

Misogyny and Marginalization in Criminal Justice Systems: Women's Experiences in Two Post-Conflict Societies

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INTRODUCTION

In Northern Ireland and South Africa, two countries that are attempting to rebuild their societies after extended periods of armed conflict, women who seek redress from gender-based violence through the criminal justice system encounter barriers to justice. Such barriers emerge from misogynistic attitudes toward women that prevent police from appropriately responding to reports of sexual and domestic violence, diminish the capacity of police and court officials to empathize with rather than blame victims, and impede judges from sentencing convicted perpetrators in proportion to their crimes. Despite the striking differences between these two countries, in each society women face similar patterns of obstacle when confronting the criminal justice system. Indeed, the respective criminal justice systems provide venues through which the hatred of women intersects with the secular politics of nation-building.

The present study¹ involved conducting field interviews with 90 women in South Africa and Northern Ireland between the years 1999 and 2007 as to their post-conflict experiences in the two nations. It found that almost all of these women—88 out of 90—indicated that, due to fear of gender-based violence, they actually feel less safe since the end of political conflict within their respective nations.

Men who are insecure in their own social status and who are jealous of women demonstrate animosity towards women that culminates in violence in the public, private, and social systems. Although peace processes have been in place in South Africa since 1990 (beginning with Nelson Mandela's release from prison) and Northern Ireland since 1994 (beginning with the first ceasefires), women continue to experience public violence from paramilitaries and gangs. Such violence occurs when men want to prove their masculinity in front of other men (Dairner, 1999; Dorothea, 2006; Hamber, 2010; Joyce, 2007; Julianne, 2006; Megan, 2006; Naomi, 2007; Shirlow, 1997; Vetton, 2000; Xaba, 2001; Yonela, 2007). These men utilize physical and sexual violence, or the threat thereof, in order to intimidate and silence women so that they can retain power and control within their communities. In the private sphere, women experience domestic violence

from (male) intimate partners as well as sexual violence from (male) intimate partners, acquaintances, family members, and strangers. Unlike the previously-described public violence, interpersonal violence tends to be hidden, and perpetrators often behave in front of others as though they have never perpetuated such violence. Finally, women experience structural violence from the healthcare, criminal justice, governmental agency, and other social systems. Such systems are ostensibly designed to help women. Yet not only do they routinely fail to do so; they may also even bring women additional harm and distress.

I. BACKGROUND OF VIOLENCE

The present study on post-conflict gender violence in South Africa and Northern Ireland illustrates that the period of rebuilding a nation after civil unrest can be a time when hostilities toward women are prominent. As governing bodies draft new legislation² to protect women's human rights, men's hostility toward women may actually escalate.

Literature in Northern Ireland and South Africa indicates that men in both countries feel that new protections toward women allow women to benefit unfairly (Geisler, 2004; Ginwala, 1998/2005; Northern Ireland Office of Statistics and Research Branch, 2006; OFMDFM, 2012). Despite evidence to the contrary (Antonopolous, 2007; ISS, 1999; Unterhalter, 2005; Vetten, 2002; Vogelmann, 2000; Women's Aid, 2011; Women's Net, 2012), men tend to feel that women surpass them educationally and in employment (Bairner, 1999; Hamber, 2010; Shirlow, 1997; Xaba, 2000; Vetton 2000; Hamber et al, 2006; Harland 2011).

Moreover, men often feel that legislation designed to equalize women's position within society and protect women from gender-based violence will unfairly punish men (Mpho, 2007; Police Officer Franklin, 2007; Police Service of Northern Ireland, 2011). Hamber (2006) found that men in South Africa fear women's new liberties. Tunney (2014) confirms that such resentment exists in South Africa and in Northern Ireland, too. Although the governments of both nations want to align themselves with countries that preserve and protect human rights, many men do not want to relinquish gender privilege in order to achieve equality and justice for all.

Furthermore, when men feel they are losing control, they tend to utilize violence against women to regain their power. For example, when women gain political power, male colleagues at times react through harassing and bullying female politicians, and husbands react through reasserting their control in the household. Although the African National Congress ("ANC") in South Africa instilled quotas to ensure that women constituted at least thirty-three percent of all ANC representatives, some female politi-

cians report experiencing harassment once in office (Pumla, 2007; Norma, 2005). Other government officials report that their increased professional status fails to improve their status within the home. One ANC parliamentarian revealed that her husband said, “You may be a member of parliament, but, when you walk through that gate, you are my wife” (ANC Parliamentarian, 2003). These examples illustrate the insecurity many men may feel when women have improved status, as well as men’s perceived need to assert authority over women.

II. WOMEN AND THE CRIMINAL JUSTICE SYSTEM

Northern Ireland and South Africa are part of a global community of women continue to have negative experiences with the criminal justice system. Women in these countries encounter structural violence from criminal justice systems that often deter them from reporting to police incidents of sexual or domestic violence.³

Shame, guilt, fear of reprisal, and fear of the community placing the woman on trial all contribute to a woman’s sense that reporting such crimes will not help her. Moreover, low conviction rates and light sentences contribute to the sense among women that the legal system will not deliver justice. Women in Northern Ireland reported seeing some improvements with policing, but such improvements are not systemic. In addition, they do not see any improvements with sentencing when court cases happen to reach a conviction. Women in South Africa generally reported negative experiences with police and courts, too.

