

A cooperative government approach to domestic violence: the case of SAPS, Ikageng and the North West Department of Justice and Constitutional Development

LB Molebeleli

 **orcid.org/ 0000-0003-4013-5746**

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Supervisor: Dr L Vermeulen

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Student number: 24564745



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ABSTRACT

The study investigated the current status of **cooperative government** between the South African Police Service (SAPS) in Ikageng and the Department of Justice and Constitutional Development in the North West Province (NW DJCD). With its focus on cooperative government, the study concentrated particularly on the efficiency of the administrative services in cases of **domestic violence** and the manner in which the victims thereof are treated by the police officers at SAPS Ikageng and the NW DJCD employees during the process of lodging complaints (domestic violence) and applying for protection orders.

Cooperative government is a constitutional imperative, enshrined in Chapter 3 of the Constitution of the Republic of South Africa, 1996 (hereafter referred to as the Constitution, 1996). The Constitution, 1996, also encapsulates the right of each citizen to safety and freedom from all forms of violence, as part of its Bill of Rights (RSA, 1996:5). Furthermore, the government promulgated the Domestic Violence Act 116 of 1998 to provide the victims with the best possible protection against domestic abuse (RSA, 1998:1). However, in spite of substantive constitutional obligations and statutory provisions, domestic violence in South Africa remains pervasive (Hasselbacher, 2010:190; Maselesele *et al.*, 2011:2517; Morei, 2014:928; Davies & Dreyer, 2014:1; HSRC, 2014:11; The Conversation Africa, 2015; RSA, 2016).

Previous research conducted nationally, established that both the police officers at SAPS and the DJCD often neglect their responsibilities to properly administer cases of domestic violence (Lopes *et al.*, 2013:20; Morei, 2014:936; HSRC, 2014:11). Furthermore, numerous complaints have been received from the victims of domestic violence, who claim to be treated in a hostile and insensitive manner by police officers at SAPS and the clerks of the court at the DJCD (ICD, 2011:2; CSP, 2016:4). The study therefore investigates the following research problem: *A lack of effective cooperative government between SAPS Ikageng and the NW DJCD, as well as neglect of responsibilities by employees from both the government entities, result in ineffective and delayed administrative processes in cases of domestic violence, causing inefficient service delivery and inhumane treatment of the victims thereof.*

An extensive literature study, as well as empirical research was conducted. The reviewed literature established the theoretical, as well as statutory and regulatory frameworks for domestic violence and cooperative government in South Africa. The study adopted a qualitative research approach and a case study research design. Semi-structured personal interviews were utilised as data collection instrument, which focused on establishing the participants' personal experiences, perceptions and knowledge of domestic violence and the administration of such cases. Personal interviews were conducted with: 10 operational police officers at SAPS Ikageng; one (1) police officer at the Domestic Violence Office of SAPS Ikageng; two (2) employees at the NW DJCD (one clerk of court and one magistrate); two (2) social workers; and 10 victims (women) of domestic violence.

The results acquired through the interviews revealed that a lack of cooperative government between SAPS Ikageng and the NW DJCD led to inefficient and delayed administrative processes in cases of domestic violence. The empirical research also revealed that the victims of domestic violence are treated with discontent and insensitivity. Subsequently, the study provides several recommendations to improve cooperative government between SAPS Ikageng and the NW DJCD, as well as efficient delivery of administrative services to the victims of domestic violence including humane treatment of these victims. The following recommendations were made: SAPS Ikageng and the NW DJCD should implement the constitutional principle of cooperative government, as prescribed by the Constitution, 1996; effective and accountable leadership should be ensured; monitoring and evaluation measures and mechanisms should be implemented; and the capacity of both departments should be improved in terms of resources and training of police officers at SAPS Ikageng and the clerks of the court at the NW DJCD.

Key words: cooperative government; domestic violence; administration of domestic violence cases; victims of domestic violence; humanise; SAPS Ikageng; Department of Justice and Constitutional Development; North West Province.

DECLARATION OF OWN WORK

I Nonny Molebeleli (Student number 24564745) hereby declare that the dissertation entitled

A cooperative government approach to domestic violence: the case of SAPS, Ikageng and the North West Department of Justice and Constitutional Development

Submitted in fulfilment of the requirements for the degree, Master in Public Administration at the North-West University, Potchefstroom Campus, is my own work and has never been submitted by me to any other university. I also declare that all the sources used have been acknowledged by means of complete referencing.

I understand that copies of this dissertation submitted for examination will remain the property of the North-West University.

Signed _____ in POTCHEFSTROOM on this 20th day of November 2017

LIST OF ABBREVIATIONS

COGTA	Cooperative Government and Traditional Affairs
CODESA	Congress of Democratic South Africa
CSP	Civilian Secretariat of Police
CSVR	Centre for Study of Violence and Reconciliation
DJCD	Department of Justice and Constitutional Development
ICD	Independent Complaints Directorate
IDS	Institute of Development Studies
IGR	Intergovernmental Relations
FAMSA	Family and Marriage Society of South Africa
HSRC	Human Science Research Council
MTSF	Medium Term Strategic Framework
NCOP	National Council of Provinces
NDP	National Development Plan
NW DJCD	Department of Justice and Constitutional Development in the North West Province
PMG	Parliamentary Monitoring Group
RSA	Republic of South Africa
SALGA	South African Local Government Association
SAPS	South African Police Service
TRC	Truth and Reconciliation Commission
TVBC	Transkei, Venda, Bophuthatswana and Ciskei
UK	United Kingdom
USA	United States of America
WHO	World Health Organisation

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CHAPTER 1: ORIENTATION AND OUTLINE OF THE STUDY

1.1. ORIENTATION

South Africa is riddled with violence. In stark contrast to the rampant violent culture, South Africa has an extensive legislative framework, committing to democratic and human rights. Most notable is the Constitution of South Africa, 1996 (hereafter referred to as the Constitution, 1996), considered as one of the most progressive globally. Inclusive of the Bill of Rights, it enshrines the rights of all citizens. The specified rights, relevant to this study include (RSA, 1996:5): everyone is equal before the law and has the right to equal safety [Section 9 (1)]; everyone has the right to their dignity being valued (Section 10); and everyone has the right to not being exposed to any kind of violence [Section 12 (1) (c)].

Despite the substantive protection stipulated in the Bill of Rights, the prevalence of violence in the country is ubiquitous and disconcerting. South Africa is regarded as the second most unsafe country of the 48 south of the Sahara (Davies & Dreyer, 2014:1). Crime statistics reveal that during 2015/2016, the number of violent crimes committed in South Africa included: 18,673 murders; 51,895 sexual offences (an average of 142.2 per day); and 164,958 common assaults (SAPS, 2016; Africa Check, 2016a). Furthermore, South Africa suffers from a scourge of domestic violence (Davies & Dreyer, 2014:1). Although SAPS does not provide a separate category of crime statistics for domestic violence or gender-based violence (see section 1.2), it coincides with the violent crimes mentioned above - murder, sexual offences and assault.

Domestic violence is one of the common crimes that South African women are exposed to on a daily basis (Hasselbacher, 2010:190; Maselesele *et al.*, 2011:2517; Morei, 2014:928; HSRC, 2014:11; The Conversation Africa, 2015; RSA, 2016). The National Crime Prevention Strategy of 1996 has acknowledged crimes of violence against women and children and subsequently, legislation such as the Domestic Violence Act 116 of 1998 (hereafter referred to as the Domestic Violence Act, 1998), was promulgated. Formal government interventions have also been established to address violence against women, for example, the National Council Against Gender Based Violence (NCAGBV) and the Thuthuzela care centres in areas where the abuse of women is endemic (Maselesele *et al.*, 2011:2519; RSA, 2016).

Violence against women, as defined by the Beijing Declaration and Platform for Action of the United Nations (UN), includes any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm to females (UN, 1995:111; 113-114; Abayomi, 2014:8). The Beijing Declaration also states that the suffering of women due to threats, coercion, arbitrary deprivations, exploitation and manipulation, should be addressed by the governments of countries (UN, 1995:3; RSA, 2015:1).

In addition to the Beijing Declaration's definition of violence against women, the South African government acknowledges that violent behaviour against women often also includes economic abuse (RSA, 2015a:1). Furthermore, the government's scope of domestic abuse includes women among the elderly, women with disabilities, lesbians, bisexuals, gays, transgender women and female refugees (RSA, 2015a:1). The government's holistic perception of violence against women is that it is a violation of human dignity and it has lasting consequences both for women themselves and the communities in which they live (RSA, 2015a:1). In support of the Government's perception of violence against women, and conforms to the Constitution, 1996, Thomas and Beasley (2011:37) argue that women should enjoy the same rights as men and continue to argue that domestic violence infringes the principles that lie at the heart of morality, inherent dignity and worthiness of all humans; and the inalienable right to be free from fear. In light of the democratic spirit of the Constitution, 1996, the encroachment on the dignity of women through domestic violence is not only inhumane, but also inconsistent with the rights they are entitled to by the provisions of the Bill of Rights.

A pattern of abusive behaviour in a relationship, where one partner dominates another primarily to acquire and maintain power and control, over the other, can be considered as domestic violence (Hasselbacher, 2010:190). The Domestic Violence Act, 1998 describes domestic violence as: physical abuse; sexual abuse; verbal abuse; psychological abuse; economic abuse; intimidation; bullying; harassment; stalking; damage to property; entering a woman's residence without permission (instances in which the partners do not share a residence); or any other dominating or abusive behaviour towards a woman, where such behaviour physically or psychologically harms, or is likely to cause harm to the safety, health or wellbeing of a woman (RSA, 1998:2).

The official government and the feminists view of domestic violence is considered in this study. Feminists view violence against women as a means of social control through which men, individually or collectively, uphold their dominant position in the family and community (Hunter, 2006:62). The feminist approach postulates that, historically, domestic violence emanates as a result of inequality within a marriage and reinforces male power and female subordination within the home setting (McCue, 2008:15; Mazibuko & Umejesi, 2015:6584).

Hunter (2006:62) argues that men use violence to punish their female partners who fail to meet their unspoken physical, sexual or emotional needs. Randle and Graham (2011:98) echo Hunter's belief and assert that men use violence against their female partners to influence their current or future behaviour. Feminist core beliefs about domestic violence hold that most men are violent, that women violence is in self-defence; men's violence escalates over time; and women are the most humiliated entity in the process (Randle & Graham, 2011:98). In chapter, 2 Feminist Theory on domestic violence is elaborated upon, together with Culture of Violence Theory, Social Learning Theory and Family Systems Theory.

This study does not necessarily concur with the feminist view (expressed above) with respect to the statement that *most men are violent*, because this is not globally evidence-based. However, based on statistics (indicated below), the study is founded on the premise that particularly in South Africa, violence against women by the hand of men is pervasive. In support of this statement, The Conversation Africa (2015), an independent news source, which communicates academic and community research to the public, reports the following on violence against women:

- Statistics from 80 different countries revealed that 35% of all women have been physically or sexually abused by an intimate partner¹, were beaten, coerced into sex, were otherwise abused by an intimate partner in the course of their lifetime, or have experienced non-partner sexual violence.
- Notwithstanding South Africa having some of the most advanced legislation on domestic violence in Africa (such as the Domestic Violence Act, 1998), violence against women continues relentless without any substantial consequences for the

¹ An intimate partner typically is a familiar friend, former partner or former friend (WHO, 2014:1).

offender (Morei, 2014:928). South Africa remains notorious for appalling gender-based crimes, especially of a sexual nature.

- Research conducted on gender-based violence revealed that 40% - 50% of women have experienced intimate partner violence (HSRC, 2014:11).
- In addition to these statistics, violence against women are to a great extent under-reported, including violence in general. The nearly 55 000 rapes reported annually are believed to be nine times lower than the hard reality.

In concurrence to the statistics provided by The Conversation Africa (2015), research conducted by the World Health Organisation (WHO) revealed that most violent behaviour directed at women takes place at the hand of their intimate partners (WHO, 2014:1). In support of this argument, Abayomi (2014:8-9) posits that approximately one in every three women suffer domestic violence at the hands of those who claim to love them. In 2014, it was estimated that one out of every eight women in South Africa was beaten by an intimate partner (Davies & Dreyer, 2014:2). In 2015, this number escalated to one out of every four women beaten by their intimate partners on a weekly basis, and every six hours, a woman is killed by her intimate partner (Mazibuko & Umejesi, 2015:6584).

Globally, 38% of all women murdered is committed by intimate partners (WHO, 2014:1). Research revealed that in South Africa, the rate of femicide² per 100 000 was 12.9% in 2009, compared to 24.7% in 1999 (Matthews *et al.*, 2013:1). Although the overall femicide in South Africa was lower in 2009 than 1999, intimate partner femicide and rape homicide rates remained unchanged as in 1999 (Matthews *et al.*, 2013:1; Medical Research Council, 2014; African Democratic Institute, 2015). The Medical Research Council's Report (2014) on intimate femicide in South Africa (2014), presented at the Parliamentary Monitoring Group (PMG), highlighted that government departments do not have reliable databases on femicide after 2009 (PMG, 2014). However, it is estimated that South Africa's femicide rate is five times higher than the global average (PMG, 2014).

Research conducted by the Human Science Research Council (HSRC) revealed that intimate partner femicide is the leading cause of death among South African women. It is also reported that 144 women report rape to SAPS on a daily basis, which is equivalent to

² Femicide (female homicide) refers to the "intentional murder of women because they are women" (WHO, 2012:2).

six cases every hour (HSRC, 2014:11). Situations such as conflict in the home, past conflict, displacement of households and families, economic strain, poor health and community violence may have a constant influence on violence against women and may exacerbate existing conflict (WHO, 2014:1).

Although domestic violence against women in South Africa is widespread, the government is not providing adequate effective support to the victims of domestic violence and the current resolves available to the victims of domestic violence has proven unsuccessful (RSA, 1998:1; Maselesele *et al.*, 2011:2518; Taranto *et al.*, 2013:2; CSP, 2013:4). This is particularly alarming considering that South Africa has one of the world's most progressive constitutions, as alluded to above. Furthermore, the fundamental rights, embodied in the Bill of Rights, the Constitution, 1996, in its Preamble also stipulates that the supreme law of the country was adopted to "establish a society based on democratic values, social justice and fundamental human rights" (RSA, 1996:3). Regrettably, for a significant number of women in South Africa, these rights remain theoretical.

In the international arena, various charters, protocols and agreements were established with a view to protect women against violence:

- During 2015 the Millennium Development Goals (MDGs) was superseded by the Sustainable Development Goals (SDGs). The fifth goal provides for the elimination of all forms of violence against women (UN, 2015; Loewe & Rippin, 2015:31).
- The UN Charter of 1995 recognises the existence of the inherent human dignity of an individual and condemns all forms of discrimination against women (UN, 1995:10).
- The UN Convention on the Elimination of all Forms of Discrimination against Women, 1979, places responsibilities on South Africa to resist, prevent and, eventually, eradicate abuse and violence against women in the country (UN, 1979).
- Various UN Resolutions on taking action against violence against women, were adopted by its General Assembly: Resolution 68/191 of 18 December 2013 on taking action against gender-related killings of women and girls; Resolution 69/147 of 18 December 2014 on the intensification of efforts to eliminate all forms of violence against women and girls; and the Resolution 70/176 of 17 December 2015 on taking action against gender-related killing of women and girls (UN, 2016).

- The African Union's (AU's) Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in South Africa, 2003, places obligations on South Africa to observe the outlined principles and rules contained in the protocol which is aimed at solving legal problems pertaining to women's rights and freedoms (AU, 2003:1).
- The Protocol on Gender and Development of the South African Development Community (SADC) 2008, requires the government of South Africa to provide for the empowerment of women; eliminate discrimination; and achieve gender equality by encouraging and harmonising the development and implementation of gender responsive legislation, policies and projects (SADC, 2008:5).

Nationally, domestic violence against women is also regulated by various legislation and policies, most notably the Domestic Violence Act, 1998. The Act is implemented under the administration of the Department of Social Development, with the purpose to provide maximum protection to the victims of domestic violence (RSA, 1998:2; Ramadimetja *et al.*, 2012:1). Furthermore, the Act introduces measures which seek to ensure that the relevant state institutions give full effect to the provisions thereof and are committed to the elimination of domestic violence (RSA, 1998:2; Morei, 2014:932). The Domestic Violence Act further provides detailed strategies on how state departments, the SAPS and the Department of Justice and Constitutional Development (DJCD) should address violence against women (RSA, 1998:6; Marais, 2002:452; Parliament of South Africa, 2013:1; CSP, 2016:4; Mogstad *et al.*, 2016:5).

The Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007 and the Criminal Law (Sexual Offences and Related Matters) Amendment Act 5 of 2015 were framed to protect women against any form of violence in South Africa. The South African Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000, consistent with the UN Charter of 1995, assert that no person should be subjected to any form of discrimination or harassment (RSA, 2000:6).

As mentioned, unfortunately the existing domestic violence legislative framework does not effectively resolve the issue of domestic violence. Considering the statistics provided above, a sombre and distressing view of the abuse of women is reflected. In a country with

extensive domestic violence, the North West Province is no exception. For example, for the 2015/2016 period, the rate of assaults with the intention to inflict grievous bodily harm in the North West Province was 13 614; murders for this period totalled 907; attempted murders, 899; and sexual offences added up to a total of 4164 (SAPS, 2016). Although these are not statistics for domestic violence or gender-based violence *per se*, these are hidden in the crime statistics for murder, sexual offences and assault, as indicated above. Ikageng, located in the JB Marks Local Municipality, is rated as the number one place of high incidents of domestic violence in the North West Province (SAPS Ikageng, 2016). During 2016, the Ikageng Police Station (SAPS Ikageng), received 2028 applications for protection orders from victims of domestic violence (SAPS Ikageng, 2016). Thus, the extensive number of applications for protection orders received by SAPS Ikageng, and the high rates of violent crimes in the province, justify an investigation into domestic violence and specifically, the administration of these cases.

The study focused on the administration of cases of domestic violence in the North West Province, particularly in Ikageng. Furthermore, the study was specifically interested in establishing whether the victims of domestic violence were effectively and timeously assisted in the administrative process (laying charges, receiving protection orders and receiving counselling) and whether they were treated in a humane manner. In this respect, the role of, and cooperation between, SAPS Ikageng and the Department of Justice and Constitutional Development in the North West Province (NW DJCD)³ was assessed to establish the shortcomings with a view to provide recommendations to improve the administrative process and cooperative government between the aforementioned two entities.

SAPS Ikageng each day receives more than 10 applications of protection orders and receives more than 400 protection orders from Ikageng's Magistrates Court each month that needs to be served on respondents (SAPS Ikageng, 2016; SAPS, 2016; Motladile, personal interview, 2016). Domestic violence in Ikageng had reached epidemic proportions with SAPS attending to more than 25-30 complaints of domestic violence each day (SAPS Ikageng, 2016). The Domestic Violence Office employs only two (2) police officers who are

³ **DJCD** refers to the national Department of Justice and Constitutional Development

NW DJCD refers to the Department of Justice and Constitutional Development in the North West Province

expected to serve protection orders for all the cases of domestic violence because the operational police officers refuse to serve protection orders, citing that it is not their responsibility, but court officials (Operational police officer, personal communications, 5 September 2017).

The NW DJCD also failed the victims of domestic violence by not rendering services during the night, weekends and holidays, as prescribed in the Domestic Violence Act, 1998. This resulted in victims who needed to return home, fuelling more abuse from their perpetrators (Morei, 2014:936). Taranto *et al.* (2013:2) contended that, at times, magistrates are not available to persons wanting to apply for protection orders after hours, during weekends and on public holidays. The undue delays in court processes at times place victims at further harm. Furthermore, this also has a negative impact on the economic livelihood of employed persons who are expected to take time off from work to attend court (Lopes *et al.*, 2013:20). This neglect of the courts to assist the victims of domestic violence outside office hours, is firstly inhumane (considering that the victim often has to return to the perpetrator and the scene of the violence); and secondly, it delays the administrative process of processing the complaints and receiving a protection order in a timely and urgent manner. The study argues that the administrative process of domestic violence should be humanised and augmented to the benefit of the victims of domestic violence.

Despite the Domestic Violence Act, 1998, and the National Instruction 7/1999, providing guidance to SAPS in terms of the procedure with domestic violence cases, numerous challenges are still observed of the manner in which SAPS officers respond to these cases, resulting in complaints (CSP, 2016:4). A statement from the Independent Complaints Directorate (ICD), revealed that 123 complaints had been received against police conduct towards the victims of violence and of 177 police stations audited, 44% did not comply with the obligations imposed on SAPS by the Domestic Violence Act, 1998 (ICD, 2011:2). Failing to comply with obligations imposed by the Act is deemed misconduct (ICD, 2011:4). It was also revealed in the ICD's Non-compliance Report of 2011 that SAPS Ikageng was one of the stations at which non-compliance was reported (ICD, 2011:12). Moreover, in 2009, only one in 20 women (4.9%) killed by their intimate partners was in possession of a protection order (HSRC, 2014:6). Taranto *et al.* (2013:2) add that there have been numerous reports of non-compliance with the provisions of the Act by members of SAPS.

Police officials refused to serve protection orders and court officials were demeaning and discriminatory towards victims of domestic violence (Taranto *et al.*, 2013:2).

According to Morei (2014:935), the National Commissioner of SAPS is required to submit six-monthly reports to parliament, in which the number of complaints against SAPS officials who fail to adhere to these statutory obligations is highlighted. However, it was noted that neither the National Commissioner nor the ICD had complied with the statutory duty to report to parliament every six months (Morei 2014:935). Bendall (2010:111) states that since the implementation of the Act in 1998, only one report had been submitted to parliament by the ICD.

In 2013, the Civilian Secretariat for Police (CSP) took over the duties of the ICD to provide civilian oversight of SAPS through monitoring and evaluating general police performance (CSP, 2013). During the period of October 2014 – March 2015, the CSP conducted an investigation at 187 police stations nationwide, to establish the level of police compliance with the Domestic Violence Act, 1998 (CSP, 2016:5). The concluding findings of the CSP's Report were: significant progress should still be made for SAPS officials to comply with the directives of the Act; and the most significant challenge identified was lack of support from other government departments, particularly the DJCD (CSP, 2016:16). The CSP's Report, therefore, confirmed the failure of SAPS and the DJCD to give effect to cooperative government to serve the public (in this case, victims of domestic violence). The lack of cooperative government between SAPS Ikageng and the NW DJCD is no exception. The study focused particularly on how the neglect of this constitutionally requisite relationship between SAPS Ikageng and the NW DJCD affected the administrative process of cases of domestic violence and the humanity and dignity with which the victims were treated.

In light of the above, it is necessary to consider the words of the Minister of the former Police, Mr N Nhleko, in his Budget Vote Speech of 2016: "Our effort in policing South Africa is about humanity and its development. Therefore, our determination and effort is about honour and integrity. It is all about upholding the ethics and values of our forefathers in creating a humane society. In this regard, we shall not fail our people" (SAPS, 2016a). This is a strong statement, committing to humanity, dignity and ethical values to be practised by SAPS officials. If the Minister's words are to be realised, SAPS officials can no longer

neglect their duties towards the victims of domestic violence and should prioritise the treatment of abused women with dignity.

1.2. PROBLEM STATEMENT

As alluded to in the previous section, SAPS's crime statistics do not reflect domestic violence or gender-based violence as categories of crime. Consequently, without quality statistical profiles, policy-makers cannot determine the magnitude of the problem (Morei, 2014:928). Statistics offered in section 1.1 painted a dark picture of the pervasiveness of gender-based violence in South Africa (UN, 2012:9; Matthews *et al.*, 2013:1; WHO, 2014:1; HSRC, 2014:11; Morei, 2014:928; Abayomi, 2014:8-9; Mazibuko & Umejisi, 2015:6584; The Conversation Africa, 2015; SAPS Ikageng, 2016; SAPS, 2016). In addition to the sobering statistics on domestic violence, in the most recent estimate of the economic impact of gender-based violence in South Africa, Klynveld Main Goerdeler and Peat Marwick (KPMG), established its cost at between R28.4 billion and R42.4 billion per year (KPMG, 2014:3). This cost is calculated from the victims' expense for health, safety and legal services, financial losses due to lost production, reduced output and lower earnings consequential to violence (KPMG, 2014:6).

Furthermore, domestic violence is also one of the most expensive health problems, crippling economic development in South Africa (HSRC, 2014:20). The annual cost of domestic violence for the country is estimated at R105 billion, which is spent by SAPS and the DJCD, through the prosecution of cases and the rehabilitation of perpetrators (HSRC, 2014:20). Khumalo *et al.* (2014:9) concluded that civil society; government and business should form an alliance against domestic violence and assist in the implementation of existing gender-based violence legislation. This is, however, not always as easy in practice as in theory, because the Domestic Violence Act, 1998 still poses major implementation problems, such as: recurring cases of domestic violence; failure of SAPS to serve protection orders on respondents; and the refusal of clerks of the court to assist victims in completing the relevant forms, outlined as part of their responsibilities in the Domestic Violence Act (RSA, 1998:4; Furusa & Limberg, 2015:6).

As alluded to in the previous section, the Domestic Violence Act, 1998 and the National Instruction, 7/1999, places obligations on SAPS in an effort to challenge its long history of

neglect of domestic violence. The specific duties imposed on SAPS by the Act include: informing complainants of their rights such as applying for a protection order; assisting victims in finding suitable shelter and obtaining medical treatment; explaining the contents of a notice which sets out what a complainant must do to enforce their rights under the Act; serving notices to the respondents to appear in court; arresting individuals who have breached the conditions of a protection order; and seizing arms and dangerous weapons from an individual (RSA, 1998:4-11; Bendall, 2014:104).

Section 205 of the Constitution, 1996, outlines the objectives of policing: to prevent, combat and investigate crime; to maintain public order; to protect and secure all citizens; and to uphold and enforce the law (RSA, 1996:105). However, as indicated in section 1.1, the operational police officers refuse to serve protection orders and to arrest the respondents, because it is the responsibility of the court to serve protection orders and the responsibility of the investigating officer to arrest the respondent. Mokgopanyane (Personal communications, 15 July 2016) echoed this statement and stated that it is not the responsibility of the police to assist the victims to complete the application forms or to serve the protection orders on the respondents. It is clear that the officials at SAPS Ikageng are neglecting their constitutional obligations in terms of service delivery.

Although the Domestic Violence Act, 1998, assigned key duties to SAPS and the DJCD, which positioned them at the forefront of the battle against domestic violence, research conducted by the HSRC reflected non-compliance amongst SAPS officials when confronted with incidents of domestic violence (HSRC, 2014:24). Officials at SAPS Ikageng are, therefore, also neglecting other legislative obligations in addition to their constitutional obligations. This neglect to comply with legislative directives comes at a time that the National Development Plan (NDP) refers to turning the police into a professional service (RSA, 2011a:43).

A number of women who obtained protection orders (23%) highlighted police negligence and difficulties in finding the money for documents to be served on the respondent, and a lack of information regarding court processes as challenges (HSRC, 2014:24). Numerous reports of non-compliance have been submitted against members of SAPS, which include: reluctance to serve protection orders and arrest perpetrators, as alluded to above (Taranto *et al.*, 2013:5; CSP, 2013:4; HSRC, 2014:24).

In terms of the Domestic Violence Act, 1998, the clerks of courts should be available to assist the victims to complete the application forms (RSA, 1998:4; Lopes, 2016:967). However, in practice, employees at the NW DJCD are under the impression that the legislation is not implementable due to limited or non-existent resources and refer the victims back to a nearby police station to ask for assistance (Taranto *et al.*, 2013:4). The Act stipulates that applications for protection orders may be brought during weekends and public holidays, which in practice is not the case (RSA, 1998:4). In terms of the criminal justice employees, research revealed that abused women commonly complain that: prosecutors are unprofessional, ill-prepared and insensitive to traumatised victims; and that the clerks of court are abrupt and not willing to assist victims (HSRC, 2014:24). In addition, victims report that magistrates tend to have a negative attitude towards them, predominantly brought on by a lack of knowledge and understanding of the complexities of domestic violence (HSRC, 2014:24). From the above, it can be argued that relations between SAPS and the NW DJCD are 'blurred' to manage the administrative processes of domestic violence with dignity, humanity and efficiency.

The Constitution, 1996, explicitly makes provision for cooperative government between the three spheres of government and all organs of the state in Section 41 (1) (RSA, 1996:21-22). Cooperative government is an inherent philosophy of government that governs all facets and actions of government (Malan, 2014:56). No sphere or department of government can function effectively without cooperation with the others because of the interdependency and interrelatedness of some government functions (RSA, 1996:1267; Edwards, 2008:68; Malan, 2014:56). In this respect, both SAPS and the NW DJCD failed dismally - the police officials refuse to serve protection orders from court and the employees from the NW DJCD refuse to assist the victims to complete the application forms and refer them to a police station (Taranto *et al.*, 2013:4). It can, therefore, be argued that both institutions are deviating from their mandates as enshrined in the Constitution, 1996, and the Domestic Violence Act, 1998.

Considering the interdependency and interrelatedness of the functions of SAPS and the NW DCJD with regard to the administrative processes pertaining to domestic violence, cooperation between these two government entities is imperative. However, due to the dysfunctional relations between SAPS and the NW DJCD, inconsistencies, insensitivity

and delays in the administrative process are likely to occur. Regrettably, those most penalised in the process are the victims of domestic violence.

With the aforementioned in mind, the problem statement for this research is: *A lack of effective cooperative government between SAPS Ikageng and the NW DJCD, as well as neglect of responsibilities by employees from both the government entities, result in ineffective and delayed administrative processes in cases of domestic violence, causing inefficient service delivery and inhumane treatment of the victims thereof.* The study, therefore, aimed to determine how the administrative process of domestic violence can be humanised and augmented to effectively manage these cases and display more sensitivity towards the victims.

1.3. RESEARCH OBJECTIVES

To investigate the research problem, the following research objectives were pursued:

- To establish a theoretical framework that explicates domestic violence (chapter 2);
- To determine the theory and value of cooperative government and its role in cases of domestic violence, especially SAPS Ikageng and the NW DJCD (chapter 3);
- To establish the statutory and regulatory framework for domestic violence (chapter 2) and cooperative government in South Africa (chapter 3);
- To establish the efficiency of the administrative services provided to the victims of domestic violence, as well as how the victims are treated by SAPS Ikageng and the NW DJCD (chapter 4);
- To determine whether there is cooperative government between SAPS Ikageng and the NW DJCD in terms of the administration of cases of domestic violence (chapter 4); and
- To offer recommendations on cooperative government between SAPS Ikageng and the NW DJCD to enhance the efficiency and humanisation of the administrative processes of cases of domestic violence (chapter 5).

1.4. RESEARCH QUESTIONS

With regard to the problem statement delineated above and the research objectives of the study, the following research questions were responded to:

- What is the theoretical framework that expounds upon domestic violence? (chapter 2)
- What is the value of cooperative government and its role in cases of domestic violence, especially with respect to SAPS Ikageng and the NW DJCD? (chapter 3)
- What is the statutory and regulatory framework for domestic violence (chapter 2) and cooperative government? (chapter 3)
- Is there cooperative government SAPS Ikageng and the NW DJCD in terms of the administration of cases of domestic violence? (chapter 4)
- Which recommendations on cooperative government can be provided to SAPS Ikageng and the NW DJCD to enhance the efficiency and humanisation of the administrative processes of cases of domestic violence? (chapter 5)

1.5. CENTRAL THEORETICAL ARGUMENTS

The following central theoretical arguments guided the study:

The **Constitution, 1996**, commits to democracy and human rights, most noteworthy, through the Bill of Rights in which the rights of all citizens are enshrined. The sections of the Bill of Rights, relevant to this study, include (RSA, 1996:5):

- Section 9 (1) – everyone is equal before the law and has the right to equal safety;
- Section 10 – everyone has the right to their dignity being valued; and
- Section 12 (1) (c) – everyone has the right to not being exposed to any kind of violence.

Furthermore, in its Preamble, the Constitution, 1996, signifies that the purpose of the Constitution is to “establish a society based on democratic values, social justice and

fundamental human rights” (RSA, 1996:3). These human rights are applicable to both women and men equally.

In addition to the Constitution, 1996, the **Domestic Violence Act**, 1998 is the most significant statute with regard to domestic violence. The Act acknowledges that domestic violence is a grave social evil and that there are high incidents of domestic violence in South Africa (RSA, 1998:1; Van der Hoven 2001:21; Bertus, 2014:1; Mogstad *et al.*, 2016:5). The purpose of the Domestic Violence Act, 1998 is to afford the victims of domestic violence the maximum protection from household abuse and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of the Act (Artz, 2011:3; Ramadimetja *et al.*, 2012:1; Morei, 2014:932; Mogstad *et al.*, 2016:5).

