths or the perpetual victimhood of women and their social identities. These claims about the prevalence of rape amongst poor, black communities neglect contributory factors, such as substance use, indicators of poverty, prior history of abuse, a lack of infrastructure in rural areas, cultural and religious traditions, and/or peer socialisation and pressure (Moffett, 2009, p. 164). The enduring power of rape myths indicates that lessons learned at the macro and meso levels regarding the myriad factors that contribute to VAW, have not diffused down to South Africa’s micro level.

4.3. Contextual Factors

4.3.1. Intersectionality

This model has thus far identified the instruments and institutions that dominate every level of discourse and perpetuate the diffusion of norms from one level to the next. However, in order to understand these instruments, it is important to provide social context. Intersectionality describes the way in which race; gender, sexuality, class, and ethnicity/culture interact to form multifaceted social identities (Crenshaw, 1991, p. 1299). Through a *postcolonial* understanding of these intersections, social identities also come to be formed within the context of ‘history’ and ‘place’ (Moolman, 2013, p. 94). For South Africa this is particularly important because it forces researchers to take the history of apartheid into account when considering the multiple oppressions experienced by contemporary women. No single factor can sufficiently explain the violence experienced by South African women: it is in *intersections* of oppression that violence occurs (Sokoloff and DuPont, 2005). For example, South Africa’s 1998 CEDAW report directly flags women in rural South Africa as being particularly at risk due to the ‘triple threat’ of gender, race and class, adding that “special emphasis is placed in government policies and programmes on reaching those women who have been most marginalised” (1998, p. 4).

The theory of intersectionality is considered by many to be in its infancy (Renzetti, 2013, p. 74), and it is increasingly being applied to women within developing states (UN Special Rapporteur, 2009, p. 43). As Rooney (2013) notes, intersectionality can function as a “conceptual framework or heuristic device for posing critical questions otherwise not asked” (p. 91). The necessity of this understanding is clear: different cultures define, perceive and approach violence against women in a multitude of ways, but intersecting structural inequalities, particularly in the aftermath of large-scale, mass violence mean that entire groups of women may ‘slip through the cracks’ of law and norms. Lesley McCall refers to this as “configurations of inequality” (2005, p. 1773).

On the other hand, a different combination of these same factors has the potential to confer tremendous amounts of power to men. Social power is constantly shifting, emanating from the state’s and even the international community’s attitude towards identity. Certain intersections of race, ethnicity, and gender in South Africa are associated with the perpetration of violence, but very little attention is paid to how these intersections produce that result. In the international arena race becomes the dominant social category associated with South Africa, such is the lasting legacy of apartheid. This leads to diminishing returns of vocal power, at the macro level. Male power is no longer exclusive at the upper echelons of the macro level in the modern day. However, South Africa as an international actor has a relatively small voice compared to the hegemonic presence of the United States of America, or China’s growing influence. It is a post-conflict state with mixed institutional success. The interplay of ethnicity, class and identity experienced at the macro level, diminishes South Africa’s voice in relation to more powerful, richer states. Male power is usually dominant over women’s power and voice throughout the model. However, the intersectionality factors that give men power at their own level may place them in a position of disadvantage in relation to the men at the next level above them. Conversely, women are almost always in a position of inherent disadvantage to men, no matter which level of the model is under examination. This results in women’s silencing and experiences of norm violation fatigue by the international community. An understanding of intersectionality as a contextual factor is therefore critical to an understanding of power, and their relationship between each level.

4.3.2. *Power*

VAW is not only a product of sexual inequality, but also maintains an unequal balance of power between men and women. Perpetrators may consciously use acts of violence as a means of asserting power and enforcing subordination. Alternatively, women may choose not to challenge accepted norms of male behaviour for fear of physical or emotional repercussions. As a result, women's unequal status creates vulnerability, and may increase the violence perpetrated against them, creating a vicious cycle. Power also works dynamically at both the individual and collective level. Women have less power in their communities but also within their households, putting them at a disadvantage at the meso and micro levels. South Africa's history suggests that the international community is prepared to exercise opprobrium and sanctions should the country violate international human rights on a sufficiently grand scale. That said, multilateral organisations are showing an increasing awareness of the potential danger of enforcing power and diminishing locally driven measures, so power is often re-framed as assisting and example-setting at that level ("Ending Violence Against Women", 2006, p. 9).