As described below, courts remain heavily backlogged, difficult for victims to navigate, and dismissive toward victims during sentencing. Hence, the criminal justice system in each country hinders women from achieving justice and security.

A. *Policing in Northern Ireland*

One would imagine that, with improved legislation and greater awareness of domestic violence and rape since 1994, criminal justice interventions would have improved. Yet research participants indicated that although some improvements with policing have been realized, policing remains inconsistent. The participants, including shelter workers and women who experienced intimate partner abuse, believed that police are more likely than they were before the transition to charge perpetrators in domestic violence cases. During a focus group of nine shelter workers, the participants reached consensus that police have begun to take domestic violence more seriously. However, the responses of individual police officers

remain uneven, as the treatment of complainants continues to depend on individual officer's level of skill and overall effectiveness. One shelter worker who accompanied women to court indicated that the police are being more proactive in charging people, and a senior shelter worker commented that in some cases women praised police for their help while in other cases women felt police treated them badly (Women's Shelter Focus Group, 2006). Such uneven results indicate that, even with improvements, women cannot count on receiving consistently helpful policing.

For many women, non-responsiveness or other improper inaction by police resulted in failures to improve women's security in multiple ways. First, women expressed a lack of trust toward police and were, therefore, less inclined to call police for help. Second, police do not always treat incidents of rape or domestic violence seriously. Third, police sometimes treat domestic violence cases as mutual abuse and so charge both the victim and the perpetrator. Fourth, police do not work to gather evidence to the fullest because they expect that victims will ultimately drop charges. Finally, the legacies of political conflict that facilitated distrust toward police in these communities ultimately deterred women from calling the police and, likewise, limited police responsiveness when women did happen to call.

Similar to Crenshaw's (1994) finding that black women in the United States lack faith in police due to racial discrimination and so are less likely to contact police to report domestic violence incidents, women's distrust of police in Northern Ireland may also affect their decisions whether to report incidence of domestic violence. The conflict- and post-conflict communities of Northern Ireland are working-class and overwhelmingly religiously-affiliated, both Catholic and Protestant. While Catholics are most commonly associated with anti-police sentiment, women within highly politicized working-class areas—and regardless of religious affiliation—reported feeling that they could not trust the police to respond to a domestic violence or rape call, since the police lacked presence within the community. For example, Sylvia (2006), who lived in a working-class Protestant area with significant paramilitary activity, believed the police neglected her community: "We have no police in this area. They drive past in their Land Rovers. You'd be lucky if you see them driving by." Sylvia argued that women were less likely to report sexual or domestic violence incidents to the police because the police lacked a community presence. In addition, another Protestant woman, Sheila, said that she wanted to be able to go to the police but felt unable to do so due to police neglect, as well as paramilitary intimidation not to speak to police (Sheila, 2006). Hence, in some areas, distrust of police, lack of police presence, and paramilitary intimidation all work to limit women's access to police and policing services.

Other, less overt forms of intimidation also limit women's access in this area. One Northern Irish reproductive health organization, which has been harassed by right wing religious activists, determined that seeking the help of police would do more harm to their clients than good: "We made a decision as an organization about a year ago not to involve the police anymore because the presence of the police was also intimidating to the women" (Sylvia, personal communication, 2006). This service provider indicated that women, no matter their religious affiliation, could feel intimidation from police presence. Sara, a Catholic woman who divorced her abuser, revealed that she would never report an incident to the police: "I look forward to the day when a police service can come onto this street that I can trust" (Sara, personal communication, 2006). These women, from Catholic and Protestant backgrounds alike and largely working-class communities, express a desire to have a police force on which they can count, but report continuing to feel intimidated and neglected by police.

In addition, police are not effective in supporting the laws they are trying to uphold. Patricia, who works with rape victims, observed that very few women report incidents of rape to police because these law enforcement officials do not seem to be effective in handling such cases (Patricia, personal communication, 2006). Megan, a Protestant woman in her late-twenties with four children, experienced abuse in multiple relationships. Although the police did respond to her calls, they did not take action to improve her safety. During one domestic violence incident

the police took him away to his mum's house, which was a five minute walk from my house. . .and told him to stay at his mum's that night. Ten minutes later, he's back at my door. By this stage, I found the police very pathetic. I had no faith at this stage. (Megan, personal communication, 2006)

Had the police actually made an arrest here, Megan may have been safer. In another incident, Megan wound up in the hospital with injuries after her ex-boyfriend and some of his friends, who were associated with a paramilitary, attempted to murder her. Although Megan's ex-boyfriend was ultimately arrested for attempted murder in this case, he received bail and violated her protection order against him. Even though he violated the order, the police refused to arrest him and said that Megan would need to wait on further legal action until he went to court.

Police also often label women and men as co-perpetrators in incidents without understanding the history or other context of abusive patterns within a relationship. Considering an incident to be a case of "mutual abuse" may be particularly pronounced in Northern Ireland due to Equality

Legislation written during the peace process. In an attempt to treat men and women equally, police attempt to be gender-blind when making domestic violence arrests. Equality Legislation, put in place to promote non-discrimination, requires that police do not refer to “him” as the perpetrator or “her” as the victim. Rather than equalizing the playing field, the government presumes an equal playing field to exist between the genders. Equality Legislation has also resulted in an increase in services for male victims of violence.