Furthermore, the Domestic Violence Act, 1998 stipulates a detailed outline of the process that must be followed to secure protection from domestic abuse, specifically applications by the victims of domestic violence for protection orders (RSA, 1998:4; Dissel & Ngubeni, 2003:2; Singh, 2004:202; Morei, 2014:933; Goldblatt, 2016:7). Moreover, the Domestic Violence Act, 1998 provides detailed strategies of how state departments such as the SAPS and the DJCD should address violence against women (RSA, 1998:6; Marais, 2002:452; Parliament of South Africa, 2013:1; CSP, 2016:4; Mogstad *et al.*, 2016:5). These strategies conform to the principle of cooperative government, as stipulated in the Constitution, 1996.

Cooperative government refers to a collaborative relationship between the national, provincial and local spheres of government in which each sphere performs a specific role (Mhone & Edigheji, 2003:75). Cooperative government is grounded in partnerships among government institutions in terms of specific policy areas (Malan, 2014:56). Section 40 (1) of the Constitution, 1996, states that the three spheres of government (national, provincial and local) are “distinctive, interdependent and interrelated”. The Constitution, 1996, also sets principles for cooperative government for “all spheres of government and all organs of state within each sphere” (RSA, 1996:21). In committing to these principles, cooperative government embodies the fundamental values of government (Malan, 2014:57).

In addition to the provisions of the Constitution, 1996, and the Domestic Violence Act, 1998, certain **theories relating to domestic violence** also guided the study, including the following:

- **Culture of Violence Theory**

This theory accentuates that the patterns of abuse of spouses, women, children and the elderly, sets the overwhelming acceptance of violence in society (Lee *et al.*, 2007:253; Retief, 2013:50; Mazibuko & Umejese, 2015:6586). South Africa is characterised by a culture of violence; a community which endorses and accepts violence as an acceptable and legitimate means to resolve problems (Mazibuko & Umejese, 2015:6586).

- **Family Systems Theory**

Family Systems Theory, also referred to as Family Systems Framework, is derived from the general Systems Theory, developed by Bertalanffy (1969). The theory assumes that individual members are part of a group or system and function as a system (Jura & Bukaliya, 2015:64). The theory postulates that violent behaviour is not due to a sole factor, but is based on the idea that each individual should be viewed, not in isolation but in terms of the interactions, transactions and relationships within the family (Jura & Bukaliya, 2015:64). A central tenet of this theory is that what affects one individual, affects the entire family system and what affects the family, affects each member as well (Hyde-Nolan & Juliao, 2012:14). The behaviour of one family member and the probability of a reoccurrence of that behaviour is affected by the responses and feedback of other family members (McCue, 2008:14).

- **Social Learning Theory**

Social Learning Theory of Bandura (1977) provides a conceptual basis for the view that childhood experiences in the family of origin shape behaviour that is learned through observation and modelling (Slabbert, 2010:24; Hyde-Nolan & Juliao, 2012:11; Tungwa & Gutura, 2016:600). One forms an idea of how new behaviours are performed and on later occasions this coded information serves as a guide for action (Holt *et al.*, 2008:13; Slabbert, 2010:24). A child who grows up in a home environment where annoyance or anger was exhibited in aggressive behaviour is a

note of exhibiting the same aggressive behaviours in adulthood (Randle & Graham, 2011:99).

- **Feminist Theory**

Lau (2009:1) conceptualises male violence as the use of power and control to assert values of male privilege, entitlement and domination over women. McCue (2008:15) states that Feminist Theory provides the basis for justification of domestic violence throughout history and posits that domestic violence grows out of inequality within marriage and reinforces male power and female subordination within the home setting. Violence against women is a means of social control through which men, individually and collectively, uphold their dominant position in the family and the community (Hunter, 2006:62; Retief, 2013:49). Feminist Theory views the struggle against domestic violence as one element of a broader context, the struggle for gender equality (Retief, 2013:50).

1.6. RESEARCH METHODOLOGY

Research methodology involves the application of standardised methods and a technique that increases the likelihood of attaining validity in a scientific endeavour; provides the starting point; and the decision the researcher takes to execute his or her research (Asmah-Andoh, 2012:116; Leedy & Ormrod, 2013:7). According to Whisker (2009:88), research methodology explains the motivation and justification for the utilisation of specific methods for research. In considering the research methodology of a study, the following elements play a central role in the decision to select the appropriate methodology: location of data; method to gather data; research procedure; and the method of data analysis (Schurink, 2010:428). The following sections explain the research methodology followed in this study, including: research approach; research design; research instruments that will be utilised for data collection; population and sampling techniques; and the manner in which data analysis will be conducted.

1.6.1. Research approach

The study adopted a qualitative research approach that allowed an in-depth understanding of the factors that constrain cooperative government between SAPS Ikageng and the NW

DJCD in addressing domestic violence. The qualitative research approach does not permit one to convert data to numerical form, but to communicate such in words, and to describe people's attitudes, perceptions, beliefs, opinions and experiences (De Langen, 2009:52; Babbie, 2011:24-25; Maxwell, 2013:30-31). It entails a consideration for, and appreciation of how people interpreted their experiences and the meaning they attribute to their experiences (Merriem & Tisdale, 2016:6). Qualitative research allows the researcher to explore a wide array of dimensions of the social world (Punch, 2016:4-5) and view the world in terms of people, situations, events and processes (Maxwell, 2013:30-31). Furthermore, qualitative research deals with questions about the intricate nature of phenomena with a view to understand, interpret and describe the phenomena and to make inferences (De Vos *et al.*, 2011:64).

A qualitative research approach is suitable for this study because it aimed to determine the experiences, perceptions and opinions of the victims of domestic violence pertaining to the administrative process of reporting the offense and applying for a protection order. Also, the study aimed to establish the perceptions, beliefs and experiences of police officials at SAPS Ikageng and employees from the NW DJCD to manage cases of domestic violence and how they perceive their responsibilities.

The semi-structured personal interviews enabled the researcher to enter into the world of the participant's experiences which assisted to understand their actions and emotions as the basis of their experience of the world and the ways in which their actions arise from, and reflect thereon (Retief, 2013:12). It can therefore be argued that a qualitative research approach allowed the researcher to obtain rich, first-hand and truthful explanations and opinions from the lived experiences of the participants - the victims of domestic violence, police officers and officials from the NW DJCD including social workers who deal with domestic violence cases.

1.6.2. Research design

A research design is the blueprint, the procedure or the plan of action, which acts as a framework or guideline of the study to achieve the objectives of the study (Bezuidenhout, 2011:40). A case study design was used for this study. A case study is an empirical investigation that explores a specific incidence or phenomenon through a holistic or

methodical focus on a single case (Babbie, 2011:301). Case studies are means of gathering material, focusing on a particular community or group of people, a set of documents, an institution, a person, or an event (Greetham, 2009:220-222).

A case study design is compatible with qualitative research as both focus on the world and phenomena in terms of people, institutions, situations, events and processes (Greetham, 2009:220-222; Maxwell, 2013:30-31). A case study research design is also consistent with the interpretive paradigm that supports the belief that the reality being studied comprises of people's subjective experiences of the external world (Terre Blanche & Durrheim, 2009:7). As alluded to in the previous section of this study, the experiences of the victims of domestic violence, the police officials and the employees at the NW DJCD including the social workers were established relating to the administration of, and the human factor in managing cases of domestic violence (see section 1.6.3.2 below).

1.6.3. Research instruments

Data collection refers to the procedures used to gather information from the sample population (Retief, 2013:15). In a qualitative study, multiple data collection methods may be utilised in a single study (Maxwell, 2013:102). In this study, more than one research instrument was used to gather information from the victims of domestic violence, police officers, officials at the NW DJCD and the social workers. The study reviewed the relevant literature and semi-structured personal interviews were conducted as the method to collect data.

1.6.3.1. Literature review and document analysis

Documents are public artefacts that are considered the primary method of data collection in qualitative research (Atkinson & Coffey, 2011:79). According to Crawley and O'Sullivan (2016:13), a literature review is an overview of previously published material, relevant to the proposal. A literature review describes the current state in a particular field (Crawley & O'Sullivan, 2016:13) and reveals the shortcomings in existing literature (Snieder & Lerner, 2009:133).

An extensive South African and international literature review was conducted on cooperative government and domestic violence to gather information on relevant theories and to establish a framework of reference from which to proceed with the research and form a basis for comparison with the research findings. The literature review also included an overview of the statutory and regulatory framework, guiding officials' actions in terms of domestic violence and cooperative government.

The official documents relevant for the study was selected and analysed carefully. The document analysis included all types of communications that could shed light on the phenomena under investigation. The sources included legislation, policies, regulations, frameworks, official documents, books, scholarly articles, academic conference papers, theses and dissertations. The following databases were consulted to establish the availability of the material for the topic: NEXUS, Sabinet, Ebsco through the Ferdinand Postma Library on the Potchefstroom Campus of the North-West University.

1.6.3.2. Semi-structured personal interviews

Interviewing is a rudimentary instrument of investigation that can be structured, unstructured or semi-structured (Whiting, 2008:36; Turner, 2010:755). In this study, semi-structured personal interviews were used. A semi-structured interview contains both closed and open-ended questions (Doody & Noonan, 2013:30). Closed questions require a precise response to a question (Kanjee, 2009:486) while open-ended questions are supplemented by probing participants and guide the discussion. Open-ended questions allow participants to respond in their own words, and encourage detail and comprehensive responses (Kanjee, 2009:486; Remler & Van Ryzin, 2010:62; Doody & Noonan, 2013:30).

A semi-structured interview also makes provision to pose additional questions that were not necessarily foreseen at the commencement of an interview (Gray, 2014:385). The basis and intent of a semi-structured personal interview is to understand and appreciate the experiences of the participants and their interpretations of those experiences (Mears, 2012:170).

According to Bryman (2012:471), the advantages of a semi-structured interview are:

- It is flexible and inexpensive;

- It provides more detailed information than what is available through other data collection methods such as surveys; and
- It provides a relaxed atmosphere to collect information and participants feel more comfortable having a conversation with a researcher, as opposed to completing a questionnaire.

As indicated in section 1.6.2, interviews were conducted with the following participants:

- 10 victims (women) of domestic violence;
- One (1) police officer at the Domestic Violence Office at SAPS Ikageng;
- 10 operational police officers at SAPS Ikageng;
- Two (2) employees at the NW DJCD (one clerk and one magistrate); and
- Two (2) social workers (Department of Social Development).

In the context of this study, providing a relaxed and comfortable atmosphere for interviewees who are victims of domestic violence was of outmost significance because these women had suffered physical and emotional trauma. The fact that the researcher is female could possibly have put the abused women at ease to engage in conversation. The interviews were conducted with great sensitivity. The researcher was accompanied by a social worker who could intervene should emotions of distress arise when the women spoke about the administrative process of their case of domestic violence.

The purpose of the interviews was to: (1) determine whether the women experience the administrative process as effective and efficient when reporting an incident of domestic violence and applying for a protection order; and (2) given the fact that these women are typically injured, traumatised and vulnerable at the time they engage with the authorities, the purpose of the interviews was to also establish whether they perceived the treatment they receive from the officials at SAPS Ikageng and the officials at the NW DJCD as just, useful, supportive and sympathetic. Since the victims (respondents) had to be approached with compassion, interviews were conducted as a method to gather data instead of completing a questionnaire.

The police officers at SAPS Ikageng and the officials at the NW DJCD were interviewed to acquire an understanding of their experiences and challenges in dealing with cases of

domestic violence, their perceptions of their responsibilities and reasons for neglect of their responsibilities. The social workers from the Department of Social Development were also interviewed to acquire an understanding of their experiences when dealing with traumatised victims during the referral phase by the court.

1.6.4. Population and sampling

According to Welman *et al.* (2011:52), a population refers to the study object that consists of individuals, groups, organisations, human products and the conditions to which they are exposed. A target population refers to the complete category of individuals who meet the sampling criteria (Burns *et al.*, 2014:351). An accessible population is the portion of the target population to which the researchers have reasonable access (Burns *et al.*, 2014:351).

Since the statistics of domestic violence vary annually, the total number of applications for protection orders for January to December 2016 was utilised as the accessible population. For 2016, 2028 applications for protection orders were received at SAPS Ikageng. These 2028 applications were, therefore, regarded as the population of the victims of domestic violence.

SAPS Ikageng employs 209 employees, including:

- 38 detectives;
- 16 police officers at the Crime Prevention Unit;
- 124 police officers at the Division: Visible Policing;
- Two (2) police officers at the Domestic Violence Office; and
- 28 employees at the support services.

The detectives only commence investigations after case dockets have been opened. Therefore, they are not involved when domestic violence charges are laid or when abused women apply for protection orders. The Crime Prevention Unit only focuses on searching vehicles, residences and business premises. Consequently, they are also not involved in cases of domestic violence. The employees at the support services due to their administrative duties are also not involved in cases of domestic violence. Hence, it is only

the police officers at the Division: Visible Policing and the police officers at the Domestic Violence Office who are directly involved in cases of domestic violence and the applications for protection orders.

The two (2) police officers at the Domestic Violence Office deal with cases of domestic violence. They receive assistance from the police officers at the Division: Visible Policing of which 17 or 18 are on duty per shift. The police officers at the Division: Visible Policing attends to all complaints, including domestic violence complaints. The Domestic Violence Office is managed by two (2) police officers while 124 police officers (although only 17 or 18 of them are on duty at a time) at the Division: Visible Policing.

The Magistrates Court at Ikageng employs two (2) clerks and one (1) magistrate who deal with cases of domestic violence. The NW DJCD comprises of three (3) officials.

The practise of selecting cases from the population for observation is referred to as sampling (Terre Blanche *et al.*, 2012:133). The study utilised purposive, non-probability sampling. Qualitative research is commonly based thereon (Creswell *et al.*, 2012:90). Non-probability sampling refers to sampling if the selection of elements is not random (Terre Blanche *et al.*, 2012:139). With purposive sampling (also called judgement sampling), a specific case, group or individual is selected for the particular features it exemplifies that are of concern for a specific study (De Vos *et al.*, 2011:391). Purposive sampling, therefore, allows the researcher to use his or her own judgement in selecting the sample - thus, the participants are selected purposefully (De Vos *et al.*, 2011:391). These participants are selected decisively because of their knowledge, understanding or experience of the phenomena that is studied (De Vos *et al.*, 2011:391).

For the purpose of this study, the victims of domestic violence were selected to participate in the study due to their personal experience of domestic violence and the consequent administrative process managed by SAPS Ikageng and the NW DJCD. The police officers at SAPS Ikageng and the officials at the NW DJCD were selected based on their experience with, and knowledge of cases of domestic violence. Only the officials at SAPS Ikageng and the NW DJCD who manage cases of domestic violence on a daily basis were selected. The social workers from the Department of Social Development were selected

because of their skills to engage with victims, children or even perpetrators during the period of domestic violence and thereafter.

A sample of 10 victims of domestic violence was selected from a population of 2028 victims. It is apparent that interviewing a total of 2028 participants is impractical or possible in terms of the availability of resources. Furthermore, as mentioned in section 1.6.3.2, the personal interviews with the abused women demanded a great deal of compassion which implied that the researcher needed to take special care and time to ensure that the interviewees felt comfortable to share their experiences, feelings and perceptions. Consequently, only 10 victims of domestic violence were interviewed. The choice of a small sample is supported by Creswell *et al.* (2012:79) who assert that qualitative research typically involves smaller sample sizes than quantitative research. In this respect, Mouton (2012:139) posits that sample size varies, based on the purpose of the research, what is at stake, what will be practical, what will have credibility, and what can be done with the available time and resources. The limitations imposed on the researcher as a result of budgets and deadlines are also highlighted by Terre Blanche *et al.* (2012:291).

The abovementioned guidelines also steered the researcher in the sampling of police officers at SAPS Ikageng and the officials of the NW DJCD. For the police officers, only one (1) officer at the Domestic Violence Office was interviewed; thus, a 100% sample. From the population of 124 police officers at the Division: Visible Policing, 10 officers were selected for interviews. In the case of the NW DJCD, the one (1) clerk and the one (1) magistrate at the Ikageng Magistrate's Court was selected for interviews; thus, a 100% sample. The two social workers from the Department of Social Development who specifically work conjointly with Ikageng court were selected and interviewed, thus a sample of 100%.

