



Legislative response to family violence in South Africa: A family centered perspective

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ABSTRACT

South Africa has instituted many legislative and constitutional changes since 1994 to combat violence. Regardless of these legislative developments, South Africa has some of the most endemic rates of violence in the world with most of these high rates of violence located within family violence. In response, South African legislation drew from a number of international and regional commitments as well as constitutional amendments to facilitate an enhanced family environment which promoted family well-being and functioning. However, legislatively, family violence is still fragmented in its respective subsets of intimate partner violence, child abuse and elder abuse. Disregarding family violence in the holistic sense, fragmented sectors and efforts to comprehensively and adequately prevent or reduce the rates of family violence. Through a family centered perspective, this paper aimed to review the various legislation used to address family violence within the South African context.

1. Introduction

A concerted effort has been taken legislatively by South Africa in a bid towards violence reduction and future eradication, especially towards gender-based violence (GBV). As noted by Mofana (2015), South Africa, since 1994, has undergone drafts and introduction of several policies and legislation aimed at gender-based violence, such as the Domestic Violence Act of 1998, Sexual Offences Act of 2007 and the National Action Plan to End Gender Violence. The South African Government has also ratified various international and local protocols to show its commitment in addressing gender-based violence (Mofana, 2015). These commitments not only include violence reduction through equality but largely in enhancing family wellbeing. Yet South Africa has some of the most endemic rates of violence in the world. This is not only reflective of violence at national or community level, but specifically at familial level targeting the vulnerable members of society, namely women, children and the elderly.

According to Africa Check (2013) the statistics provided by the South African Police Service (SAPS), showed the South African murder rate to be six times the global estimate for the year 2012–2013. Of these murders, South Africa has the highest rates of child and intimate partner violence (IPV) related female homicide in the world (Mathews, Abrahams, Jewkes, Martin, & Lombard, 2013; Seedat, Van Niekerk, Jewkes, Suffla, & Ratele, 2009; Wood & Jewkes, 2005). South Africa has

displayed the highest incidence of rape for a country not engaged in armed conflict and twice the global estimate for child homicide (Mathews et al., 2013; Seedat et al., 2009; Wood & Jewkes, 2005). Youth exposed to family violence are more likely to commit violent acts or acts of intimidation, than youth not exposed to family violence (Loeshut, 2009). Though research on elder abuse within South Africa is noted as sparse (Ferreira & Lindgren, 2008), international literature notes family members as the most likely perpetrators of elder abuse (Berkman, 2006; Soares et al., 2010). Overall, 46% of all injury related deaths in South Africa are linked to interpersonal violence (Department of Health, 2012).

If such progressive legislative transformation has taken place, why do the statistics show family violence to be the overriding experience of the South African citizen? In examining this question, the aim of this paper is to promote a family-centered approach as a primary point of intervention for the various legislations used to address family violence and enhance family well-being within the South African context. A family-centered approach has been a missed opportunity due to the oversight in much family focused legislation. The main concern of legislation aimed at families, was to either address the victim/perpetrator relationship or addressing family prescriptively through legislation without considering structure, context and functioning unique to the family. In understanding this, we will firstly engage the theoretical framework inspiring the direction of a family-centered focus within

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legislation. Secondly, we will review international and regional commitments South Africa had largely drawn from in shaping family focused legislation and how it has influenced South Africa's response to families at risk due to violence. Thirdly, the need for an integrated strategic framework for violence will be addressed, as the best means to co-ordinate resources and stakeholder responses as well as harness political will, in directing efforts towards violence prevention. Lastly, we will look at South African legislation directed towards family violence and the implications of putting families at the forefront of legal as well as health promoting interventions.

2. Theoretical framework

Human beings can only be understood and effectively aided, within the context of their intimate and influential human systems, one of which is family (Bronfenbrenner & Morris, 2006; Hartman & Laird, 1983); as family is constructed and developed through its generations, having an extensive effect on all its members (Hartman & Laird, 1983; Ryan, Rich, & Roman, 2015). Family members are shaped through mutual interaction and influence (Bronfenbrenner & Morris, 2006). These mutual interactions and influences, create habitual ways of behaving and communicating (the manner in problem-solving, arguments or discussions occur), as well as establishing relationship patterns which govern these actions (Becvar & Becvar, 2006). As such, the family is logically modeled after a system, owing to the interdependence seen through these relationship patterns and the networks they create between the family and the social environment (Connard & Novick, 1996). Through Bronfenbrenner's ecological systems theory, we begin to understand that as individuals are influenced by family, so too are families influenced and affected by other external factors, notably work, community but also legislation and public policy (Pittenger, Huit, & Hansen, 2016).