However, Equality Legislation does not recognize the gender-bias in domestic and sexual violence or correct the misogyny that promotes such violence. Consequently, police can mistakenly label women as perpetrators when they use self-defense, either at the time of an attack or later on when the partner is more vulnerable. The Director of Domestic Violence at Police Service in Northern Ireland stated that police statistics are misleading because they only track the number of incidents; they do not acknowledge the context. The Director also stated a belief that such statistics create an artificially elevated perception as to the frequency of women perpetrating domestic violence (Patricia, personal communication, 2006). Of all domestic violence criminal charges published in a 2011 report, for example, prosecutors identified females over the age of 18 as victims of domestic violence in 69 percent of cases and males over 18 constituted 21 percent of victims of domestic violence (Police Service of Northern Ireland, 2011). Such a high proportion of male victimization is at odds with established research findings, which indicate that females constitute between five to fifteen percent of perpetrators, and in most cases the female perpetrators acted out of self-defense (Healy, 1998). Indeed, the Director of Domestic Violence reported that, during her career, she had found only one case in which she believes that the woman was actually an unprovoked perpetrator.

Moreover, police tend to blame women for the abuse that they experience. One women’s shelter worker, after evaluating numerous police reports, noticed that police reports tend to label the woman as argumentative:

Looking back at reports, I never see argumentative comments attributed to the perpetrator. I never see any of those; it’s always to the woman. I’m looking at this case thinking he threw her out in the night when she was 8 months pregnant because she was argumentative. (Lisa, personal communication, 2006)

Indeed, a woman may be labeled as argumentative or even hysterical if she experiences a crisis, because society in general is less likely to recognize the seriousness of an incident or to acknowledge the trauma that a woman experiences. Because gender roles dictate that a woman is not sup-

posed to fight for her rights, police may see her behavior as out of line. Consequently, as Lisa said, “The police are going to endorse the behavior of the perpetrator” (personal communication, 2006).

Finally, police often expect women to drop charges against perpetrators, and consequently might not exercise due diligence in gathering evidence to the fullest. Police officers interviewed under this study expressed frustration over those women who initially pressed charges but later change their minds when the couple had reconciled. Officers reported that such experiences made them less likely to gather evidence to the fullest. In fact, lack of evidence could result in the failure of the Office of Public Prosecution to prosecute cases. Of the 23,059 domestic violence incidents reported to the police in the years 2005-06, for example, police and prosecutors only classified 10,768 as offenses, or prosecutable crimes. Assaults constituted 58 percent of the crimes, criminal damage constituted 15 percent, and breach of protection orders constituted only 13 percent (Bollen, Artz, Vetter and Louw, 1999). More than half of the time that police initiated domestic violence charges, the Public Prosecution service considered those incidents to be domestic violence but did not consider the incidents serious enough to count as crimes.

B. *Policing in South Africa*

Women in South Africa often do not report rape or abuse cases to the police because they believe that law enforcement officers will not help them. Even though a staggering 25.4 percent of all women in South Africa were raped in 2011, only 3.9 percent called the police and only 2.1 percent reported intimate partner rape (Department of Social Development, 2012). As well, one 2010 Gender Links survey indicated that 29 percent of South African women experienced physical or emotional abuse but did not indicate how many had reported the abuse to police (Machisa, 2011). Other factors that shape women’s reasons for not reporting rape and abuse cases include reluctance to discuss personal problems with strangers and even self-blame; many women in this study stated beliefs that they were responsible for the incident and that they should have predicted it.

Changes since apartheid also make it difficult for women to receive police support. Previously, black women would not have reported rape or abuse under apartheid, since the police repressed black communities. Yet even now that the police force has been overhauled, the new police service suffers from insufficient resources, including human resources, needed to effectively tackle the problem of violence against women, and morale is also low (Simpson & Kraak, 1998, 1). While police are beginning to receive training on new domestic violence and rape legislation, not enough

officers have received this training and some police also fail to act according to the training they receive. Those who work in the field of domestic violence express concern that, without sufficient training and attitudinal changes on behalf of law enforcement officers, victims will continue to doubt the police (and may even be right to do so). Study participant Kristina said, “Our new laws are wonderful, but when it comes to the implementation, they haven’t thought that through.” Kristina also noted that police often resort to calming an immediate crisis rather than filing charges against an abuser: “They are just trying to resolve the dispute and calm the couple down and file a complaint” (personal communication, 2007).

Participants in this study who have called the police report that officers often fail to respond to calls or, when they do, to respond only after a significant delay. Bonolo, who was living in a shelter at the time of the interview, explained that waiting for the police compromised her safety: “You call and call the police and they come or they don’t come. Then they want us to wait for them in the house in the time that we can get out. And then they don’t even come” (personal communication, 2007). Likewise, another study participant waited for the police for an excessive amount of time: “When the police are called, it can take up to an hour, an hour and a half” (Nozizwe, personal communication, 2007). Such a poor response time can compromise victims’ safety.

Similar to the conditions in Northern Ireland, in South Africa police still might not arrest the perpetrator even after a victim reports domestic violence. According to South Africa’s Independent Complaints Directorate, police refused to lay a charge in 53 percent of cases of victim abuse. As well, in many cases the officer incorrectly informed the victim that the law did not allow them to file charges (Barnard, 2011). In addition, Democratic Alliance found that police failed to inform an astounding 96 percent of victims of their rights, including the right to apply for a protection order. The directorate concludes that 65 percent of police stations in South Africa do not comply with the new domestic violence law (Barnard, 2011).