1.6.5. Data analysis

Qualitative data analysis is typically centred in an interpretive philosophy (as is the philosophy of this study) and seeks to determine how participants attach meaning to specific phenomena by interpreting their experiences, perceptions, feelings, attitudes, knowledge and values with a view to estimate their formation and understanding of the phenomena (Creswell *et al.*, 2012:90). The significance of a sound interpretive analysis is

to interpret the data with empathetic understanding (Terre Blanche *et al.*, 2009:321). The data gathered from the personal interviews with the victims of domestic violence was interpreted with consideration of their experiences and wellbeing and with contemplation and appreciation for their context and trauma. Likewise, the perceptions and attitudes of the police officers at SAPS Ikageng and the officials at the NW DJCD were interpreted in consideration of their institutional context, resources, circumstances and challenges.

The following step of data analysis outlined by Babbie (2013:396) was adhered to:

- The data from the interviews was transcribed, interpreted and structured.
- The data was clarified by eliminating diversions and repetition.
- A distinction was made between essential and non-essential information.
- The analysis of the data was followed to give meaning to the data.
- The researcher established and contextualised the current state of affairs on the administrative processes of domestic violence cases (by SAPS Ikageng and the NW DJCD), and the extent of cooperative government. The experiences of the victims of domestic violence were also contextualised.
- The researcher brought her own understanding of the data to light, by drawing information from the literature study and theoretical analysis.
- The researcher provided new perspectives on the phenomena investigated in consideration of the primary purpose of the study as background.

Furthermore, the data was triangulated. Triangulation is a combination of multiple data sources through cross-verification to validate the findings of a study (Nieuwenhuis, 2010:113). Data gathered from the literature review, the document analysis and the personal interviews was analysed individually and combined (triangulated) to present coherent findings with a view to increase the reliability and validity of the study (see section 1.7 below). All research must respond to the norms that reflect the criteria against which the trustworthiness of the study can be evaluated (Anney, 2014:272). These norms include the validity, reliability and dependability of the findings (Anney, 2014:273).

Validity refers to the ability of a data collection instrument of what it is supposed to attain or measure to enable the researcher to make certain deductions and conclusions from the findings (Vermeulen, 2011:198). If the research produces credible results that can be used

to draw certain generalisations, it can be regarded as valid (Van der Riet & Durrheim, 2009:90). The study drew inferences and conclusions from the results acquired through the personal interviews. Five themes also emerged during the interview process (indicated and discussed in chapter 4). Generalisations were drawn from the results since these were in all likelihood applicable to other victims of domestic violence, SAPS stations and the DJCD elsewhere in the country.

Bezuidenhout (2011:52) states that reliability implies the method of testing and measuring used would give the same result if the test were to be repeated. However, with interpretive research, the context in which the study takes place is neither fixed nor stable; therefore, equivalent, recurring results are not anticipated (Van der Riet & Durrheim, 2009:93). The experiences, perceptions and observations of individuals, groups and institutions will adjust and vary in changing contexts (Van der Riet & Durrheim, 2009:93). Therefore, dependability is more suitable to establish the credibility of the findings, rather than the reliability.

Dependability is achieved when the reader is convinced that the findings of the research are rationalised and vindicated by the researcher (Van der Riet & Durrheim, 2009:93). In this study, the dependability of the results was ensured through accurate and comprehensive descriptions of the current status of the administrative processes of cases of domestic violence and the victim's experiences thereof. The triangulation of the data of the reviewed literature, document analysis and the personal interviews contributed towards the dependability of the study.

1.7. ETHICAL CONSIDERATIONS

Research ethics is the moral principles and behavioural expectations that should be adhered to by researchers when they interact with other people, to avoid causing harm to them (Babbie, 2007:27; Bezuidenhout, 2009:472; Simmons, 2010:90). This implies that a relationship of trust should be established between the researcher and the participants in the study to ensure they are treated with respect and to demonstrate the value placed on their human dignity. The researcher abided by these principles and considered the social and cultural contexts during the interviews. As the women who participated in the study are victims of domestic violence who already suffered physical and emotional trauma, they

were treated with the utmost dignity, sensitivity and respect. The researcher displayed patience and compassion towards the victims and they were not pressurised to respond to questions which they felt uncomfortable. Furthermore, a social worker accompanied the researcher to ensure that counselling was available should it be necessary.

Research participation has to be voluntary, the purpose of the study should be explained to the participants, and informed consent to participate in the study should be obtained (Leedy & Ormrod, 2016:102). The participants were informed about the purpose of the study and informed consent was obtained in writing, stating that their participation is voluntary. The participants were ensured of their anonymity and of their freedom of choice to withdraw from the study at any given time. The participants were also ensured that the results from the interviews would be reported in a collective manner; thereby no individuals will be implicated. All the participants requested not to be audio-taped during the interviews.

Permission from those in authority was requested, that is: Strategic Head of SAPS Ikageng and the Chief Magistrate of the NW DJCD at the Ikageng Magistrate Court, through letters in which the purpose and aims of the research was explained. The researcher also requested permission from the Ethics Committee of the Faculty of Arts at the North-West University (NWU), Potchefstroom Campus, to conduct the study. The research was conducted according to the ethical guidelines of the NWU.

1.8. LIMITATIONS AND DELIMITATIONS TO THE STUDY

According to Mouton *et al.* (2006:579), limitations are conditions that restrict research. The Ikageng Station Commander, detectives, employees from support services and crime prevention police officers were excluded from the study because they are not directly involved with the daily domestic violence complaints. Therefore, the study did not provide a holistic or management perspective of the administration of cases of domestic violence. However, the researcher ensured that a representative sample was selected from the police officers at SAPS Ikageng and the employees at the NW DJCD who manage these cases on a daily basis.

With regard to the victims of domestic violence, only 10 women were interviewed whose experiences and perceptions were not necessarily representative of the experiences and views of all victims of domestic violence. However, based on the results acquired through the empirical research (presented and analysed in chapter 4), it was concluded that their views and experiences are similar to those of other victims of domestic violence. Furthermore, as alluded to in section 1.6.4, the sample of the women was deliberately small because these interviews were expected to be time consuming and it would be impossible to interview a larger sample of victims, due to constraint of resources.

A further limitation that was anticipated is that the victims of domestic violence would not necessarily feel comfortable to share their experiences with the researcher. Fortunately, the victims shared their experiences openly. It is believed that these women in all likelihood felt comfortable to speak about their experiences due to the following reasons: the researcher is female; accompanied by a social worker; and the interview questions on the administrative aspects of cases of the domestic violence and not on their personal trauma and hurt.

In the interviews with the police officers at SAPS Ikageng and the officials of the NW DJCD, it was in all probability that information was withheld as the employees would not want to implicate themselves as negligent of their responsibilities. To counteract this possibility, the researcher made use of national, provincial and SAPS Ikageng statistics of complaints from victims of domestic violence to substantiate the arguments. It is, however, assumed that the guaranteed anonymity of the participants enabled them to speak freely.

1.9. SIGNIFICANCE OF THE STUDY

It is commonly acknowledged and reported that despite the most advanced legislation on domestic violence in Africa (such as the Domestic Violence Act, 1998), support is not provided effectively to the victims. Furthermore, legislative resolves available to the victims of domestic violence have proved to be unsuccessful (RSA, 1998:1; Maselesele *et al.*, 2011:2518; Taranto *et al.*, 2013:2; CSP, 2013:4; Morei, 2014:928; The Conversation Africa, 2015). The study provided recommendations and revealed how this legislation can be implemented successfully.

The study also provided valuable recommendations as to how cooperative government between SAPS Ikageng and the NW DJCD can be improved. The strengthening of this relationship will contribute towards the augmentation of the administrative process of cases of domestic violence that will benefit such victims. The study also recommended of how police officers and officials at the NW DJCD can ensure the humanisation of the process of reporting an incident, applying for a protection order and undergoing a medical examination.

The locus (SAPS Ikageng and the NW DJCD) and the focus of the study (cooperative government/ administration / service delivery to victims of domestic violence) rest in the public administration domain in practice and Public Administration as an academic discipline. Therefore, through the recommendations provide in the study, a contribution was made to the body of scholarly knowledge of the discipline. Furthermore, the critical analysis of the Constitution, 1996, and other legislation is included in the comprehension of Public Administration. Thus, recommendations on the improvement of the constitutional principle of cooperative government also contributed towards the scholarly knowledge of the discipline as well as the practice of public administration.

1.10. PROVISIONAL CHAPTER LAYOUT

The study was conducted in the following sequence:

Chapter 1: Orientation and outline of the study

Chapter 1 provided an introduction and orientation to the research; outlined the challenges associated with cooperative government and the administrative processes followed in cases of domestic violence. The chapter also postulated and clarified the problem statement of the study. Furthermore, the chapter offered valuable background information and statistics on the prevalence of domestic violence in South Africa. The central theoretical arguments in the chapter were highlighted including the theoretical and conceptual framework of the study. Furthermore, the research methodology adopted for this study was discussed.

Chapter 2: Domestic violence – theoretical and legislative framework

This chapter of the study provided a theoretical framework on domestic violence. The statutory and regulatory framework, relevant to domestic violence in South Africa and the international community, was also reviewed. Furthermore, the prevalence of domestic violence nationally and internationally was expounded upon.

Chapter 3: Cooperative government – theoretical and legislative framework

Chapter three focused on the value of cooperative government and its role in cases of domestic violence, especially with respect to SAPS Ikageng and the NW DJCD. The chapter also outlined the principles and challenges of cooperative government. The statutory and regulatory framework was also provided in this chapter.

Chapter 4: Empirical research: results and findings

In chapter 4, the results acquired from the empirical study (personal interviews) was presented and interpreted. The frequent challenges and shortcomings of cooperative government between SAPS Ikageng and the NW DJCD, was investigated and analysed. The results acquired through the personal interviews were compared to the literature review; document analysis and subsequently triangulated to validate the findings of the study.

Chapter 5: Conclusion and recommendations

A summary of all the chapters was provided in chapter 5. The chapter also indicated the research objectives of the study which were achieved by means of a structured overview and rationalisation. Recommendations on cooperative government between SAPS Ikageng and the NW DJCD to enhance the efficiency and humanisation of the administrative processes of cases of domestic violence were provided.

1.11. CONCLUSION

The chapter provided the introduction to the study by giving the background information and laying down the research problem. The research objectives and the research questions of the study were aligned. The central theoretical statements and methodology to be used was also outlined. The limitations and the delimitations of the study were

highlighted and the significance of the study was also brought to light. The next chapter will discuss a theoretical and legislative framework on domestic violence.

CHAPTER 2: DOMESTIC VIOLENCE – THEORETICAL AND LEGISLATIVE FRAMEWORK

2.1. INTRODUCTION

In chapter 1, a background to the prevalence of domestic violence in South Africa was discussed and the boundaries of the study were demarcated. Since the study focuses on a lack of effective cooperative government between SAPS Ikageng and the NW DJCD in terms of the administrative process of cases of domestic violence, a theoretical framework for domestic violence is established in this chapter. Furthermore, a comprehensive overview of the incidence of domestic violence is also expounded upon.

The chapter commences with a conceptualisation of domestic violence, which is followed by the description of what a domestic relationship entails, as well as different forms and the cyclical nature of abuse. There are a number of diverse theories which explain the domestic violence phenomenon. For the purpose of this study, the following relevant theories were selected: Culture of Violence Theory, Social Learning Theory, Family Systems Theory and Feminist Theory. These theories are discussed in this chapter.

A discussion of the various theories is followed by an explanation of the international legislation of various countries on domestic violence and the statutory and regulatory framework relevant thereto in South Africa, with reference to the Constitution, 1996, the Domestic Violence Act of 1998, the Criminal (Sexual Offences & Related Matters) Amendment Act 32 of 2007, the Protection from Harassment Act 17 of 2011, and the application process for protection orders under the Domestic Violence Regulations of 1999. Furthermore, the international and national prevalence of domestic violence, including Africa and specifically South Africa will be expounded upon.

2.2. CONCEPTUALISATION OF DOMESTIC VIOLENCE

Domestic violence is conceptualised as a multidimensional phenomenon, which involves numerous features of abuse such as physical, sexual, emotional and economic abuse (Lewis, 1999; Van der Hoven 2001:13; Mazibuko & Umejesi, 2015:6585). Domestic violence is also known as domestic, spousal, battering, dating abuse and intimate partner

violence which is perceived as the intentional use of threatened or factual bodily force or physical power against oneself or another person (Marais, 2002:448; Bosede & Alokun, 2013:100; Rezaie, 2013:55). Furthermore, Davies and Dreyer (2014:3) describe domestic violence as any controlling or abusive behaviour by a partner who harms, or may cause imminent harm to the safety, health or wellbeing of a person with whom the abuser is in a domestic relationship. Viitala *et al.* (2011:45) define domestic violence as “any use of physical or sexual force, actual or threatened, in an intimate or domicile relationship”.

Consistent with the above explanations, Abayomi (2013:8) and Jura and Bukaliya (2015:63) describe domestic violence as the intentional and persistent abuse of anyone in the home in a way that results in pain, distress or injury. The Centre for the Study of Violence and Reconciliation (CSV) reveals that it refers to any abusive treatment of one family member by another (CSV, 2016:9). Furthermore, domestic violence is a form of antisocial behaviour that occurs when a family member or ex-partner attempts to physically dominate or harm the other (Makhamadze *et al.*, 2013:55).

Viano (1992) in Singh (2004:197) claims that domestic violence and abuse can be described as a “Fundamental lack of understanding and appreciation of the commonality of our humanity, of what truly makes us human, the bonds that support and nourish us. Patriarchy, sexism, machismo, ageism and racism are different attempts to establish hierarchies; to inflate and exploit superficial differences; to mask one’s weaknesses by denigrating and oppressing others; to deny our independence and mutual linkage; and to subdue, oppress, and to take a domestic violence advantage of those considered to be inferior”.

Viano’s (1992) view was also supported by the American Medical News (1992), Matczak *et al.* (2011:4), and Chhikara *et al.* (2013:71), who assert that domestic violence is a simple phrase but it encompasses a horrifying list of abusive behaviours, (physical, psychological, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.

As alluded to in chapter 1, section 1.1, the UN’s Declaration on the Elimination of All Forms of Violence against Women describes violence against women as “any act of gender-based violence that results or is likely to result in physical, sexual or psychological harm

or suffering to women, including acts or threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or in private life” (UN, 1993:2; UN, 1995:111-114; Envuladu *et al.*, 2012:63; Abayomi, 2014:8; Chireshe, 2015:260; Kumar, 2016:1; Manful *et al.*, 2016:64; Onyemelukwe, 2016:5-6). In this respect, Esere *et al.* (2009:001) describe domestic violence as terrorism and violence within the home setting. The women are abused brutally by their partners within their own homes which is supposed to be a safe shelter for women and children (Slabbert & Green, 2013:234; Abayomi, 2014:8; Berman, 2015:123). Therefore, this type of degrading violent behaviour is generally directed at women and children, whereas this study focuses specifically on domestic violence against women.

From a democratic perspective, Bertus (2014:1) describes domestic violence as a pattern of abusive behaviour that transgresses the right of citizens to be free from violence. Thus, the incidence of domestic violence violates the law of basic human rights (Abayomi, 2014:8; CSV, 2016:9; Ishola, 2016:4), as enshrined in the Constitution, 1996. As indicated in chapter 1, section 1.5, the Bill of Rights includes the following human rights, relevant to domestic violence (RSA, 1996:5): everyone is equal before the law and has the right to equal safety [Section 9 (1)]; everyone has the right to their dignity being valued (Section 10); and everyone has the right to not being exposed to any kind of violence [Section 12 (1) (c)].

The above definitions and descriptions confirm the multidimensionality of domestic violence (Lewis, 1999; Van der Hoven 2001:13; Mazibuko & Umejese, 2015:6585). It can thus be concluded that domestic violence is:

- Any intentional or deliberate form of abuse, either physical, psychological, sexual or economic, suffered by women at the hands of their intimate partners within the home setting;
- The aim of domestic violence is to control, dominate, oppress, overpower and subjugate women as women are regarded as inferior within many societies; and
- The violence is used to coerce, degrade, humiliate, hurt, harm, terrorise and intimidate the victim.

In the next section, the different types of domestic relationships in which domestic violence occur is discussed.

2.3. DOMESTIC RELATIONSHIPS

In society, the family is symbolised as the place of affection, love and nurturance; it is supposed to be a safe haven for women, but instead it has become a place of insecurity and uncertainty (Berman, 2015:123). However, as mentioned in section 2.2, it is in fact the place where violence is most tolerated as domestic violence occurs in a victim's home (Thomas & Beasley, 1993:43; Nordien *et al.*, 2003:39; Kumar, 2016:5). A large number of violent incidents are perpetrated by family members on family members, including children and young people (Thomas & Beasley, 1993:45; Madzivhandila, 2015:43). Thus, domestic violence emerges through domestic relationships.