Power dynamics in South Africa in particular are heavily dependent on the government agenda. Jacob Zuma speaks publically on the importance of women's equality, but his casual interactions with the public suggest otherwise. Zuma has, as recently as October 2013, been criticised for saying "if you don't respect those in leadership, if you don't respect authority, then you are bordering on a curse" ("Cursed if We Criticise Zuma", Mail and Guardian, October 2013) and for implying that women should clap or even lie down before men to show respect ("Zuma: Venda Women Show Respect", News24, December 2013). The new laws protecting women from violence (where power is a core dynamic) and the requirement for gender equality in government, as preserved in the Constitution, are undermined by the social values that place women in a position of subordination relative to men. Every time Zuma's informal beliefs are picked up by the media and used in sound bites, they undermine the power balance the government is allegedly working towards.

There is also evidence of bias in the sentencing of perpetrators of IPV who are often not given punishments deemed to fit their crimes (Mathews et al., 2004). This not only undermines the efficacy of new domestic violence law, it reflects the power dynamic of an overwhelmingly

male judiciary (Andrews, 2006, p. 567) and harkens back to the problems of amnesty and under-punishment at the TRC. The inability to rely on the legal system after experiencing a serious violation renders women doubly powerless and diminishes the likelihood that they will make use of formal legal processes in the future (Mogale et al., 2012, p. 589). The failure to grasp the multidimensional nature of power and any suggestion that VAW may be somehow “inevitable” perpetuates the cycle of power from the meso into the micro level and stops positive norm diffusion of gender equality and female empowerment flowing down from the macro level.

4.4. Ideological Underpinnings

4.4.1. Embedded Patriarchy and Constructed Victimhood

Patriarchy and power are often interchanged in studies of VAW. Table 1 reflects patriarchy as an underpinning to both power and control, and a contributor to intersectionality factors for both men and women. Patriarchy denotes a system in which ‘masculinity’ leads men to dominate women (hooks, 1984). Under a system of patriarchy, women are excluded from positions of power, unless that power is vested specifically with the intention of perpetuating male domination. It promotes a sense of entitlement among men and allows society to blame victims for male behaviour, particularly violence. It provides the ideological justification through which power is exercised. In this context, institutional or political equality have very little meaning (Sigsworth and Valji, 2012, p. 122), and women become a subclass who must be ‘kept in their place’. Patriarchy promotes a binary of sexual distinction between men and women, rigidly constructing roles and skills for each. Where gender distinctions are perpetuated, violence is more likely to occur because the desire to prove one’s hegemonic masculinity can reproduce violent behaviour (Messner, 2009).

During the ‘winding down’ period of apartheid, then Constitutional Court Justice Albie Sachs (1990) noted, “it is a sad fact that one of the few profoundly non-racial institutions in South Africa is patriarchy” (p. 1). Sachs reinforced this opinion in the *Baloyi* case, directly linking patriarchy to acts of VAW, “to the extent that it is systematic, pervasive and overwhelmingly gender-specific, domestic violence both reflects and reinforces patriarchal domination” (*S v. Baloyi* [1999] ZACC 19, per Sachs J at p. 13). In a society that is adjusted to

living within a protracted system of hierarchy, it is hardly implausible that the hierarchy may have shifted from an ethnic distinction to a gendered one. Furthermore, patriarchy is commonly reproduced through traditional household structures and the subordination of women in kinship-ordered societies – two factors which characterise South Africa. Embedded patriarchy is integral to the model illustrated in this paper because underlying ideologies of male dominance diminish the efficacy of newly created institutions and the successful diffusion of norms from the international community down to the micro level. Because patriarchal ideology reinforces the notion that men are dominant in all areas of life, it also normalises the idea that men are entitled to be violent to exercise their will, express frustrations or maintain supremacy.

Patriarchy is not unique to South Africa. Every culture constructs gender roles according to its unique beliefs about – and social constructions of – men and women. While the treatment of women and forms of violence may vary across cultures, the occurrence of VAW is universal (UN HRC, “Fifteen Years...” 2009, p. 1) and sexism, however subtle, may infiltrate institutions at the highest levels. It is only since the 1990s that calls for a more inclusive, empirically grounded and nuanced approach to gender-based violence, particularly during conflict, have been brought into practice at the UN (“Ending Violence Against Women”, 2006, p. 77). This development means that embedded patriarchy is not listed at the macro level of Table 1. The meso level cannot be said to be free of embedded patriarchy, as evidenced by leadership’s mixed response to women’s equality and the interplay of power during TRC testimony and the Zuma trial. All of these factors indicate an ideologically embedded patriarchy that proves fundamentally stronger than the norm diffusion of equality and nonviolence from the international community at the macro level.