As in Northern Ireland, one reason why police in South Africa may choose a course of inaction is that women who are domestic violence victims often do return to their abusive partners: “Two days later the woman comes back and withdraws the case. There is a lot of time there being wasted. People are not aware of the options” (Kristina, personal communication, 2007). Yet one common reason that a woman may take back her abusive partner is that she cannot risk the loss of income if her spouse is arrested:

The support system is very, very sparse in South Africa. There’s nowhere; you can’t go if you’re not paid or have no working income, you

can't go. Many women, after they've calmed down and the anger is gone and the hurt is gone, they go back to their partners. (Carol, personal communication, 2007)

Hence, a woman might not find it practical to contact the police or follow through with charges if she depends on her husband's income for survival. Obviously, confronting the economic reasons that may be behind a woman's decision not to follow through with charges may result in more victims being willing to press charges, which would be a better approach to criminal justice and policing than if police officers simply choose not to arrest perpetrators due to the anticipation that a women victim is likely to change her mind, for whatever reason.

Rural living conditions in South Africa can also make it difficult for women to access police services. The police are likely to be of little help to those women who live in isolated areas during their experiences of abuse, for as one service provider explained:

There's a woman whose village is 65 kilometers from the nearest police station. There are no phones in her village. She must travel 67 kilometers to the nearest court to get her a protection order. A protection order means nothing in rural areas because it cannot be implemented. (Kristina, personal communication, 2007)

Those who work with victims of domestic violence and rape in South Africa also expressed concern over police response time. A person who works in the courts declared, "One of the other obstacles that we are encountering is the reluctance of the police to assist." Police intervention in rape is especially crucial, because in order for a woman to access the local rape crisis center or receive medical attention, she must first open a case (Mr. Makabe, 2007). Yet as Eileen, a government department worker, revealed, it often takes hours before a woman who was raped sees a detective. This means that while she is waiting for the police, a rape victim is not able to shower (which cannot happen until after all the evidence is collected). It also means that unless the victim accesses the police and the police agree to open a case, she will receive no medical treatment, anti-retroviral drugs, or counseling. Research participants from this study who were raped or who experienced attempted rape did not go through this protocol because they either did not report the offense at all or reported it days after the incident. Unfortunately, not reporting right away can weaken one's case, deprive an individual of access to medicine needed to prevent spread of HIV, and prevent one from receiving counseling.

The incidence of spousal rape of women also presents many challenges. For instance, if a woman experiences spousal rape, the wider socie-

tal perception that “rape” cannot occur within marriage may cause her to doubt her perception of the incident and the police’s willingness to respond. Philippa explained that she struggled with whether she was really raped: “I didn’t feel comfortable reporting it as rape, even though he did force himself.” After it happened a second time, she decided to take action:

It happened again two nights later. Then I did call the police. It happened during a period when there was a campaign against abuse of women and children. I had to go to the rape crisis center; I had to be put on antiretroviral drugs. I opened a case with the police, but the police did not arrest him. I was forced to carry on living in the same house, sleeping in the same bed with this man. The police were getting fed up with me. (Philippa, personal communication, 2007)

In this situation, the police did not press charges, even though Philippa went through the appropriate procedure. Philippa reported feeling that the police failed to treat her with respect and that they did not want to bother with her case. In incidents of marital or intimate partner rape, police may choose against arresting an alleged perpetrator because they do not feel confident that they will be able to gather sufficient evidence to ensure a conviction. One court officer said, “Evidence is often not sufficient because the information is very vague. Also, it is not always completed in the manner that we need for court” (Mr. Makabe, 2007).

Multiple women reported futile attempts at convincing police to open cases for rape and attempted rape. For instance, Yonela, a former gang member who was raped multiple times when she tried to escape the gang, said that she tried to report cases in multiple venues. In all instances, police refused to open cases and arrest the alleged perpetrators. She said, “I reported cases everywhere—where I was, you name it. Nothing has been done” (Yonela, personal communication, 2007).

Likewise, Ntombe reported an attempted rape to the police. Although her clothes were ripped and she had bruises, the police refused to open a case because she still had her underwear on. She said she feels as though rapists have more rights than the women who are raped because the former roam freely around society. Ntombe also questioned whether victims of gender violence would have to die before the police opened a case (Ntombe, personal communication, 2007).

Regarding her own case, Bonolo explained that the police brought her to a shelter rather than arrest the perpetrator. She said, “The only good thing the police have done for me was bring me to the shelter” (Bonolo, personal communication, 2007). Although she was glad to be taken to a refuge to improve her safety, Bonolo might have been safer if her perpetrator was behind bars.

Nomsa, another rape survivor who is part of this study, said she does not feel safe because the police refuse to help her. “The police, they also do crime. I am not safe. Because of the father of my son, I nearly died. I praise the Lord that I am alive today” (Nomsa, personal communication, 2007). Nomsa recalled another incident where the police failed to charge an abusive neighbor, which led to a murder-suicide. “The police sent the husband home. After he went home, a neighbor heard shots from their house. They were found both dead” (Nomsa, personal communication, 2007).