Section 1 (vii) of the Domestic Violence Act, 1998 defines the term *domestic relationship* as a relationship between the complainant and the respondent in the following ways (RSA, 1998:2; Artz, 2001:47; Van der Hoven, 2001:13):

- They are or were married to each other, including marriage according to customary law, custom or religion;
- They are of the same or the opposite sex;
- They are cohabitating;
- They are the parents of a child or have or had parental responsibility to that child;
- They are or were engaged, divorced or separated; and
- They are dating or in a customary relationship or they share or recently shared the same residence.

The Australian Domestic Relationship Act of 1994 describes a domestic relationship as a personal relationship between two adults in which one provides personal or financial commitment and support of a domestic nature for the material benefit of the other and includes a domestic partnership but does not necessarily include legal marriage (Australia, 1994:1). In corroboration with this statement, the Ugandan Domestic Violence Act of 2010, describes a domestic relationship as a family relationship, a relationship similar to a family

relationship or a relationship in a domestic setting that exists or existed between a victim and a perpetrator and includes relationships where (Uganda, 2010:10):

- The victim is or has been married to the perpetrator;
- The perpetrator and the victim are family members related by consanguinity, affinity or kinship;
- The perpetrator and the victim share or shared the same residence;
- The victim is employed by the perpetrator as a domestic worker or house servant and the victim does not reside with the perpetrator;
- The victim is the employer of the perpetrator and does or does not reside with the perpetrator; and
- The victim is or was in relationship determined by the court to be a domestic relationship.

Therefore, a domestic relationship refers to one in which a victim is any person who is or has been in a relationship of some sort with a respondent and who has been subjected or allegedly subjected to an act of domestic violence (Roux-Kemp, 2013:3; Gadinabokao, 2016:10).

From the above definitions, it can be inferred that a domestic relationship is one between a complainant (victim) and a respondent (perpetrator) or a relationship between the parties involved in a domestic dispute. Domestic violence can, therefore, not take place between complete strangers but only between people who know each other and are or were in a domestic partnership. To understand the nature of domestic violence, the different forms of domestic abuse is discussed in the next section.

2.4. FORMS OF DOMESTIC VIOLENCE

Bollen *et al.* (1999:6) and Bertus (2014:1) assert that the concept of domestic violence is primarily not just a one-time event and usually escalates in frequency and severity. Cognisance should be taken that domestic violence is not just physical, but can take many forms. The manifestation of social malaise of domestic violence includes: physical abuse; sexual abuse; emotional or psychological abuse; harassment; stalking; intimidation; damage to property; entering a woman's residence without permission, and any other

controlling or abusive behaviour towards a partner, as mentioned in chapter 1, section 1.1 and section 2.2 of this chapter. Each of these forms of abuse are explained in the following paragraphs.

- **Physical abuse**

Physical abuse is the most commonly reported type of domestic violence according to the police statistics (SAPS, 2011:6-12; SAPS, 2016:8; Stone *et al.*, 2013:3; Jura & Bukaliya, 2015:64). This may include the use of physical force in a way that injures the victim or puts him or her at risk of being injured (Abayomi, 2014:10; Olumeri, 2015:36). Common forms of abuse include beating, stabbing, slapping, pushing, kicking and punching (Rawls, 2016:5). Other forms include choking and female genital mutilation (Marais, 2002:448; Mpani & Nsibande, 2015:11; Olumeri, 2015:26). Physical abuse can also include behaviours such as denying the victim of medical care when needed or depriving him/her of sleep or other functions necessary to live (Chhikara *et al.*, 2013:71; Tshwaraganang Legal Centre, 2012).

Ferrato (2000:8) in Slabbert (2010:17) compiled the following warning signs of controlling behaviours to identify physical violence: if a male uses intimidation in his relationship with his partner and often makes angry comments he might be inclined to physically abuse his partner; and behaviour that is characterised by destruction or threats might also be a sign of caution. Habitual abusers will ensure that they inflict physical injury on body parts such as the torso instead of the face or limbs to avoid leaving visible marks (Slabbert, 2010:17). An untimely death is often the result from physical injuries to women who are trapped in an abusive relationship (Retief, 2013:60; Simister, 2016:115).

- **Sexual abuse and marital rape**

Sexual abuse refers to any conduct that includes all forms of sexual assault, harassment or exploitation, forcing a person to participate in sexual activity (Slabbert & Green, 2013:240; Abayomi, 2014:10; Jura & Bukaliya, 2015:64). It also refers to any sexual conduct that ignores the other party's feelings and is aimed at humiliating, degrading or otherwise violating an individual's integrity (Bertus, 2014:3). Sexual abuse can also

include marital rape whereby one party assumes the right and privilege to have sex whenever he wishes, in any form he desires, without taking the partner's feelings into consideration (Chikkara *et al.*, 2013:72; Olumeri, 2015:26; Retief & Green, 2015:240). In a study conducted by Slabbert and Green (2013:240), 20% of the research participants revealed that they were sexually abused by their partners, ranging from being referred to as sexual objects, being forced to wear sexy clothes and having certain sexual behaviours enforced while their male partners were under the influence of substances.

- **Emotional, verbal and psychological abuse**

Emotional abuse can be verbal or non-verbal and refers to any pattern of degrading, humiliating and demeaning behaviour in public or private (Slabbert, 2010:17; Retief, 2013:60; Olumeri, 2015:27; Retief & Green 2015:139; Musawa, 2016:1). This includes threatening a person or his or her possession or harming a person's sense of self-worth by placing him or her at risk of serious behavioural, cognitive, emotional or mental disorders (Retief & Green, 2013:139). Victims, who live with their perpetrators, have reported high levels of stress, fear and anxiety (Marais, 2002:449). Depression is also common because victims are made to feel guilty for provoking the abuse and are subsequently subjected to intense criticism (Marais, 2002:449; Chhikara *et al.*, 2013:72; Bertus, 2014:3; Avdibegovic *et al.*, 2017).

Ferrato (2000:7) in Slabbert (2013:18) compiled the following warning signs of controlling behaviours to identify emotional abuse: a continuous, destructive criticism of a partner; verbal attacks such as name calling, mocking, swearing and making humiliating remarks or gestures; pressure tactics such as guilt tripping, threats to withhold money and manipulating children; a man who abuses his authority, abuses trust, breaks promises and treats people with disrespect; someone, minimising his misbehaviour, denying and blaming others; men who use isolation and prevent their partners from seeing friends in order to control them; someone who harasses his partner by checking up on her activities and movements; and self-destructive behaviour in the abuse of drugs and alcohol.

- **Economic or financial abuse**

Economic and financial abuse includes the unreasonable withholding of economic or financial resources which the victim needs or is entitled to; stealing from or defrauding a loved one; and manipulating or exploiting a family member for financial gain (Chikkara *et al.*, 2013:72; Jura & Bukaliya, 2015:64; Olumeri, 2015:26). This kind of abuse also refers to any coercive act or limitation on an individual, with adverse economic implications for the victim and any dependants of the victim (Retief & Green, 2015:141).

- **Intimidation**

The Domestic Violence Act defines intimidation as any verbal or written death threats as well as overt or covert behaviour displayed by the perpetrator which results in the victim being fearful (RSA, 1998:6; Retief, 2013:63). This form of abuse can also include the display of weapons, destruction of property or hurting the victim's pets (Bertus, 2014:4; Retief & Green, 2015:142). The clear message of intimidation is that if the victim does not obey, there might be violent consequences (Bertus, 2014; Madzivhandila, 2015:32).

- **Harassment**

Harassment implies engaging in a pattern of conduct that induces fear of harm and includes the abuser who repeatedly watches or loiters outside or near an individual's place of residence or work, or where the individual studies or happens to be; repeatedly make telephone calls or induces another person to make phone calls to the victim, whether or not conversation ensues; and repeatedly sends, delivers letters, emails, texts, packages or other objects to the victim (RSA, 1998:3; Retief, 2013:62; Bertus, 2014:4).

- **Stalking**

There is no real legal definition of stalking and neither any specific legislation to address this behaviour (Bertus, 2014:4; Madzivhandila, 2015:32). However, stalking can be described as involving the unwanted and repeated following or keeping of a victim under constant surveillance (Retief, 2013:62; Retief & Green, 2015:143). Stalking can also

include the following: anonymous calls; constant texting; and watching the victim all the time without the knowledge that he or she has been put under surveillance (RSA, 1998:3; Bertus, 2014:4; Retief, 2013:62; Madzivhandila, 2015:32).

- **Damage to property**

Damage to property is described as the intentional damaging or breaking of properties or anything belonging to the victim or in which the victim has a vested interest (Retief, 2013:62; Retief & Green, 2015:140). This may include burning clothes or damaging the victim's vehicle (RSA, 1998:2; Bertus, 2014:4).

- **Entry into a person's house without consent**

This may include entering the victim's house without permission where two parties do not share the same residence (RSA, 1998:1).

From the above definitions and descriptions, it can be concluded that domestic violence is a multidimensional phenomenon which takes many forms, including physical, sexual, economic and psychological abuse. Retief (2013:63) states that when assessing domestic violence, often only physical acts of violence are measured without taking into consideration all other forms of violence that may occur such as those outlined in this section.

However, it should also be noted that, at times, abuse goes unreported and not all forms thereof constitute an offence (SAPS, 2006:19). Also, the victim may only lay a charge if the conduct of the respondent complies with the requirements of an offence (SAPS, 2006:19). These forms of domestic violence, outlined above, typically occur in a cycle of violence. This cycle of violence in which domestic violence occurs is discussed in the next section.

2.5. CYCLICAL NATURE OF ABUSE

Maselesele (2011:2) explains that when a victim is trapped in an abusive relationship, the three dynamics of love, hope and fear keeps the cycle of domestic violence in motion. A model of the cycle of violence was developed by Lenore Walker in 1979 (Davies & Dreyer, 2014:4). Researchers (Collins, 2000:1-2; Vogt, 2007:21; Slabbert, 2010:22-23; Maselesele, 2011:1; Retief, 2013:48-52; Davies & Dreyer, 2014:4, Madzivhandila, 2015:51-56; Mazibuko & Umejese, 2015:6587) agree that a cycle of abuse is an ongoing process in which the behaviour, actions and events are repeated with similar beginnings and endings and often increases in intensity over time. They identified three phases namely: **the tension-building phase, the explosion phase and the honeymoon phase** to explain the cycle of violence. All phases identified by Vogt, 2007:21; Slabbert (2010:22-23), Maselesele (2011:1), Davies and Dreyer (2014:4), Madzivhandila (2015:51-56) and Mazibuko and Umejese (2015:6587), outlined below, are closely interlinked even though at times the cycle does not follow the same pattern.

The tension-building phase begins with anger and blaming and the increased tension builds up for the abuser until it reaches a stage of conflict (Maselesele, 2011:1; Madzivhandila, 2015:51; Mazibuko & Umejese 2015:6587). The minor incidents leave the victim trying to appease the abuser when he or she becomes violent (Slabbert, 2010:22). The victim senses that the abuser is feeling edgy, irritable, and possessive, demanding and she feels as if she is walking on eggshells (Collins, 2000:1; Vogt, 2007:21; Retief, 2013:55; Davies & Dreyer, 2014:4). The victim generally tries her best to calm the abuser by becoming nurturing, compliant and submissive and have the believe that the conciliatory behaviour will prevent the anger and abuse from escalating (Retief, 2013:55, Davies & Dreyer, 2014:4). She blames herself for the situation and her lack of ability to control what is happening around her as the tension reaches the point of being unbearable (Mazibuko & Umejese 2015:6587). The abuse is labelled and considered as minor (Slabbert, 2010:22). This phase generally ends with the first outburst of violence.

The **explosion phase** is the violent stage. The abuser's behaviour escalates, the tension that built-up in the tension-building phase erupts, battering occurs, and violence now becomes part of the relationship (Collins, 2000:1-2; Mazibuko & Umejese, 2015:6587). A

woman endures the abuse while placing a high value on the sound aspects of the relationship (Maselesele, 2011:1; Davies & Dreyer, 2014:4).

This phase is characterised by an uncontrollable discharge of tension and the victim may be physically, sexually and emotionally abused but generally does not become violent in return (Collins, 2000:2; Vogt, 2007:21). If there are children on the property, they may be afraid and hide, call the police or try to intervene (Collins, 2000:2; Slabbert, 2010:22). The woman generally continues to tolerate the abuse and feels that she has invested so much in the relationship that she wants to have faith in her partner and that battering will never occur again (Vogt, 2007:22). The victim feels partially responsible for the abuse and tries to cover all signs of discordance between herself and her partner (Maselesele, 2011:1). To break the cycle of violence, a woman must leave and seek refuge with family or friends (Slabbert, 2010:23).

The honeymoon phase is the loving stage of the cycle. The abuser is loving, calm and tends to lure the victim (Collins, 2000:2; Slabbert, 2010:22; Madzivhandila, 2015:56). Maselesele (2011:1) explains that the honeymoon phase is one during which victimisation is complete just as brutality marks the explosion phase, extremely loving, kind and remorseful behaviours characterise the honeymoon phase (Vogt, 2007:22; Retief, 2013:57; Maselesele, 2011:1). The abuser may feel remorseful and apologetic while the victim struggles with feelings of loyalty towards her partner and feelings of an allegiance to the self, whilst wondering whether she is going to survive (Davies & Dreyer, 2014:4, Mazibuko & Umejese, 2015:6587).

During this phase, the abuser asks for forgiveness and is afraid that the victim will leave (Collins, 2000:2; Vogt, 2007:22; Madzivhandila, 2015:56; Mazibuko & Umejese 2015:6587). Subsequently, the abuser starts to make promises to the victim to ensure that she does not leave (Collins, 2000:2; Slabbert, 2010:22; Madzivhandila, 2015:56). The woman makes attempts to cry out for help as she begins to realise that her life is meaningless as the self begins to re-emerge at different points in the relationship (Vogt, 2007:22). The most disheartening aspect of the honeymoon phase is the false hope it fosters as the victim gets a glimpse of what they thought and still hope, they had in a partner (Slabbert, 2010:23; Women Safe, 2015:3). As the honeymoon phase wears off, the abused woman is left with a cycle of tension-building which results in a syndrome of

increasing medical and emotional problems such as depression, anxiety and substance abuse (Maselesele, 2011:1).

Domestic violence is an ongoing process and research has revealed that each year 4.8 million women are victims of physical assaults and rape (Rawls, 2016:4). It is difficult for the victim to leave because calm and loving behaviour gives way for occasional incidents of battering but phase one re-occurs and a new cycle begins (Vogt, 2007:22). When the abuser calms down and asks for forgiveness, the victim generally drops the charges and accepts the abuser's apology; however, the abuser's rage will build up again and the violent cycle will be repeated (Slabbert, 2010:23; Davies & Dreyer, 2014:4).

The above phases clearly depict that domestic violence is a continuous recurring process which follows a certain predictable pattern. However, the cycle of domestic violence and the forms thereof that occur do not explain the underlying reasons for the violence. In this respect, certain scholarly theories could help to establish and understand these reasons. The next section explores these theories.

2.6. THEORIES THAT EXPLICATE DOMESTIC VIOLENCE

No singular recognised causal theory for domestic violence could be found in during the literature search. There are, however, a number of theories which explain the possible underlying reasons for domestic violence. The theories that explain domestic violence are predominantly theories of Psychology, Social Psychology and Sociology (Lewis, 1999 in Vogt, 2007:14; Retief, 2013:7). These theories have practical implications as the type of intervention embarked on is influenced by the prevailing theoretical understanding of the determinants of the problem (Okereke, 2002:41; Buzawa & Buzawa, 2003 in Vogt, 2007:14). Therefore, the existence of domestic violence will be discussed against the four most cited theories on the topic. The theories include Culture of Violence Theory, Social Learning Theory, Family Systems Theory and Feminist Theory.

2.6.1. Culture of Violence Theory

Culture of Violence Theory accentuates that many patterns of abuse, such as the abuse of a wife, women, child or elder lays the foundation for the overwhelming acceptance of

violence in society (Retief, 2013:50). According to Manful *et al.* (2015:64), domestic violence is influenced by socially rooted role expectations, though there are instances of violence in a domestic context which stems from social relations and the dynamics of being either male or female.