At the opposite end of the spectrum lies ‘constructed victimhood,’ which is the idea that women are fragile and more likely than men to be victims of violence. Just as patriarchy feeds on commonly understood routines, customs, and ritualised behaviours to justify the actions of perpetrators, constructed victimhood arises from social frames of female fragility and the characterisation of women as part of a lower social standing than men. As with patriarchy, this ideology reproduces from generation to generation and is perpetuated by women as well as men. Studies demonstrate that women understand that if the payment of a *lobola* secures her union

with her husband, she is his property (Jewkes et al., 1999, p. 9; Shope, 2006, p. 68). Violence in the home may be justified through assumptions that “she only wants to please her husband” (JMC Report, 2002, p. 56), and rapes defined as punishments for promiscuity (CSVR Report, 2008, p. 42) or for sexual orientation (Di Silvio, 2011).

This ideology has the most bearing at the micro level. While Western scholarship is disseminating ideas of empowerment and healing for ‘victims’, women continue to be denied economic rights and experience a lack of access to leadership positions at the local level. Poverty further compounds the likelihood of women turning to transactional sex (Jewkes, 2002, p. 1239), yet these decisions foster blame because women are said to ‘deserve’ sexual exploitation – “women like money, that’s why they get raped.” (“Men’s Shocking Views”, Sky News, September 2013). There is a question as to whether interventions should focus on VAW itself, or on raising the status of women in general. It may be the latter which will lead to a shift in attitude towards women and women’s status at the local level.

5. Blockages and Weaknesses in Feedback Loops

Contemporary South Africa faces a deep contradiction in the rights and security of its women. Ever-growing national and international institutions promote gender parity in government, redefining feminism and power. At the same time, high levels of day-to-day VAW demonstrate an underlying, gender-based power dynamic that is largely unaltered by international *or* national initiatives. In short, several elements of the norm boomerang pattern are not working effectively. While the South African government purports to be an instigator of change, state-driven programs have had a limited impact and norms of gender equality are either weakened or blocked altogether. Evidence suggests that institutions may have undermined the voices of the very women they were created to help, *contributing* in the long run to women’s oppression.

Recognising the constructivist view that norms represent “shared understandings that constitute actor identities and interests” (Checkel, 1997, p. 473), this model demonstrates that the ‘shared understanding’ that VAW should be subject to opprobrium and social action, is being lost in translation between the national and community spheres. While the feedback loop

between the meso level of contemporary South Africa and the international arena is by in large maintained, feedback between the micro level and *any* other level is a much more problematic process. The interpretation of VAW following the end of apartheid was that it was a stand-alone problem, independent from ethnic tensions, power dynamics, reconciliation or the renewed control of the democratic state. As a result, women were not fully integrated into governments or civil society and women's issues were only deemed to be within women's purview to change through separate institutions, policies and laws. The shared history of struggling against apartheid by Black men and women had resulted in Black women attempting to align themselves and their needs with their male counterparts. In the modern day, sustained rates of VAW have weakened this union by planting the idea of men as perpetrators of violence against women, rather than comrades, allies and equals. This serves to further encourage women to rely on their peers to enact changes and maintains the prolonged separation of ethnically focused *and* gendered integration. All of these factors exacerbate the overall 'norm drag' that South Africa experiences when it comes to this issue.

5.1. Accessibility and Apparent Compliance

There is a significant difference between the *means* of complying with international law and customs, and the *results* arising from that compliance. The structures may be in place, but 'collective expectations' have not altered and, therefore, norm diffusion is not complete. These first two factors represent a weakness in norm diffusion between the macro and the micro levels. There is no weakness, however, between the macro and the meso levels because institutional creation and legal changes have happened in South Africa. Actors at the meso level are aware that they must comply with the international implementation of anti-VAW policies and practice, or risk sanctions and opprobrium (Brysk, 2013, p. 264). The strengthening of SAPS training, the shift in attitudes in courtrooms towards VAW cases and the shift in priorities of the CGE towards a more focused agenda, all serve as strong indications that institutionalization and moral discourse are occurring. The South African government is responding in a way that is consistent with international rules of behaviour for protecting the rights of women to be free from violence. The discourse of its leaders also suggests that they are cognizant of their obligations. For example, Jacob Zuma credited the combined efforts of South Africa's police, NGOs, and courts

in a 2013 speech for National No Violence Against Women Day, noting, “we cannot defeat this scourge working alone as government” (Media Statement From President Zuma, 25 November 2013).