Evidence from this study indicates that some research participants do not seek help from the police because they lack faith in the police’s response. Tandiwe chose not to call the police after either of her two attempted rapes because she did not believe the police would help (Tandiwe, personal communication, 2007). Likewise, Nomsa declared, “We did not call police we had just said we need no police to come and guard us. We thought that it will cause more trouble for us” (Nomsa, 2007). One research participant expressed the concern that police were more interested in prosecuting gang and drug activity than gender violence. For instance, although police refused to prosecute Yonela’s rapists, they asked her to become an informant about the gang to which she had previously belonged. She refused to become an informant because she felt doing so would put her in too much danger (Yonela, personal communication, 2007).

Three other research participants, two former sex workers and one woman who shelters former sex workers, suspected that women lack the protection of law enforcement due to corruption on the police force and collusion between gangs and police: “Unfortunately a lot of our police are corrupt, as well. Since ’94, the police have allowed brothels and escort places and relations on the streets everywhere. The police receive money or favors in return” (Beatrice, personal communication, 2007). Joyce, a former sex worker who is married to her abusive pimp said:

There’s basically nothing the police can do, that’s my opinion. I’ve been on the streets now for 10 years and I know the only thing they can do for your own protection is pick you up for loitering and put you in the cell overnight, so they can protect you for that one night so nothing happens to you. They don’t really bother to respond or they don’t take it seriously when a prostitute is in trouble. I don’t think is fair. A girl can get beaten by a pimp and, if she lays the report, the pimp gives a police officer a few hundred rand and it is let go. (Joyce, personal communication, 2007)

Hence, occurrences such as lack of response, lack of arrests, and even pos-

sible acceptance of bribery provided evidence to study participants that the police would not redress gender violence.

C. *Courts in Northern Ireland*

Courts in Northern Ireland generally administer very light sentences to convicted perpetrators of domestic violence and rape. The sentencing guidelines for domestic violence include fines, community service, and suspended sentences. While guidelines indicate that custodial sentencing may be used, they do not propose the length of time for various forms of domestic violence (Magistrate's Court Sentencing Guidelines, 2014). During one 2009 government debate, members of the legislative assembly recognized that perpetrators seem to receive more lenient sentences than perpetrators of non-domestic related assaults (Kerr et. al., 2006). "The Magistrate's Sentencing Guidelines" for domestic violence includes the following guidelines, presented in order of increasing severity: "Absolute or Conditional Discharge, Fine, Community Order, Suspended [Sentence], or Custodial Sentence." Fines, probation, or new court ordered programs for perpetrators are the most common non-custodial sentencing offenses for offenders (End Violence Against Women Coalition, 2007).

Female participants in this study indicated that, due to these light sentences, they had not achieved justice or safety. Megan's perpetrator, who was originally charged with attempted murder, was ultimately convicted of occasional acts of bodily harm with intent to kill, as well as acts of criminal damage on her home; he was sentenced to sixty hours of community service. Megan continued to feel unsafe, and eventually asked a local paramilitary group to protect her from him (Megan, personal communication, 2006).

Dorothea also discussed the weak sentence given to her daughter's perpetrator of sexual violence. She said that her daughter "had the courage to take this man to court and he got a suspended sentence." Dorothea described the strength and resolve on the part of survivors to challenge perpetrators in court but questioned whether a court case is worth enduring if perpetrators will not receive custodial sentences.

Julianne said, "When that judge slammed his hammer on that piece of wood he handed me a life sentence and him seven months. . .the judicial system stinks for its sentencing" (personal communication, 2007). Julianne equated experiencing sexual violence and the ongoing threat that a perpetrator may present with receiving a life sentence; one must live with those traumas for the rest of one's life.

Similarly, one shelter worker discussed a case in which a woman in a shelter was almost killed. Zoe said, "One man was sentenced to ten years

and got two, even though he nearly killed her. I think if perpetrators of domestic violence do to strangers what they do to partners and wives, the response would be totally different than what these women are facing on a daily basis” (personal communication, 2006).

Light sentencing for incidents of rape and domestic violence sends the message that courts do not take these crimes seriously. Moreover, light sentences become a public health and safety issue, not simply a justice issue. With perpetrators on the street, women live in fear. They often leave their communities, hide from perpetrators, or seek protection by paramilitaries in order to survive. Sentences neither account for the repeated pattern of abuse that perpetrators inflict on their victims, nor reflect the reality that victims often feel the threat is so substantial that they choose to go into hiding when courts fail to imprison perpetrators.

Data for conviction and sentencing on rape and sexual assault seem to indicate that judges do not treat sexual violence with sufficient seriousness. The rate of conviction for rape, after trial, decreased from 28.2 percent in 1994 to just 19 percent in 2005 (Northern Ireland Office Statistics and Research Branch, 2006). In 2003, 108 defendants were convicted of sexual crimes, but only 56 of those criminals received custodial sentences (Northern Ireland Office Statistics and Research Branch, 2006). Two individuals received sentences of less than six months in prison, while six individuals received sentences of nine years or longer. The average custodial sentence was three years, and the average sentence for rape was seven years and seven months. Hence, judges do not automatically put perpetrators of sexual offenses in jail, and those who are convicted of committing sexual offenses might receive only short sentences. These sentencing results show that not much has changed since McWilliams and Spence (1990) found that efforts to improve the criminal justice system had focused on policing rather than adjudication and sentencing. Such light sentencing, specifically for rape, sexual assault, and domestic violence convictions, indicates that misogyny is embedded within the criminal justice system.