Violence is used as an instrument to reinforce social control in a context of women who are socialised to be passive and dependent on men for decision-making (Manful *et al.*, 2016:64). In support of the above statement, the CSVR (2016:8) and Fidan and Bui (2016:1078) states that males are placed in a powerful position in relation to women due to practices such as *lobola*, *ukuthwala* and Sharia law. The women inherently hold subordinate positions to men which is normalised with both males and females being socialised into conforming to cultural and religious practices. Nordien *et al.* (2003:39) and Mutiso *et al.* (2010:66) further maintain that people often use religion and culture to explain and rationalise violence against women. The abuse is often condoned by the tacit silence and the passivity displayed by the state and the law-enforcing machinery (Mutiso *et al.*, 2010:66).

Dalal and Dawad (2011:1932) submit that in South Africa, a culture of violence is a strong pervasive feature of the post-apartheid legacy, which often induces violence against women. Part of the blame for domestic violence is specifically attributed to the colonial heritage and repressive practices of post-colonial regimes in Africa that continued the culture of violence by accepting it as a way to resolve disputes (Retief, 2013:50; Fidan & Bui, 2016:1076). This sense of acceptance of a culture of violence gained traction over the years and in most instances, it does not receive the due attention it deserves. Ratele (2008:515) notes that acts of domestic violence against women and girls continue on a daily basis, such that they are referred to as part of the undeclared yet public gender.

It should also be noted that in many communities, when men go through initiation, they are taught to consider themselves as leaders and women as their subordinates (Siyanda, 2012; Bvukutwa, 2014). It can be argued that initiation in itself perpetuates patriarchy as it establishes a man as the head of the family, irrespective of age. Based on the premises of Culture of Violence Theory, it can also be inferred that the use of violence is deeply rooted within a person's own culture, tradition and norms.

2.6.2. Family Systems Theory

As mentioned in chapter 1, section 1.5, the Family Systems Theory, also referred to as Family Systems Framework, grew out of the general Systems Theory, developed by Bertalanffy (1969), and assumed that members are part of the group or system and function as a system (Jura & Bukaliya, 2015:64). The theory postulates that violent behaviour is not due to one sole factor, but it is based on the idea that each individual should be viewed not in isolation but in terms of interactions, transactions and relationships within the family (McCue, 2008:12; Lau, 2009:1; Jura & Bukaliya, 2016:64). A central tenet of this theory is that what affects one individual affects the entire family system and what affects the family also affects each member (Hyde-Nolan & Juliao, 2012:14).

According to Vogt (2007:17), domestic violence is the result of a dysfunctional family set-up. The victims and abusers are mutually causal elements. Thus, Family Systems Theory views the functions of the entire family which in some way places partial blame on the victim. Randle and Graham (2011:99) argue that the theory posits that men and women are equally likely to be both perpetrators and victims of violence. As mentioned in chapter 1, section 1.5, the behaviour of one family member and the probability of the reoccurrence of that behaviour are affected by the responses and feedback of the other family members (Cunningham *et al.*, 2002:9; McCue, 2008:14).

It can, therefore, be deduced that according to Family Systems Theory, the dynamics and relationships between all members of a family will either lead to or prevent domestic violence. When it does lead to domestic violence, it affects all members of the family, not only the victim.

2.6.3. Social Learning Theory

Social Learning Theory of Bandura (1977) provides a conceptual basis for the view that childhood experiences in the family of origin influence behaviour and that such behaviour is learned through observation and modelling (Cunningham *et al.*, 2002:15; Hines & Saudino, 2002:213; Bottos, 2008:13; Wagstaff, 2009:49; Slabbert, 2010:24; Hyde-Nolan & Juliao, 2012:11; Tanga & Gutura, 2016:600; Woollett, 2016:1068; Okenwa-Emengwa *et al.*, 2016:2). When behaviour is learned through observation, one forms an idea of how

new behaviours are performed on later occasions as this coded information serves as a guide for action (Cunningham *et al.*, 2002:15; Holt *et al.*, 2008:13; Slabbert, 2010:24; McLeod, 2011; CSV, 2016:11). This perspective postulates that there is a causal link between two variables found to be highly correlated among men: exposure to violence in the family of origin; and violence towards intimate partners in adulthood (Cunningham *et al.*, 2002:15).

Partner violence is seen to occur in individuals who grew up in families in which they witnessed inter-parental violence or who directly experienced child abuse, resulting in the tolerance or acceptance of violence in the family (Hines & Saudino, 2002:213; McHugh & Frieze, 2006:128; Sampson, 2007:4; Franklin *et al.*, 2011:1; Randle & Graham, 2011:99; Nwanna & Kunnuji, 2016:2642). People learn from observing and modelling behaviour and if one observes violent behaviour, he or she is more likely to imitate it and if there are no negative consequences to this behaviour, it will likely continue (Vogt, 2007:15; Kadam & Chaundhari, 2011:262; Okenwa-Emengwa *et al.*, 2016:1). Several studies have revealed a link between exposure to violence as a child or being a victim of child abuse, and the use of violence towards female partners in the adult life (Buttel, 1998:9; Lee *et al.*, 2004:463; Mackenzie, 2006:278).

Furthermore, Rawls (2016:15) points out the following factors that may trigger or contribute towards violent behaviour:

- An event that heightens arousal - e.g. A person may frustrate or provoke another through physical assault or verbal abuse;
- Aggressive skills - learned aggressive responses that are picked up from observing others, either personally or through the media;
- Expected outcomes - the belief that aggression will somehow be rewarded; and
- Consistency of behaviour with values - the belief, gained from observing others that aggression is justified and appropriate given the circumstances of the present situation.

Some of the weaknesses of Social Learning Theory are that it focuses on the individual abuser and does not include the impact of violence in the wider context (Vogt, 2007:16). It

also does not explain why all people who were abused do not abuse their partners (Singh, 2003 in Vogt, 2007:16).

It can be concluded that according to Social Learning Theory, violence is a behaviour that is learned through observation in the early stages of life and the modelling of this behaviour in later life. It can be assumed that no-one is born with aggressive behaviour, but those events or circumstances create such behaviour. It can also be argued that people, who grew up in families where violence was prevalent, are more likely to use violence later in life. The link between childhood experiences and violence in adulthood has been acknowledged by researchers, and is a phenomenon frequently referred to as the inter-generational transmission of violence or the cycle of violence (Murrell *et al.*, 2007; Shlonsky & Friend, 2007 in Wagstaff, 2009:49).

2.6.4. Feminist Theory

The Feminist Theory was developed in the early 1970s, giving collective meaning to individual experiences through applying the concepts of domination, oppression, exploitation and ideology to women's experiences (Anderson & Umberson, 2001:358; UN, 2005:2; Stacey, 2007:576; Wagstaff, 2009:53). Feminist Theory underscores that men use violence against their partners to maintain dominance within the relationship (Sampson, 2006:4; Lau, 2009; Mashiri, 2013:94; Retief, 2013:49; Cannon *et al.*, 2015:669; Nguten, 2016). Feminist Theory supports the notion that men use violence as a method of exerting control because they have been socialised in a patriarchal society to be dominant in the family (Slabbert, 2010:23; Fidan & Bui, 2016:1076; Simister, 2016:115). Consequently, violence is perceived as a problem-solving method, shared with "macho" male friends by many perpetrators (Maselesele *et al.*, 2009:2520; Slabbert, 2010:23; Mashiri, 2013:95).

Advocates of Feminist Theory argue that intimate partner violence is highly gendered and should be perceived as a social problem for women (Randle & Graham, 2011:98; Garrett, 2012:22). The researchers of this paradigm also perceive sexism and gender inequality in patriarchal societies as the primary causes of intimate violence (Cunningham *et al.*, 2002; George, 2002:3; Bottos, 2008:14; Tracy, 2007:576; maccue, 2008:15; Lau, 2009:1; Randle & Graham, 2011:98; Bosede & Alokun, 2013:10; Chireshe, 2015:259; Mazibuko & Umejisi, 2015:6585; Ishola, 2016:9, Manful *et al.*, 2016:64; Tanga & Gutura, 2016:600).

As alluded to in chapter 1, section 1.5, domestic violence conceptualises male violence to utilise power and control to assert values of male privilege, entitlement and domination over women (Dobash & Dobash, 2001:5; Cunningham *et al.*, 2002:20; Lau, 2009:1; Simister, 2016:114). This view is affirmed by Hunter (2006:62) who argues that men use violence against women as a means of social control through which men, individually and collectively uphold their dominant position in the family and the community (also alluded to in chapter 1, section 1.5).

As mentioned in chapter 1, section 1.1, Anderson and Umberson (2001:359) posit that men use violence to punish their female partners who fail to meet their unspoken physical, sexual or emotional needs. Randle and Graham (2011:98) echo Hunter's belief and state that men use violence against their female partners to influence their current or future behaviour. This view is also supported by Bosede and Alokun (2013:101) and Scarduzio *et al.* (2017:92), who confirm that the primary goal of men who utilise violence against their female partners is to influence their partners' current or future behaviour; and the men also use violence against their partners when they feel jealous.

Violence against women is a manifestation of historically unequal power relations between women and men, which has led to domination over and discrimination against women (McHugh & Frieze, 2006:128; Fidan & Bui, 2016:1076; Kumar, 2016:1; Simister, 2016:115). Feminist core beliefs about domestic violence hold that most men are violent, that women's violence is in self-defence, that men's violence escalates over time and that women are by far the most humiliated entity in the process (Randle & Graham, 2011:98). As mentioned in chapter 1, section 1.1, the study does not necessarily concur with the feminist view expressed above with respect to the statement that **most** men are violent, because this is not globally evidence-based. However, this study focuses on violence against women by the hand of men specifically in South Africa, which is substantiated statistically (Morei, 2014:928; HSRC, 2014:11; The Conversation Africa, 2015). Moreover, Dissel and Ngubeni (2003) in Tanga and Gutura (2016:600) noted that domestic violence in South Africa is perceived as gender-based violence which is founded on power relations between men and women and is disseminated by culture and tradition that nurture male dominance.

The Feminist Theory, according to Jura and Bukaliya (2015:64), has been criticised because it isolates the role of women in relationships and neglects that both genders should have equality within family relationships. Jura and Bukaliya (2015:64) further maintain that Feminist Theory fails to account for the men who are not abusive in their relationships with their female partners and women who are abusive within homosexual relationships, which challenges the feminist premise in terms of men behaving dominantly over women (Jura & Bukaliya, 2015:64). Kitchen (2016:6) criticises Feminist Theory since it primarily focuses on elitist white women and excludes women from other socio-economic classes despite the findings that certain women are more susceptible than others, that some men are more liable to commit violent acts, and the perpetuation of the idea that women as social category have some sort of shared identity or sameness.

Yllö and Strauss (1990:283) established a curve-linear relationship between the status of women and spousal abuse, and outlined it as follows: in countries where structural inequalities are great, the rates of violence against women are correspondingly high; and as the status of women across the world increases, the rate of female abuse decreases, but in countries where women have the highest status, the rate of women abuse increases again. The authors attributed this finding to a reaction against the improved status of women.

The above theories serve as a guide to provide a broader meaning for the existence of domestic violence in society. Men use violence against women as a demonstration of power and control. Considering the premises of the above theories, it is clear that the function of domestic violence is to dominate, subjugate, intimidate and control one's intimate partner through aggression. Although, the aetiology of domestic violence is still inconclusive (Retief, 2013:53), these theories provide likely attributions to the cause or reason for domestic violence.

Irrespective whether the reasons of domestic violence are always clear, it remains a real and widespread problem in society. To mitigate the prevalence of domestic violence, various legislations, nationally and internationally have been implemented. The next section explores international legislation on domestic violence, followed by national legislation in the section thereafter.

2.7. INTERNATIONAL LEGISLATION: DOMESTIC VIOLENCE

Domestic violence is acknowledged in international law as a violation of human rights. In the 1990's, domestic violence began to receive more explicit attention with commentary by the Committee on Elimination of Violence Against Women (CEDAW), and countries such as the United States of America (USA), United Kingdom (UK), Japan, Italy, France and Canada who adopted various laws that focus on violence against women (UN, 2012:1). In international law, the recognition of women's rights in the public and private sphere, including the right to protection against gender-based violence, has been clearly articulated in various instruments including CEDAW and the UN's General Assembly Declaration on the Elimination of Violence against Women (Onyemelukwe, 2016:6).

The **USA**, its fifty states, and the District of Colombia offer legal remedies to victims of domestic violence which include criminal law provisions, such as the opportunity to obtain a protection order (Vogt, 2007:29). According to the United States (US) Department of Justice (2015:1), the congress passed the Violence against Women Act of 1994 to end domestic violence, sexual assault, dating violence and stalking (USA 2011:1). This Act enables the victims and the US government to work together to implement prevention measures and victim support programmes (USA, 2011:1). However, domestic violence against women remains a problem in the USA, despite increased public awareness and law enforcement response (Lockwood & Prohaska, 2015:78). In corroboration with the above statement, O'Neill (2016:1) asserts that every nine seconds, a woman in the USA is assaulted or beaten despite the domestic violence legislation.

The **UK's** cross-governmental definition of domestic violence describes it as any incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over, who are or have been intimate partners or family members, regardless of gender or sexuality (Home Office, 2013; Serious Crime Act, 2015; Crown Prosecution Services, 2016; Child Law Advice, 2017; NSPCC, 2017). In England and Wales, there are civil and criminal remedies for domestic violence, including Section 76 of the Serious Crime Act which was enforced in 2015, criminalising patterns of coercive or controlling behaviour perpetrated against intimate partners or family members (British Broadcasting Corporation, 2015; Bowcott, 2015; Hill, 2015; Woodhouse & Dempsey, 2016:3). Under the domestic violence protection orders, the police and magistrates are allowed to ban

perpetrators from returning to their homes or from having contact with the victim for up to 28 days (Hill, 2016; Woodhouse & Dempsey, 2016:10). It was, however, revealed that the UK police failed to charge a single person with this offence under the new law (Hill, 2016).

The **Italian** government strongly condemns the use of violence against women as a result of religious practice, tradition and custom and various tools for protection has been implemented (Nadeau, 2013:1; Capecchi, 2017:1). In 2006, the Italian government passed a special law (2006 N.7) protecting women from female genital mutilation, pursuant to Article 2 and 3 of the Italian Constitution and the principles enshrined in the Beijing Declaration and Plan of Action. Italy's penalty code punishes those who mutilate female genital organs (UN, 2009:4). In 2013, Italy passed stiffer penalties for certain forms of domestic violence which was previously not possible: victims are no longer able to withdraw reports of abuse, including harassment and stalking complaints; police should remove the abuser from the family home; and legal aid should be provided for any woman who proceeds with prosecuting her abuser (Davies, 2013; Nadeau, 2013:1; Capecchi, 2017:2). However, according to Edwards (2016:2), during 2014 and 2015, 136 and 128 women respectively were still victims of femicide, despite the country having the new penalty code to protect women.

In **Japan**, Act 31 of 2001 of the Japanese Prevention of Spousal Abuse, as amended by Law 64 of 2004, makes provision for the protection of victims of domestic violence. The law is intended for not only married couples, but also common law marriage partners, ex-wives and ex-husbands (Marikkar, 2007:90). Chapter IV of the Act makes provision for the application of protection orders against the respondents and necessary steps the police should take to ensure that the victims are protected (Japan, 2001:7). Article 9 of this Act also obliges cooperation and collaboration amongst concerned organisations to protect victims of abuse (Japan, 2001:6). However, many Japanese men still view women as the property of their husbands with a total of 54.7% of Japanese women suffering physical or sexual abuse (Marikkar, 2007:87- 89). According to Gilhooly (2016:2), although the domestic violence law was revised in 2014, it still does not include the victims of domestic violence. In 2012, 43, 950 cases of abuse were reported to the police and it is estimated that in Japan, a woman is killed every three days (Gilhooly, 2016:3).

In **France**, the Minister of Women introduced the Act for Equality, 2013, to promote equality between women and men. The Act makes provision for victims of abuse to accelerate the application process and the renewals of protection orders (Atwill, 2010:2; Potter, 2014:1). In addition, the Act provides that the abuser be required to leave the shared residence with the victim (Potter, 2014:4). However, though legal tools exist in France, evidence has revealed that judicial processes are not far-reaching enough and that there is a lack of understanding of the rights and prosecution procedures amongst victims (Van der Aa *et al.*, 2015). Furthermore, the police, social workers, public prosecutors or doctors seem to lack knowledge of their duties and procedures to provide appropriate support to the victims (Van der Aa *et al.*, 2015).