The weakness lies in the diffusion of this norm of behaviour all the way down to the micro level. It is extremely difficult for the international community to gain access to the women the norms most need to reach. Domestic and international NGOs are working to disseminate information on women’s lived experiences of violence and hold the South African government to account. Nevertheless, an understanding that institutional transformation is not enough to mean true compliance is critical for the international community. As long as the international community judges South Africa’s success by institutional investment, norm diffusion will continue to be weakened by ‘apparent’ compliance. A recognition by the macro level that accountability must be measured by a change in statistical results and reporting could shift the way the international community gauges the extent of South Africa’s problem and therefore the way in which its norms are able to reach micro-level communities.

A key theme of South Africa’s response to VAW lies in its reactionary nature. As more time passes from the transition to democracy and new sub-issues of VAW are raised, be they problems of corrective rape, IPV or the intentional transmission of HIV, the South African government communicates to the international community that it is willing to deal with the issue. However, the underlying problems created by significant wealth gaps between rich and poor, slow policing and court processes and under enforced Constitutional principles mean that the potential *factors* that increase the likelihood of VAW, and other crimes, are not addressed quickly or thoroughly. As a result, the norms are slowed in their movement down to the micro level and true, results-based changes take longer to see. There is also little being done to tackle hegemonic masculinity at either the meso or micro levels, to curtail the dialogue that perpetuates the notion of female victimhood. The continuous addition of new institutions to the meso level does not guarantee that new problems will not arise or that new forms of VAW will not become more problematic. The South African government must stop engaging in rhetoric and work to prevent new forms of VAW from manifesting.

5.2. Institutional Weakness

This piece has identified several instances where institutions that were rich with potential were nevertheless unable to fulfil their mandates, either immediately or even at all. At times the actions of institutions have resulted in repercussions that ran counter to their mandate and neutralised their effectiveness years down the line. TRC reparations are an excellent example of this. Although the ways in which women were disenfranchised at the time of the TRC hearings has been noted, an argument can be made that the lack of organisation around reparations led to the continued economic oppression of women and minorities and undermined the long-term gains intended by the Commission. Firstly, the Committee for the TRC defined ‘victims’ who would receive reparations as those that had suffered “gross violations of human rights” (Simcock, 2011, p. 247). This not only eliminated the possibility of ‘proxy payments’ for women who had lost the primary breadwinners in their households to apartheid, but the definition of human rights violations much like the definition of ‘politically motivated crime’ failed to include sexual violence or any other form of VAW specifically (Simcock, 2011, p. 247). As a result, thousands of women were excluded from the process.

Now, over ten years after the TRC submitted its report, this omission stands as evidence of incomplete ‘compliance’ with internationally and nationally recommended principles. Even Yasmin Sooka, who herself was a TRC Commissioner, admitted that by taking so long to implement a reparations process, the government of South Africa undermined the TRC’s recommendations. She also expressed disappointment that a significant proportion of reparations had not been paid out at her time of writing (2009, p. 33). This lack of action also gives the impression that the TRC was a mere instrument of the government, “dragooned by an emergent bureaucratic elite into the service of nation-building” (Wilson, 2005, p. xvi) and a body that the government could choose to ignore once its recommendations were handed down. The trickle down of anti-VAW norms cannot diffuse through institutions that do not give sufficient credence to the issue, that grant amnesty to perpetrators and deny women who experienced violence access to reparations on the basis of a legal technicality. Recommendations must be borne out by action for changes to be effective (Minow, 1999, p. 57). For all of those reasons, the model reflects weakness in norm diffusion from the meso to the micro levels at this point.

Intersectionality theories now recognise the multiple, interlinked oppressions of class, ethnicity and gender that women and men in South Africa experience. Fragmentation of women's NGOs and women-led institutions in modern-day South Africa along ethnic and class weakens the overall 'voice' of these organisations and renders them less likely to be able to follow through on promises of reform. If these promises between the meso and micro level are broken, those oppressions will continue, and it is highly likely that violence will continue as inequality, poverty and frustrations perpetuate. This critique demonstrates that it is not just the language of institutions that counts, but their ability to fulfil their promises in the long-term.