The failure to treat women with dignity is another pervasive way that the criminal justice system exercises and reflects misogyny. One complainant took her case to the court with the help of shelter workers, and requested that she be allowed testify in a room separate from her perpetrator due to the intimidation she experienced from him. However, the court told her “that she was being really immature, and she felt really bad about it. She was told that she would be in the same room because they were not wasting time again” (Meredith, personal communication, 2006). This incident illustrates the lack of sensitivity and understanding within the courts regarding the power that an abuser may have over a victim, including intimidation from simply being in the same courtroom as the abuser. In addition, the

incident reflects improper, even inappropriate judgment directed by courts toward witnesses. Specifically, characterizing the victim as “immature” demeans the victim’s status as a competent woman, and considering her request to be a “waste of time” undermines the validity of her emotions and concerns as these bear on her in-court testimony.

Given that some service providers do judge women, then it appears that women make rational choices when they are hesitant to press charges against perpetrators. Appearing in court opens the already-victimized woman to public scrutiny. The woman’s actions are then questioned and she must relive her experience in a potentially hostile environment. If she is already overwhelmed and lacking energy for any endeavor beyond basic survival, a court appearance could simply be too much to handle immediately after such an incident.

D. *Courts in South Africa*

Only one case out of fourteen that South African participants in this study brought to the police actually made it to the courts. The one case involved an attempted rape of Precious’s daughter, age 15, by a neighbor man who, at the time of the interview, remained out on bail while he awaited trial. He lived down the street from Precious, a circumstance which continued to compromise her daughter’s safety. She and her daughter awaited a court date, but courts were backlogged and cases were not processed promptly. Such delays can give witnesses time to question whether they will take the stand; they also can give community members an opportunity to question victims’ behavior. In addition, after the incident Precious’s daughter cried frequently, had trouble concentrating on her studies, and acted carelessly. Precious worried about the ongoing effects of the incident on her daughter, and the delay in the trial compounded their stress (Precious, personal communication, 2007).

Since so few research participants had success in getting a case to court, domestic violence officers provided valuable first-hand information about the kinds of cases that do reach the courts. One officer of the court outlined the obstacles to women within the court system, as he believed the courts require substantial improvements in order to meet the needs of victims of sexual and domestic violence. First, the waiting areas are not victim-friendly because perpetrators and victims must wait in the same area, a factor which can produce intimidation. Second, not enough judges process emergency orders. Since no judge is dedicated to domestic violence cases, magistrates must examine cases after hours in addition to their already-full caseloads. Providing additional funding for magistrates to process protection orders and to adjudicate domestic and sexual violence cases could

reduce waiting time (Mr. Makabe, 2007). Furthermore, Kristina, whose work with a non-governmental organization has brought her intimate knowledge of the judicial system, argued “There isn’t a magistrate that is fulfilling the administrative duty of rubber-stamping all these applications” (Kristina, personal communication, 2007). All of these difficulties inhibit women from getting protection orders or taking a perpetrator to court.

Two research participants who contemplated getting protection orders against abusers described how difficult getting to the courts from their residence would be, and how intimidating they imagine the process would be once they arrived. Even if a woman could afford and locate transportation to get to the courts, she might not be sufficiently literate to understand the paperwork involved in applying for a protection order or opening a case, and in any case might feel intimidated by the prospect of telling a judge her personal story of abuse. Hence, poverty, illiteracy, and lack of community support can also impede women from accessing courts.

E. *Counseling Perpetrators in South Africa*

Common interventions in domestic violence include shelter services for women; for men, they include court-mandated counseling, probation, suspended sentence, or jail time. Non-custodial options are considered preferable to custodial ones due to prison overcrowding. These interventions do little to transform the gender role hierarchies that facilitate male privilege and provide context for such abuse. While in shelter, counseling, or a support group, women may learn about the ways that gender role stereotypes contribute to their abuse, but such information helps them only after they have already experienced such abuse. Likewise, programs that work with men, which are still in early stages of development and implementations, largely work with men who have already perpetrated abuse. As such, these programs do little to prevent the formation of attitudinal misogyny.

This research study focused on only one batterer intervention program, called NICRO, which South African courts commonly mandate. NICRO bases their program on the world-famous Duluth Model and adapts it for South Africa’s cultural conditions. Kristina said, “Men and women hold different cultural perspectives when it comes to their roles. We challenge that because women do not believe that men are entitled to punish their wives” (Kristina, 2007). Kristina stated that NICRO has a 60 percent success rate in working with voluntary clients. However, Kristina did not reveal how many clients NICRO included in this statistic. Voluntary and long-term participation (one and one-half years) are necessary to the pro-

gram's success, and Kristina indicated that she sees less success with shorter programs and court-mandated participants.

Unfortunately, due to prison overcrowding concerns, courts that are eager to find non-custodial sentencing options often mandate perpetrators to participate in NICRO. Yet if courts fail to sentence perpetrators, then partners will continue to live in fear. Kristina suggested that courts spend few resources on domestic violence because they believe that complainants will withdraw charges. Perhaps, with greater resources, fewer victims would withdraw charges because they would feel more confident that their abusers would receive a custodial sentence.