In **Canada**, violence against women is regarded as a chronic problem with more than 40 000 complaints lodged each year (IRBC, 2013:1). Laws against femicide and other forms of violence against women were approved in 2008, recognising that femicide, violence against women, including psychological and economic violence, are punishable crimes (Musalo, 2010:165). However, the police in Canada consider violence against women as a private matter and when contacted with complaints of domestic violence, police are slow to respond and occasionally fail to attend the complaint (Drysdale, 2008:54; Jeffrey, 2017).

From the above discussion, it can be concluded that countries around the world ratified various international and regional declarations, laws, charters, protocols and agreements to protect women against violence (as also alluded to in chapter 1, section 1.1), but domestic violence still remains widespread and pervasive. Domestic violence is still considered in many countries as a private matter between husband and wife that need to be resolved behind closed doors, while women remain the powerless group in society. Kumar (2016:1) quotes Karl Marx, stating that “women are the only exploited group in history to have been idealized into powerlessness”. Domestic violence degrades and injures the personality and the human nature of the victim, which is in direct contrast to the spirit and stipulations of the Constitution, 1996. Subsequently, the next section deliberates the Constitution, 1996, and other relevant domestic violence legislation in South Africa.

2.8. SOUTH AFRICAN STATUTORY AND REGULATORY FRAMEWORK FOR DOMESTIC VIOLENCE

As mentioned in chapter 1, section 1.1, the South African government upholds various international and regional conventions to protect the rights of women and girls and passed various laws such as the Domestic Violence Act, of 1998, the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2012, the Maintenance Act of 1998, and the Protection from Harassment Act of 2011 in this regard. Furthermore, the most notable of the legislative framework for domestic violence, is the supreme law of the country, the Constitution, 1996.

The Constitution, 1996, incurs obligations in terms of the Bill of Rights which guarantees the citizens' right to equality and their right to freedom and security of all people (RSA, 1996:5-6). Domestic violence offends the values and rights enshrined in the Constitution (Kruger, 2006:154; Morei, 2014:929; Furusa & Limberg, 2015:9). Therefore, the discussion of the statutory and regulatory framework for domestic violence in South Africa commences with the provisions and rights of the Constitution, 1996, and is followed with a discussion on other legislation, relevant to domestic violence.

2.8.1. Constitution of the Republic of South Africa, 1996

As mentioned in chapter 1, section 1.1, South Africa has an extensive legislative framework, committing to democratic and human rights. Most notable of these is the Constitution, 1996. Chapter 2 of the Constitution, 1996, the Bill of Rights, enshrines the rights of all citizens (Andrews, 2008:5). The Constitution, 1996, also provides protection for victims of domestic violence and it attempts to address this matter by providing, under Section 12 (1) (c) that and everyone has the right to not being exposed to any kind of violence.

Section 12 (c) of the Constitution, 1996, also as part of the Bill of Rights, provides that everyone has the right to freedom and security of the person which includes the right to be free from all sources of violence (RSA, 1996:5; Andrews, 2008:5; Bendall, 2010:102). With respect to Section 12 (c) of the Constitution, 1996, it requires the state to protect

individuals, both by refraining from such invasions itself and by retraining or discouraging private individuals from such invasions.

Section 7 of the Constitution, 1996, provides that the Bill of Rights affirms the democratic values of human dignity, equality and freedom and it should be read alongside Section 9 (3) of the Constitution, 1996, stipulating that the right to equality underpins all other rights enshrined in the Bill of Rights, including that of freedom from violence (RSA, 1996:5; Andrews, 2008:5; Bendall, 2010:102; Retief, 2013:78). Thus, the Constitution obliges the government to enact legislation to realise the fundamental rights of citizens, including victims of domestic violence (Kruger, 2006:154; Retief, 2013:78).

According to Retief (2013:78), due to the gendered nature of domestic violence, the right identified in Section 12 (c) of the Constitution, 1996 - everyone has the right to freedom and security of the person - imposes a three-fold obligation on the state:

- Firstly, it requires that specific and appropriate measures be adopted to prevent domestic violence in all forms and manifestations;
- Secondly, it requires that measures be put in place to minimise the secondary Effects and impact of domestic violence; and
- Thirdly, it requires that any measures adopted are receptive to the plight of all victims of domestic violence.

The Constitution, 1996, as the supreme law of the country, obliges all departments (national and provincial) to protect the victims of domestic violence as encapsulated in the Bill of Rights. The Constitution, 1996, also specifies in Section 7, that the state is required to respect, protect, promote and fulfil the rights of citizens as stipulated in the Bill of Rights (RSA, 1996:5; Bendall, 2010:102; Gadinabokao, 2016:14).

As indicated in chapter 1, section 1.6.3.2; the victims of domestic violence were interviewed. Given the constitutional protection of human rights to citizens, including the right to be free from violence, interviewees were also probed of their experience with regard to the protection of their democratic and constitutional rights. The results from these interviews are discussed in chapter 4 of the study.

2.8.2. Domestic Violence Act 116 of 1998

The Domestic Violence Act, 1998 was deemed a landmark piece of legislation that brought issues, previously ignored by the legislature in South Africa, to the attention (Stone, 2012:25; Lopes *et al.*, 2013:2; Sibisi, 2016:1). The Preamble of the Domestic Violence Act, 1998 acknowledges that domestic violence is a significant social evil and that there are high incidents thereof in South Africa (RSA, 1998:1; Van der Hoven 2001:21; Smith, 2013:17; Bertus, 2014:1; Mogstad *et al.*, 2016:5). The purpose of the Act is to afford victims of domestic violence the maximum protection from domestic abuse that the law can provide and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of the Act (Vetten, 2005:4; Artz, 2011:3; Ramadimetja *et al.*, 2012:1; Morei, 2014:932; Mogstad *et al.*, 2016:5).

One of the key innovations associated with the Act is the comprehensive manner in which the Act defines domestic violence (Vetten, 2005:4; HSRC, 2014:21). As mentioned in section 2.2, the Act explains that domestic violence includes physical, sexual, emotional, verbal, psychological abuse, economic abuse, intimidation, harassment, stalking, damage to property, entry into a complainant's residence without consent, and any other controlling behaviour towards the complainant (RSA, 1998:2-3).

The Domestic Violence Act, 1998 further provides detailed strategies of how state departments, the SAPS and the DJCD should address violence against women as alluded to in chapter 1, section 1.1 (RSA, 1998:6; Marais, 2002:452; Parliament of South Africa, 2013:1; CSP, 2016:4; Mogstad *et al.*, 2016:5).

The Domestic Violence Act, 1998, together with the Domestic Violence Regulations of 1999, contain a detailed outline of the process to be followed in securing protection from domestic abuse, specifically with regard to applications by the victims of domestic violence for protection orders (RSA, 1998:4; Dissel & Ngubeni, 2003; Singh, 2004:202; Morei, 2014:933; Goldblatt, 2016:7). A victim may apply for an interim protection order to the court which is granted if it is satisfied that there is sufficient evidence that the abuser had committed violence and that the victim would suffer undue hardship if a protection order was not issued immediately, as stipulated in Section 4 of the Act (Bendall, 2010:104; Artz, 2011:3; Furusa & Limberg, 2015:3; Lopes, 2016:967). The protection order prohibits the

respondent from committing any act of domestic violence against the respondent (RSA, 1998:8; Furusa & Limberg, 2015:3; Lopes, 2016:967).

Instances of urgency will result in an interim protection order being granted and once it is served on the respondent, the two parties will appear before the court on a certain date at which the respondent is afforded the opportunity to present reasons why the protection order should not be finalised (Bendall, 2010:105; Artz, 2011:3; Morei, 2014:933; Lopes, 2016:967; Sibisi, 2016:4). The warrant of arrest is issued concurrently with the protection order and effected if the complainant reports that the respondent has breached any provision thereof (Lopes, 2016:967, Sibisi, 2016:4). If the respondent is found guilty of a contravention, the court may convict the respondent and sentence him or her to a fine or a term of imprisonment (RSA, 1998:18; Artz, 2011:3; HSRC, 2014:22; Gadinabokao, 2016:12). While the Act criminalises the breach of a protection order, it does not imply an offence of domestic violence (Morei, 2014:932).

Some of the questions in the interviews held with the victims of domestic violence, focused on the victims' experience with the process of applying for a protection order to establish whether the legal prescripts are followed in practice and the process is experienced as effective by the victims of domestic violence. These results are discussed in chapter 4.

2.8.3 The Criminal (Sexual Offences and Related Matters) Amendment Act 32 of 2007

The Sexual Offences Act of 2007 is administered under the DJCD. The aim of the Act is to manage all legal aspects of, or related sexual offences and crimes under one statute (RSA, 2007:1; Artz, 2011:3; Ramadimetja *et al.*, 2012:2; Goldblatt, 2016:7). The Act regulates all procedures, defences and evidentiary rules in the prosecution and adjudication of all sexual offences; it criminalises any form of sexual penetration or sexual violation without consent, irrespective of the gender of the victim; it criminalises the exposure or display of child pornography as well as situations in which an individual is forced or compelled to watch or witness certain sexual conducts; and it criminalises the sexual exploitation of children and mentally disabled persons (RSA, 2007:2; Parliament of South Africa, 2013:2, RSA, 2015:3).

According to Parliament of South Africa (2013:2), the Act expanded the definition of rape and created a number of new crimes (as mentioned above) to cover the extent of violence. Goldblatt (2016:7) further states that the Act was aimed at amending the outdated definition of rape and related offences, consistent with the Constitution, 1996, leading to changes in the definition that acknowledged rape includes penetration into the vagina, anus or mouth with any other body part or object (Goldblatt, 2016:7). The Act introduced gender neutrality into the definition of rape by recognising that anyone, including men, could be victims of rape (Goldblatt, 2016:7).

In a study of 63 countries, South Africa was identified as the most violent and referred to as the “undisputed rape capital of the world” (Davis, 2012:2; Gordon & Collins, 2013:1; Africa Check, 2016b). Research conducted by the Medical Research Council (MRC), in which 1700 men were interviewed, revealed that one in four males had raped someone and 73% of those men had raped before the age of 20 (RSA, 2012:2). Statistics have also revealed that relatives and intimate partners committed the majority of rapes – 34.6% (Stone, 2012:25). Reported rape numbers in South Africa were the highest in the world in 2001, and recent statistics has revealed 43,195 cases of rape for 2014/2015 (Andrews, 2008:2; Goldblatt, 2016:2) and 42,596 cases of rapes for the 2015/2016 year (Africa Check, 2016a; SAPS, 2016). Middleton (2011) submits that 40% of women will be raped in their lifetime and that 9 rapes are reported, that is, the average South African woman is more likely to be raped than complete secondary school.

The following trends were also noted in the provinces during 2013/2014: the Free State recorded a rape rate of 174.9 per 100 000 people; Northern Cape, 15.8 per 1000 000 people; Eastern Cape, 149.5 per 100 000 people; North West, 134.8 per 100 000; Western Cape, 134.0 per 100 000 people, Limpopo, 116.4 per 100 000 people; Kwazulu-Natal, of 113.6 per 100 000 people; Mpumalanga, 95.8 per 100 000 people; and Gauteng, 86.6 per 100 000 people (RSA, 2015:17). From these statistics, it is evident that the North West Province has one of the highest rape rates in the country – the third highest. It should also be noted that rape takes a particularly brutal form in South Africa with a high rate of rape homicide and multiple perpetrator rape being common (Goldblatt, 2016:2).

Ramadimetja *et al.* (2012:3) identify the limitations or gaps within the Act which includes: inadequate guarantees of accountability in implementing the Act due to rigid norms;

prejudicial practices and precedent cases that prevail within the criminal justice system; weaknesses in the management of legislation by the departments responsible for it; a lack of appropriate transformation in reproductive health policy and service delivery, resulting in denial and ongoing transgressions against women's reproductive rights; and a lack of an adequate budget and other resources to appropriately implement and monitor the Act. This view is supported by Mpani and Nsibande (2015:34), who assert that certain challenges within the Act include: a limited understanding of the Act's provisions amongst various role-players which contribute to some sexual offences falling through the cracks of the justice system; a lack of coordination amongst duty bearers given the role that each play in the chain of justice; and a shortage of employees in the justice system to address sexual offences.

In the interviews with the victims of domestic violence, questions were posed to determine whether the provisions of this Act protect them against rape and whether they perceive it to make a difference in domestic violence including the complaints they lay. These results are provided and discussed in chapter 4.

2.8.4. Protection from Harassment Act 17 of 2011

The Protection from Harassment Act, 2011 serves to provide the issuing of a protection order against harassment, to effect consequential amendments to the Firearms Control Act 60 of 2000 and to provide for matters connected therewith (RSA, 2011b:2, Parliament of South Africa, 2013:2). The Act defines the Protection from Harassment Act, 2011 as the remedy against any form of harassment (Sewsunker, 2013; DJCD, 2017:1). Sections 2, 3 and 9 of the Act make provision for a protection order to act as a shield for survivors of harassment, including sexual harassment (DJCD, 2017:1). The Act further condemns sexual harassment, amongst other forms of harassment, and allows victims to apply for a protection order or to lay a criminal charge in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, if such act of harassment constitutes a sexual offence, as defined by the Act (RSA, 2017:1). According to Landman and Ndou (2013:81), the Act permits any person who alleges that he or she is being subjected to harassment to apply to a Magistrate's Court for a protection order against harassment. Parliament of South Africa (2013:2) adds that the Act also provides for online harassment.

It can be deduced that the Protection from Harassment Act, 2011 is applied in a similar manner as the Domestic Violence Act, 1998, as victims need to apply to a court for a protection order and then appear before it to give oral evidence. In the case that the court is satisfied with the evidence presented, a protection order, which is accompanied by a warrant of arrest, will be issued (Landman & Ndou, 2013:81). The two Acts correspond as both were enacted to protect the victims of crime.

The legislation discussed above were promulgated with the view to make provision for measures and procedures with regard to domestic violence, as well as various other sexual crimes. Although the progress made with these legislation is commendable, domestic violence against women continues relentless without any substantial consequences for the offender (Morei, 2014:928). It is, therefore, evident that the manner in which these Acts are implemented and enforced require attention because South Africa remains notorious for appalling gender-based crimes, especially of a sexual nature. The prevalence of these gender-based crimes, particularly domestic violence, is discussed in section 2.10 below.

2.9. INTERNATIONAL PREVALENCE OF DOMESTIC VIOLENCE

As pointed out in chapter 1, section 1.1, statistics from 80 different countries globally revealed that 35% of all women have been physically or sexually abused by an intimate partner, beaten, coerced into sex, otherwise abused by an intimate partner in the course of their lifetime or have experienced non-partner sexual violence (McHugh & Frieze, 2006:123; Eze-Anaba, 2010:21; Hasselbacher, 2010:190; Abayomi, 2014:9; The Conversation Africa, 2015; Duvvury, 2016; WHO, 2016:1; Taylor *et al.*, 2017:182; Scarduzio *et al.*, 2017:90). The statement is corroborated by Simona *et al.* (2015:10); Yusuf *et al.* (2011:240) and Manful *et al.* (2016:64), who posit that globally, the lifetime prevalence of domestic violence among ever-partnered⁴ women ranges from 15% to 71%. Studies have revealed that approximately one in every woman has experienced physical aggression, sexual coercion, or emotional abuse in an intimate relationship.

⁴ Women were considered *ever-partnered* if they had ever been married, ever lived with a man, or were currently with a regular male sexual partner (Fanslow & Robinson, 2004:117).

Violence against women and girls continues to be a global epidemic that kills, tortures and maims, physically, psychologically, sexually and economically and is one of the most pervasive of human rights violations, denying women and girls equality, security, dignity, self-worth and their right to enjoy fundamental freedoms (Mutiso *et al.*, 2010:65; Dalal, 2013:39; Bertus, 2014:2; Manful *et al.*, 2016:64). Domestic violence destroys human life and relationships all over the world, with women and children as the primary victims (Tom & Musingafi, 2013:45; Madzivhandila, 2015:56; Nwanna & Kunnuji, 2016:2640). Against this background, Maselesele (2011:1) claims that the rate of domestic violence is standing at 5.3 million and has devastating health consequences.

The prevalence of domestic violence is found in both developed and developing countries (WHO, 2013:16-17). Therefore, the next section provides an overview on the pervasiveness of domestic violence in both first and third world countries followed by a discussion of domestic violence in Africa *per se*.