5.3. Silencing

The silencing of women is often described in the context of VAW as a psychological issue that renders individual women unable to divulge details of the violence they have experienced. Silencing as a blockage to feedback between the micro and meso levels speaks to an individual psychological problem, but also to a wider, community-level silencing. This problem is grounded in several factors: community traditions encourage silence in the face of adversity or victimhood; fear of unfamiliar or new institutions reinforce perceived shame or judgment, as evidenced by women's testimony during the TRC; or access and activism is drowned in the face of public discourse about women's 'place,' value, or common experience. The activist women's movement in South Africa may have succeeded in 'bringing in' women's institutions, but it has not yet been able to deconstruct successfully the underlying and entrenched patriarchy that encourages female silencing and affects women at the micro level.

Under Keck and Sikkink's (1998) model of norm diffusion, in the event that national groups are blocked by the state from accessing 'open space,' they are able to reach out in other directions to new NGOs or transnational bodies (p. 13). However, if the blockage is the result of self-silencing by women themselves, that may perpetuate within the micro level and prevent women from reaching out *at all*. South Africa's police and courts are walking a fine line between establishing primacy for modern provisions on sexual and domestic violence, and showing respect for traditional custom, which may reaffirm patriarchy and contribute to the silencing of women. Myths and socially reinforced beliefs about women, who suffer as a result of violence, change the narrative from one of openness to one of blame. Every time an institution at the meso

level reinforces these myths, be it the police, courts or traditional authorities, women are silenced and find it harder to reach out to either the meso or the macro levels and plead their case. Silencing therefore acts as a complete blockage to successful norm feedback.

5.4. Divergent Priorities

Divergence in priorities leads to a blockage in Figure 2, as the needs of the micro level are not properly heard or understood by the meso level. At the time of South Africa's transition, gender inequalities were enmeshed with the racial hierarchies established in the apartheid era, reducing the likelihood of alliances for women across racial lines and reflecting the 'fault lines' of South African society as a whole. This clashed with the emphasis on racial and gender equality as defined by the international community. By focusing on ethnicity to the detriment of gender rights, or by presenting gender issues as stand-alone and separate from ethnic tensions, a gap between the priorities of the meso level and the needs of the micro level emerges. This was another area where the TRC set a bad precedent, but this blockage was also particularly evident during the Zuma trial, when a combination of power, masculinity, and ethnic dialogue were used as tools to detract attention from the victim's testimony. This paper has shown in its sections on 'power' and 'patriarchy' that there is a disjuncture between policy and practice – combatting VAW may be a vocalised government priority in South Africa, but the follow-through on those policies will be the true measure of the government's dedication to the issue.

Removing this blockage from the model requires effort on both sides. Activism must be sustained at the micro level and efforts must be made to push through entrenched divisions to form successful coalitions. The sixty women's NGOs under the National Gender Machinery are a prime example of a group that would benefit from collective strength and unity ("South African Report to the AU", 2006, p. 6). At the meso level, there are suggestions for ways in which the government can reinforce the 'equality for all' goal it set in its Constitution. Some have advocated for a 'second wave' TRC to realign gender priorities with South Africa's democratic and developmental trajectory and 'complete' the transition process begun by the first TRC. Others suggest that South Africa must publicly recommit itself to addressing VAW as a public health issue (Jewkes et al., 2002, p. 1242) and change the framing of violence from legal-political groundings to one which everyone at all levels of society may take ownership.

At the micro level of South African society, it is crucial to move beyond the assumption that rape is a socially predestined phenomenon. Classifying certain groups of South Africans as ‘more likely’ rapists on the basis of their poverty, ethnicity, culture or traditional background, perpetuates risky gender and ethnic stereotypes and reinforces fragmentation along intersectional lines. The narrative at the micro level is rich with custom, entrenched social beliefs and ritualized behaviour. The implication from these dialogues is that rape is somehow justified after the ‘legacy’ of apartheid, or that all rapists belong to certain demographics, namely Black, rural, poor, and uneducated males. What is more, this narrative holds an underlying assumption that the situation in South Africa may never change and that micro-level norms will continue to be stronger than those filtering down from the meso and macro levels. Just as realignment is critical for the meso level, so too must collective expectations and myths at the micro level be displaced in order to align with international standards of behaviour.