An additional adverse consequence, Kristina observed, is that few court-mandated participants take NICRO as seriously as the voluntary participants do. For example, court-mandated participants often fail to complete the program once the couple enters the "honeymoon phase" of the cycle of violence. Walker (1979) developed the cycle of violence in order to describe the pattern that commonly emerges within a domestic violence relationship. The cycle involves three phases: 1) the tension-building phase; 2) the violent episode, after which police and courts generally become involved; and 3) the honeymoon phase, when the perpetrator successfully reconciles with the victim. During the latter phase, the plaintiff often withdraws the charges because she believes the perpetrator will change. The couple reconciles as the perpetrator apologizes, promises he will never again harm her, and blames her for the violence. As a result, court-mandated NICRO participants may stop attending counseling; the perpetrator partner no longer must prove to the victim partner that the former will change and, likewise, the former is no longer required to serve a sentence.

NICRO also finds it challenging to keep in contact with either party after the violent incident calms. "We usually meet the women when they are in crisis, just after the abuse has happened and unfortunately only a few of them enter counseling. They go into the honeymoon phase and we don't see them again until another incident occurs" (Kristina, personal communication, 2007). Finding ways to keep women and men connected to NICRO or FAMSA, an organization that helps families and counsels many victims of abuse even after the violent incident appears to be resolved, continues to be a major challenge for both organizations.

Hence, programs for perpetrators are not likely to be successful if 1) the offender's attendance of the program is court-mandated rather than voluntary; 2) courts use these programs as substitute for custodial sentencing; or 3) wider society focuses only on rehabilitating prior offenders rather than on prevention through changing community attitudes on gender role stereotypes. Programs for offenders can always be an option for perpetrators in

prison once they are serving their custodial sentence. However, treating these programs as replacement for incarceration too often sends a message to perpetrators that they can get away with crime so long as their intimate partners are the victims.

Programs for perpetrators also differ greatly from couples counseling, the latter of which is generally contraindicated in the field of domestic violence (Walker, 1979; Walker, 1994; Bancroft, 2002). While academics and activists worldwide often discount mediation and restorative justice approaches in the domestic violence context (due to unequal power status between victims and perpetrators, as well as victim safety concerns), South Africa has experimented with and even institutionalized mediation and other forms of restorative justice processes (Dissel & Dgubeni, 2003). African traditions often rely on mediation of extended family members to resolve family disputes, and this author argues that families can play a role in supporting the victim and shaming the perpetrator. Community work to educate families on domestic violence can help in this matter. In addition, extreme financial concerns of participants may deter women from even seeking custodial sentences; community processes can meliorate some effects of such financial hardships.

It is possible to improve the legal system simultaneously while working within the community to deter domestic violence. Given the frequency with which perpetrators violate protection orders, it would be prudent to implement some legal consequence should the parties to these mediated agreements violate the terms. Furthermore, if the concern is to ensure that women pursue custodial sentencing of perpetrators rather than avoid these processes and thus stay in abusive relationships for financial reasons, then the provision of government welfare programs, not mediation, may be a better long-term strategy. Finally, one major concern with mediation is the same concern with court-mandated counseling as a replacement for custodial sentencing: it often sends the perpetrator a message that crimes against intimate partners are not as serious as the crimes of assault, property destruction, or attempted murder of another person.

Similar problems arise in the case of couples counseling for domestic violence. Practitioners argue that the power differential between the parties can actually exacerbate abuse if counseling takes place (Walker, 1979; Bancroft, 2002). Mpho, who works for FAMSA, is open to joint counseling in domestic violence situations. Part of the reason that FAMSA works with men is that men simply are unaware of the new legislation that punishes perpetrators of domestic violence. With such a rapid transition, education is necessary to make individuals aware of the laws. FAMSA's divergence from current conventional wisdom in Western nations makes one ask whether special circumstances, such as the need to educate the masses about

the changes in legislation, should affect conventional best practices. However, Mpho did not seem satisfied with the results, as she reported that only two men admitted that they had a problem and wanted to change their behavior (personal communication, 2007).

Some programs that seek to work with young men do attempt to challenge traditional notions of masculinity, but they might not prioritize working on gender-based violence. Youth Action Northern Ireland's Young Men's Project, which also works closely with the Young Women's Project, attempts to challenge conventional conceptions of masculinity. This project has researched and worked with youth on linkages between economic alienation, social alienation, violence, and masculinity (Harland, 2011). However, it appears that this project does not prompt young men to consider how their behavior can degrade young women or explore more generally their privilege relative to young women. Similarly, Dissel & Dgubeni (2003) argues that South African society neglects boys and how young men face a crisis of their masculine identity. Such examples confirm that work on masculinity does not always take place in women-centered environments or in conjunction with work on femininity (Ní Aoláin, Haynes, & Chan, 2011).

Appropriate intervention would involve working with male populations on how they construct masculinity as well as with women on constructions of femininity. Cole and Guy-Sheftall (2003), for example, have voiced concern that the U.S. African-American community overemphasizes the plight of the black male rather than examine the intersections of race and gender within African-American communities. This critique could arguably be applied to Northern Ireland and South Africa, as well, for although class, religious, and racial/ethnic hierarchies work to the detriment of certain male populations in each society, gender roles still privilege most men above most women. Identifying and dialoguing about the ways that men can exploit this privilege to perpetuate violence against women can begin to change this dynamic.