Most family violence policies draw from the ecological approach of which individual, familial as well as communal factors are considered (ANROWS, 2017; Nagia-Luddy & Mathews, 2011). The ecological approach used within policy, reflects risk resulting from the interplay of personal, individual, situational as well as socio-cultural factors at various levels in the social environment (Nagia-Luddy & Mathews, 2011). Notably, to tackle the issue of family violence and seek appropriate intervention, we need to understand the ecological framework as a heuristic approach to organize a systemic attempt in disentangling the various levels of influence; as we develop in the context of relationships which serve to sustain, serve, enable or discourage maladaptive behavior (Stormshak & Dishion, 2002). To disregard these relationships and the context they were forged (such as parent-child relationship or family), would inhibit positive change not only in the immediate environment but other contexts such change would extend to (Stormshak & Dishion, 2002).

The ecological approach is therefore seen as a beneficial framework which promotes a better, holistic understanding of violence; this is especially seen in the conceptualization of potential prevention strategies (Heise, 1998; Dahlberg & Krug, 2002 in CDC National Center for Injury Prevention and Control; Nagia-Luddy & Mathews, 2011). Evidently, to truly promote holistic prevention or intervention, we must comprehend that families are most at risk, as violence is known to occur more between family members than acquaintances or strangers and have generational transference (Ryan et al., 2015; Tolan, Gorman-Smith, & Henry, 2006). Thus it is important to fully enhance the ecological aspect of family violence policy and legislation, as most interventions may be ideologically driven, most are also policy determined (Tolan et al., 2006). However, in using the over inclusive, earliest version of the ecological framework can be diffuse, making it difficult for clinicians or policy-makers to specifically focus on what to study or when, where, and how to intervene (Eriksson, Ghazinour, & Hammarström, 2018). In using the latest version of the approach, specifically the Process–Person–Context–Time Model, focus would be

more on the individual behaviour and not the contextual assaults which shape it, a criticism linked to the model's "victim-shaming" ideology (Eriksson et al., 2018; McLeroy, Bibeau, Steckler, & Glanz, 1988). Victim-shaming ideology has been a long standing deficit in interventions not using the family-centered approach; families are seen as prescriptive to a specific group instead of unique, differences seen as in conflict with the intervention plan and not as contextual factors to be considered and worked with (Burns, Dunn, Brady, Starr, & Blesser, 2008). The ecological approach which considers within/between interactions of systems is noted as most effective for health promoting policy; we not only allow for focus to be on intrapersonal as well as environmental needs, we allow policy to reflect this, in being shaped by individual factors but also the lived environment (Eriksson et al., 2018). In promoting a family-centered focus, we efficiently match policy and legislation to what is occurring in the lives of South Africans, as we are able to contextualize risk factors within the ecological framework of the three levels of prevention, namely primary, secondary and tertiary prevention (Nagia-Luddy & Mathews, 2011).

Family life in South Africa is directed according to guiding principles laid out in the White paper on Families in South Africa (Department of Social Development, 2012). The white paper on families is a policy used to direct all ratified international declarations, regional commitments, as well as national legislation all defining what a family should be, protection and support the family is entitled to, and how equality in marriage and commitment to care of children, should be the basis within these families (Department of Social Development, 2012). Key features in the white paper policy will be highlighted.

3. International commitments

Two platforms speak directly to support families should receive, which is the International Conference on Population Development Plan of Action (1994) and the World Summit for Social Development, Copenhagen (1995). The International Conference on Population Development Plan of Action (1994) was a shift of focus, from demographic-specific targets to placing importance on the improvement of individual lives of men and women in order to address inequality at the individual level. Defeating inequality means providing support and protection to families, as families are the basic unit of society (Department of Social Development, 2012; International Conference on Population Development Plan of Action, 1994). Supporting and protecting to families was one of the ways inequality, sustainable economic growth, child and mother mortality as well as access to reproductive health, could be tackled. Adequate protection and support however, can only be provided to families through family-sensitive policies regarding housing, work, health, social security and education.

Nonetheless, the elderly were not included under family but rather under 'Population, growth and structure'. The focus on the elderly was more about independence through work opportunities and quality of life; to be self-sufficient through self-determined lives. The population development plan of action (1994) states we should recognize and value the role of the elderly not only in volunteer work but the caregiving roles they play in family life as a member of the family; speaking about the elderly under population, growth and structure rather than family protection and support, seems disjointed (Department of Social Development, 2012; International Conference on Population Development Plan of Action, 1994).

The World Summit for Social Development, Copenhagen (1995) aimed to promote social progress and the betterment of the human condition through the participation of all. The summit noted families as integral to social integration. In order to enhance the capacity of families to achieve social progress, the summit asserted the rights of the child to be respected as well as to eliminate violence towards women (World Summit for Social Development, Copenhagen, 1995). In essence, these gatherings reiterated that families are entitled to support and protection (Department of Social Development, 2012).

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