5.5. Norm Violation Fatigue

The final factor that blocks the progress of norm diffusion is here termed ‘norm violation fatigue.’ At the local (micro) level, norm violation fatigue has been termed “normalisation” (Bornman et al., 2013 p. 9) and describes a phenomenon whereby people have become so accustomed to the high rates of VAW in South Africa, that norm violation has experienced diminishing returns. What was once shocking to the international community now runs the risk of being seen as ‘run of the mill’, reduced to discussion every time a prominent case arises but with little follow-up or opprobrium as a result. This desensitisation is hindered by continuous media headlines that proclaim South Africa the “rape capital of the world”.¹⁵ Although South Africa’s crime rates across the board, including rates of VAW, are notably high, this title is nevertheless contestable, given the high rates of VAW also occurring in the Democratic Republic of Congo, India and Somalia, to name but a few. Many of the reasons given to explain this title, underreporting and stigma, are far from unique to South Africa. What the label does do, however

¹⁵ For examples, see: *The Examiner* (June 2009) – South Africa: The Rape Capital of the World; Reuters (February 2013) – ‘Outcry Over India Rapes Shames Some in South Africa’; *The Washington Post* (March 2013) – ‘South Africa, Once Called the World’s Rape Capital...’ *Mail and Guardian* (December 2013) – ‘Malema: South Africa’s Feminism Champion; and *The Independent* (January 2014) – ‘Crisis in South Africa.’

subconsciously, is plant the idea that the state is beyond help, which diminishes the likelihood of positive change.

The normalisation of violence at the micro level is an obvious cause for concern. Of equal concern is the fact that this reporting does not seem to have an effect on the wider international community. It appears that the rhetoric of the South African government that it is working on developing gender equality diminishes its short-term accountability on the world stage; its words are not sufficiently matched by deeds. Researchers and the media must be wary of disseminating information that is at best damaging and at worst untrue. The international community must also strengthen the force of its opprobrium against South Africa, and push harder 'from above' for positive results.

6. Conclusions

This project denotes the dichotomy between South Africa's progressive and gender-friendly institutions and the lived experiences and suffering of women on a day-to-day basis. The South African government has made a tremendous leap since the downfall of apartheid, particularly with regard to its understanding of ethnic tensions and the rights of maligned groups. While its political transition has been largely successful, findings suggest that South Africa's position as a leading proponent of gender equality, has not translated to equality for ordinary South Africans. Institutions set up during the process of democratization promised significant change, but have yet to *uniformly* deliver on these promises. The TRC, the blueprint and 'change maker' for institutional reform, failed to include women adequately and this omission may have bled into other, newer institutions. The continued rhetoric of government and its assertions that it has created change, contradicts the evidence that the needs of women at the micro level are not being heard. Despite training and growing awareness, a lack of sensitivity within justice and policing institutions does not allow for the dissemination of consistent messages to victims. Within this system, socially constructed gender stereotypes around victimhood, patriarchy and power flourish. In this sense, South Africa's transition to democracy may be said to be somewhat incomplete. This study concludes that perceived compliance, institutional weakness, fragmented

political will and norm violation fatigue all combine to mask a pervasive problem that cannot be shifted without concerted effort ‘from below’ and ‘from above.’

Norm diffusion is notoriously difficult to ‘measure.’ Very few of the factors mentioned in this manuscript are unique to South Africa and a great number of them are not even unique to post-conflict countries. This study does not seek to imply that the factors outlined here are the only plausible explanations for high rates of VAW. One of the strengths of this model is that it can be easily adapted to account for alternative explanations or applied to other post-conflict states. That said, there is much that the South African government could do to address the problems outlined in this piece. Firstly, the courts must continue to walk the line between respecting customary laws and traditions, maintaining South Africa’s legal norms at the level of its extremely progressive Constitution. The police must continue training and aim to standardise their dealings with vulnerable women. Female-centric institutions must be given the time and the funding to centralise their agenda and form necessary coalitions on a national and international basis. The idea that certain segments of the population (be they stereotyped victims or perpetrators) are ‘lost’ to either the international or national agenda, is a structurally embedded fallacy that must not be allowed to continue.

Societies that are emerging from conflict have a significant number of complicated goals to fulfil in order to successfully ‘reintegrate’ into world norms. That said, they are also ripe with potential for constructive change and policy improvements that can transcend socially created divisions and lead to constructive healing. Instead of merely ‘talking the talk’ and failing to deliver on promises, the South African government must now look at ways to reinvigorate its population with its post-apartheid, inclusive agenda. The South African government must also start thinking ahead and prevent socially accepted norms of VAW from bleeding into the next generation of young South Africans. Rather than simply ‘reacting’ to violence as a common facet of society, it must work to prevent its occurrence. Finally, further research in this area should encompass both a wider empirical study of VAW across South Africa and delve more deeply into an analysis of particularly vulnerable communities, particularly in rural areas. In-depth, qualitative research would illuminate many more problems that cannot be seen in policy and

research analysis. Only with the benefits of further research can the gender binary pervading all layers of South African society be understood and effectively addressed.

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