Massive preventive education that challenges the gender role socializations that privilege men and degrade women is a necessary step toward ending misogyny and marginalization in the criminal justice systems of both countries. Such education can take place through media forms that challenge gender role stereotypes, and through dialogue in the schools about gender roles as well as domestic and sexual violence. Youth programs that teach cooperation between the genders rather than facilitate gender segregation could help young people to learn equal attitudes and behaviors. Cooperation between local men's projects and women's centers would also help ensure that men's programs do not replicate gender hierarchies. In addition, politicians and civil servants can begin gender sensitivity

training, and community leaders—ministers, traditional leaders, and local activists—can serve as role models and mentors.

CONCLUSION

Women experience structural violence from the criminal justice systems in both Northern Ireland and South Africa because patriarchal values and misogynistic practices remain embedded in the respective systems. Women generally do not expect to heal through the criminal justice system. Rather, victims of violence lack trust that police will deliver unbiased and fair protections. Women in Northern Ireland do not always feel comfortable calling the police, and women in South Africa do not find police stations to be victim-friendly. Such a lack of comfort also illustrates the ways that race/ethnicity, class, and other salient social factors may intersect with gender to contribute to women's intimidation. In addition, police in both countries continue to diminish incidents of domestic or sexual violence, and may even arrest both parties for mutual abuse. Furthermore, South African women find that police might take a long time to respond to calls or might not respond at all. Such police behavior illustrates a lack of sensitivity to the power dynamics within domestic and sexual violence, to which police are insufficiently attuned. Police are also reluctant to gather evidence in such cases because they suspect that women will drop charges; this reluctance illustrates a victim-blaming climate among police.

Courts in both countries tend to blame women victims of abuse, and the courts also take a long time to resolve cases. Most importantly, when courts do find a perpetrator guilty, judges tend to issue light sentences that compromise victim safety and send a social message that such offenses are not serious crimes. Hence, the criminal justice systems in both countries convey messages to perpetrators that gender violence is tolerated and that women victims will have no redress. Though many women victims want to take action to achieve justice, in many instances they find the process to be ineffective. Women weigh the likely consequences of seeking justice and many ultimately decide against pressing charges.

For these reasons, interventions toward improving women's experiences with the criminal justice systems in both countries must recognize the wider societal patterns of gender-based violence, as well as the patterns of intimate partner violence within specific relationships. For instance, police and courts need training on the dynamics of domestic violence and how to provide victim-friendly facilities. Police must also be trained and otherwise encouraged to document all forms of abuse and harassment, so that they can help courts determine whether a pattern of intimate partner abuse is present. If police and courts determine a pattern of abuse, then

perpetrators need to be jailed and rehabilitated from jail. Sentences must also reflect the detrimental impact that rape and domestic violence can have on women. In addition, screening for abuse or histories of sexual violence should become routine within hospitals. Those conducting the screenings should be trained for greater proficiency in how to ask women to disclose abuse and how to identify signs of domestic violence. Communities can also offer support to women in various ways. These include not questioning a victim's behavior, intervening if they suspect or observe violence, and promoting healthy relationships between men and women.

NOTES

1. The researcher conducted semi-structured interviews with over fifty women who identified as victims of gender-based violence or helped victims of gender-based violence. The researcher largely interviewed participants through a snowball sample based on prior contact with a women's center or women's shelter. However, the researcher also attempted to ensure that participants included women from diverse racial/ethnic, religious, economic, and geographic (suburban/urban/rural/township) backgrounds.

2. In the UK, The Domestic Violence, Crime and Victims Act (2004) improved upon the 1998 law. Sexual Offenses Act came into effect in 2003. In Northern Ireland, The Equality Commission, established after the Good Friday Agreement in 1998, has established legislation to promote social and economic equality for nine identified interest groups. Such legislation includes The Disability Discrimination Act (1995), Race Relations Order (1997), Fair Employment and Treatment Order Northern Ireland (Equality, Disability, etc.) (1998), Northern Ireland Order (2000), Employment Equality (Sexual Orientation) (2003), Special Education Needs and Disability (2005), Disability Discrimination Order (2006), Employment Equality (Age) Regulations (2006), and The Equality Act Regulations Northern Ireland (Sexual Orientation) (2006). In South Africa, The Termination of Pregnancy Act of 1997 gave women the right to have safe and legal abortions. The Domestic Violence Act of 1998, arguably the most progressive act of its kind, applied to same-sex partners, non-married partners, and non-cohabitating partners. One could be arrested for any form of abuse, even verbal or mental abuse. A plaintiff could get a protection order from the courts, and a police officer could arrest a perpetrator of abuse without a warrant (Domestic Violence Act, 1998). The Maintenance Act of 1998 requires that both parents of a child contribute financially toward that child's financial well-being. If only one parent financially

provides for a child, it provides that parent with the opportunity to seek remuneration from the court. The Victims' Charter of Rights of 2003 set out a minimum standard of requirements for the criminal justice system to ensure the victims receive information, protection, assistance, and restitution (Victim's Charter 2003). See also the Government of South Africa's Sexual Offenses Act (2007).

3. The problem also extends around the world. Globally, only 10 percent of people report rape or domestic violence (UN Women 2011, p.4).

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