2.9.1. Domestic violence in developed and developing countries

At least one in three women globally experienced battering, sexual abuse or harassment and, in addition to South Africa, countries such as Australia, Canada, Israel and the USA have the highest number of female violence (Rezaie, 2011:56). According to Abayomi (2014:8) and the CSVR (2016:6), globally, one of three women is beaten, coerced into sex or otherwise abused during her lifetime. In support of the above argument, Payne and Wermeiling (2009:2) assert that 6.2 million of American women are affected annually by domestic violence, causing injury that is more serious to women than car accidents, muggings and rapes combined (O'Neill, 2016). It is estimated that at least 4 million women globally experience serious assault by an intimate male partner during an average 12-month period (Payne & Wermeiling, 2009:2; Slabbert & Green, 2013:234).

Tom and Musingafi (2013:45) posit that in **Germany**, one in four women suffer domestic violence at least once in her lifetime; **Ethiopia** almost 50% of all women are affected; **Russia** 17 000 women die as a result of domestic violence each year. The same authors also allude that in **India**, every nine minutes a woman is abused by her partner and every 77 minutes a woman dies at the hands of her husband or family member because the bridal prize had not been paid (CSV, 2016:9; Kumar, 2016:1). Mitra (2016) submits that

India has the dubious distinction of being one of the most dangerous places in the world for women. An Indian woman is raped every fifteen minutes (Khan, 2016). In Russia, 12 000 women die each year as a result of domestic violence; and in Pakistan 80% of the women are victims of domestic violence (UN Population Fund, 2007:2; Abayomi, 2014:9).

Furthermore, in **Guatemala**, two women are murdered each day; **Australia, Canada, Israel** and the **USA**, between 40% and 70% of female murder victims are killed by their intimate partners; **Mexico**, 66% of murders were committed by husbands, boyfriends or other family members (Dobash & Dobash, 2001:5; African Democratic Institute, 2015; UN Women, 2015). The Canadian Immigration and Refugee Board (IRBC) adds that 720 women were killed in Guatemala in 2009; 675 women in 2010, and 705 women in 2011 (IRBC, 2012:1).

In view of the above statistics, it is evident that domestic violence is one of the most widespread violations of human rights globally and it is a consequence of structural power asymmetries in intimate and family relationships. Violence against women as a global concern affects everyone irrespective of age, class, race, religion or socio-economic status.

In addition to the countries included in this section, domestic violence is also pervasive in African countries. The next section elaborates on domestic violence in countries which are members of the South African Development Community (SADC), as well as Nigeria, that is not a member but an African country.

2.9.2. Domestic violence in African countries

In many African countries, women suffer violence on the basis of their gender and are not always protected by legislation (Onyemelukwe, 2016:2). For example, gender-based violence against women in **Botswana** remains highly prevalent and major related crimes are underreported to the Botswana Police Service (Raditloaneng, 2013:068). Instances in which crimes are reported, they are scarcely investigated (HSRC, 2014:8). Research has revealed that over two thirds of women in Botswana (67%) have experienced some gender-based violence in their lifetime, and 44% of men admitted perpetrating violence against women (Gender Link, 2012:7; Raditloaneng, 2013:068). Berman (2015:123) avers

that violence against women in Botswana is meted out by men against their female partners, wives, cohabitating partners and girlfriends. Gabaitse (2012:194) articulated that Botswana has become a place of death, because the country witnessing murder-suicides and wrongly labelled passion killings in which more than 90% of the victims are women.

Also in **Zimbabwe**, domestic violence is increasing annually despite the fact that it's Domestic Violence Act, Chapter 5:16 was implemented to protect those who are domestically abused by their spouses (Jura & Bukaliya, 2015:62; Chireshe, 2015:260). According to Mashiri (2013:94) and Makhamadze *et al.* (2015:4), high levels of domestic violence in Zimbabwe remain a concern despite several gender laws and policies. The Ministry of Women Affairs and Community Development (MWACD) revealed that women and girls in Zimbabwe continue to be the victims in 99% cases of intimate partner violence (MWAGD, 2012). Traditional practices which violate women in Zimbabwe include: virginity testing; pledging of women and girls for the purpose of appeasing spirits; and child marriages (Human Rights Bulletin, 2011:2).

According to Zimbabwe's Demographic and Health Survey (ZDHS), 2010-2011, 42% of the women had either experienced physical, emotional or sexual violence at some point in their lives (ZDHS, 2011:252). According to Langa (2013:1), 68% of the women in Zimbabwe suffered from gender-based violence perpetrated by men. Makhamadze *et al.* (2015:4) further states that 85% of the women in Zimbabwe are survivors of domestic violence by men and 15% are survivors of domestic violence by other women. The authors further maintain that 33% of the women in Zimbabwe have experienced domestic violence which matches an incidence of 29-62% of intimate partner violence (Makhamadze *et al.*, 2015:4). It was also revealed that 40,500 cases of domestic violence were reported to the Zimbabwean police (All Africa Global Media, 2016; Nyamundada, 2016; Mutingwende, 2017). According to Razemba and Vunganai (2017), Zimbabwe recorded 149 276 cases of domestic violence. Chiketo (2016) adds that almost 50% of the women in Zimbabwe suffer from gender-based violence and the Zimbabwean government needs to accelerate efforts to curb the scourge. Chireshe (2015:260) points out that Zimbabwe needs to move in the direction of South Africa with respect to legislation that fully criminalises domestic violence.

Cases of domestic violence in **Nigeria** have been on the increase: cases of men killing and maiming their wives have escalated; women are generally brutally treated by their intimate partners; and every fourth Nigerian woman suffers domestic violence (Bosede & Alokun, 2013:101; Olumeri, 2015:25; Animasaun, 2016; Musawa, 2016:1). Women are beaten and ill-treated on a daily basis for supposed transgressions; raped and even murdered by members of the family (Esere *et al.*, 2009:002; Eze-Anaba, 2010:25; Abayomi, 2014:9; Ishola, 2016:3). The Nigerian society is patriarchal and a woman's place in society is subordinate; therefore, the beating of a woman is sanctioned as a form of discipline and a father is seen as a semi-god whose word is obeyed (Abayomi, 2014:9; Adogu *et al.*, 2015:62; Olumeri, 2015:5-9; Ishola, 2016:3).

Almost a third of all women in Nigeria (28%) have experienced physical violence (Onyemelukwe, 2016:2). However, currently no data for women who have undergone emotional or psychological abuse is available (Onyemelukwe, 2016:2). Other statistics have revealed that violence against women remains enduring, with young women between the ages of 15 and 24 being most likely to have experienced physical violence (Abayomi, 2014:9; Onyemelukwe, 2016:2; Domestic Violence Nigeria, 2016:1). The Nigerian Stability and Reconciliation Programme (NSRP) revealed that a record of 80 incidents of violence against women and girls were reported in 2016, where sexual violence and child abuse continue to be major themes in reporting (NSRP, 2016:1).

While other countries enacted laws against violence and inequality against women, Nigerian lawmakers voted against a Gender and Equal Opportunities Bill which was aimed at bridging the gap between the rights of men and women (Kazeem, 2016:1). It can also be mentioned that in Nigeria, government officials and other authorities rape and sexually exploit women and girls, displaced by the fundamentalist Islamist group Boko Haram (Walsh, 2016). Abayomi (2014:10) submits that the Nigerian society is patriarchal and the place of women within the scheme is subordinate.

A study conducted by Envuladu *et al.* (2012:63) revealed that 28.9% of the 201 women interviewed, experienced violence during their previous pregnancy and 31.8% experienced violence in their first pregnancy. In a study conducted by Project Alert in 2015 with women in secondary schools and universities, 64% of the 45 female participants revealed that they had been beaten by their partners (Olumeri, 2015:25). The recent form of violence against

women in Nigeria includes the use of corrosive acid, which cause permanent disfigurement to the victim, trafficking and rape (Eze-Anaba, 2010:25-27; Daniel, 2016; Musawa, 2016:1).

In **Zambia**, gender-based violence is reported to be rampant; there is an enormous need to address the number of cases of intimate partner violence being reported; and statistics reveal that Zambia stands at a rate of 89% of incidents of gender-based violence (Mziwenge, 2015). According to the Zambian Demographic and Health Survey (ZDHS), 2013-2014, 47% of all women in Zambia experienced physical violence since the age of 15. Furthermore, one of five Zambian women (20%) experienced sexual violence in their lifetime by a current partner, former husband or boyfriend (ZDHS, 2014:373; Simona *et al.*, 2015:1). The Zambian Police Service (2016:1) revealed that domestic violence had increased by 7.7% in the first quarter of 2016, with a total of 4998 cases of gender-based violence registered in 2016. The statement is corroborated by the Centre for African Journalist News (CAJN), stating that 31% of girls had been forced to have sex; 35% of the women have experienced physical violence since the age of 15; and Zambia has one of the highest rates of child marriage in the world with approximately 17% of girls between the ages of 15 to 19 are married and 65% of the women being married by the age of 20 (CAJN, 2016).

Gender-based violence in **Lesotho** is currently at exacerbating levels and is a significant driver of the HIV-infection among women. An estimated 86% of the women in Lesotho have experienced intimate partner violence in their lifetime (HSRC, 2014:8). Incidents of intimate partner violence are underreported and only 2% to 35% of women who experience intimate partner abuse report it to the police or seek any form of medical attention (Gender Link, 2013). The statement is supported by research conducted by the HSRC (2014:8), which revealed that Lesotho has a high rate of rape. Approximately 92 of every 100 000 people who are annually raped.

According to Adjah and Agbemafle (2016), and the Institute of Development Studies (IDS), 2016, the prevalence of domestic violence in **Ghana** remains high with numerous consequences. A total of 33% of the married women are abused by their husbands (IDS, 2016). Violence against women in Ghana occurs in the context of patriarchal relations which perpetuates a system of female subordination and male domination (Manful *et al.*,

2016:65). Furthermore, 36.6% of the women in Ghana aged 15 to 49, reported experiencing physical violence by an intimate partner since the age of 15; 15% of the women stated that their first sexual encounter was forced against their will; 27% of the women experienced psychological abuse at the hands of a partner; and almost a fifth (18.8%) of the women aged between 14-49 reported some experience of sexual violence (Duvvury, 2016).

The above statistics reveal that domestic violence remains widespread in many African countries. In many instances, women are controlled as patriarchal relations still dominate and perpetuate female subordination (Abayomi, 2014:9; Adogu *et al.*, 2015:62). Women are often regarded as objects, as men's property and beating is perceived as a form of discipline (Abayomi, 2014:9; Adogu *et al.*, 2015:62; Manful *et al.*, 2016:64). Women in Africa are subjected to customary African law and traditions, much of which reinforces the subordinate position of women in the family (Manful *et al.*, 2016:64). Even though most societies prohibit violence against women, the reality is that the violence is often condoned under the garb of cultural practices and norms, or through misinterpretations of religious tenets (Marikkar, 2007:87; Mutiso *et al.*, 2010:66). In many African societies, after marriage, a women's reproductive capacity is owned by the husband, which is also evident because widowers are expected to marry their husband's brother under customary law (Manful *et al.*, 2016:65). To eradicate gender-based violence, societies need to eradicate stereotypes and the patriarchal system that gives power and dominance to males.

Aligned to the previous section, which focused on the prevalence of domestic violence globally (in developed and developing countries), and this section on the pervasiveness of domestic violence in African countries, the next section explores domestic violence in South Africa.

2.10. NATIONAL PREVALENCE OF DOMESTIC VIOLENCE

As mentioned in chapter 1, section 1.1., violence against women in South Africa continues unabated without any serious consequences for the perpetrators. Studies report that 40% to 50% of South African women have experienced intimate partner violence (Jamiatul Ulama, 2013:1; The Conversation Africa, 2015; Makhubu, 2016). Most violent behaviour directed towards women takes place at the hands of their intimate partners (Slabbert,

2013:234; Davies & Dreyer, 2014:1; WHO, 2014:1; Mazibuko & Umejese, 2015: 6584; African Democratic Institute, 2015; WHO, 2016:1; Simonovic, 2016:5). In support of this argument, Van der Hoven (2001:14) and Makamba (2016) revealed that one of every six women in South Africa is assaulted regularly by her partner.

As mentioned in chapter 1, section 1.1, South Africa is the second most unsafe country of the 48 countries south of the Sahara (Davies & Dreyer, 2014:1) and permeated by a high crime rate (SAPS, 2016b). Domestic violence is one of the most common crimes that women in South Africa are exposed to on a daily basis with a rate, five times that of the global average (Hasselbacher, 2010:190; Maselesele *et al.*, 2011:2517; Morei, 2014:928; HSRC, 2014:11; PMG, 2014; The Conversation Africa, 2015; RSA, 2016). Crime statistics revealed that during 2015/2016, the violent crimes committed in South Africa included; 18,673 murders; 51,895 sexual offences (an average of 142.2 per day); and 164,958 common assaults (SAPS, 2016b; Africa Check; 2016). Research conducted by the University of the Witwatersrand (Wits) in 2016, revealed some of the highest levels of violence against women ever recorded in South Africa – 56% of the men interviewed reported they have raped or beaten a woman in the last 12 months (Wits, 2017).

A research study conducted in Cape Town revealed the following: 40% of the women interviewed experienced sexual assault; 45% of the women between the ages 14-24 described their first sexual encounter to have been one they had been coerced into; and 27% of the men interviewed admitted to sexually abusing their intimate partners (Slabbert; 2013:234, Simonovic, 2016:5). A study conducted in three provinces of South Africa (Eastern Cape, Mpumalanga and Limpopo) revealed that 26.8% of the women in the Eastern Cape had been physically abused in their lifetime; 28.4% of the women in Mpumalanga; and 19.1% of the women in Limpopo (HSRC, 2014:3; Manful *et al.*, 2016:65; CSV, 2016:6).

As indicated in chapter 1, section 1.2, research conducted by the HSRC revealed that intimate partner femicide is the leading cause of death among South African women and it is reported that 144 women report rape to SAPS on a daily basis, which is six cases every hour. It is reported that in South Africa, femicide per 100 000 was 12.9% in 2009, compared to 24.7% in 1999 (Taranto *et al.*, 2013:1). Although the overall femicide rate was lower in 2009 than 1999, intimate partner femicide and rape homicide rates remained

unchanged (Abrahams *et al.*; 2013:1; PMG, 2014; African Democratic Institute, 2015). In 2015, the national femicide rate in South Africa was 8.8 per 100 000 women, aged 14 years and older (Mazibuko & Umejese, 2015:6584), the highest rate of femicide reported globally (Simonovic, 2016:5).

Morei (2014:928) and Mpani and Nsiband (2015:3) revealed that it is estimated that every six hours a woman in South Africa is killed by her intimate partner. Lopes (2016:966) further proclaims that available statistical evidence from SAPS from 2007-2013 revealed that 1 016 588 cases of contact crime had been committed against women. Femicide was reported as a major contributing factor, as 50.3% of the female homicides in South Africa were committed by intimate partners (Lopes, 2016:966). Women killed in the incidence of gender-based violence were murdered by means of the following methods: blunt force trauma - 33.3%; sharp objects - 32%; firearms - 30%; strangulation – 3.4%; burns – 1.1%; drowning's – 90.4%; and asphyxiation – 0.1% (CSVR, 2016:7).

In 2012, a study conducted by Gender Links revealed that 77% of the women in Limpopo experienced some form of gender-based violence; 51% of the women in Gauteng; 45% of the women in the Western Cape and 36% of the women in Kwazulu-Natal (CSVR, 2016:6). As mentioned in chapter 1, section 1.1, research revealed that in South Africa, the rate of femicide per 100 000 was 12.9% in 2009 compared to 24.7% in 1999 (Mathews *et al.*, 2013:1). However, although the statistics revealed that femicide in South Africa was lower in 2009 than 1999, intimate partner femicide and rape homicide rates remained the same as in 1999 (Mathews *et al.*, 2013:1; PMG, 2014; African Democratic Institute, 2015). Furthermore, the MRC's Report (2014) on intimate femicide in (2014), presented to the Parliamentary Monitoring Group (PMG), highlighted that government departments have no reliable databases on femicide after 2009 (PMG, 2014), although it is estimated that South Africa's femicide rate is five times higher than the global average (PMG, 2014).

The above statistics illustrate that domestic violence and male dominance is a definite and pervasive problem in South Africa. It cannot be ignored that women suffer at the hands of people who claim to love and care for them, and those who are supposed to protect them. Even after two decades of democracy, women in South Africa still remain an oppressed, vulnerable and marginalised group. Vivekananda in Kumar (2016:1) pointed out that “there

is no chance for the welfare of the world unless the condition of women is improved and women will work out their destinies much better too than men can ever do for them”.

2.11. CONCLUSION

The chapter provided a theoretical and legislative background of domestic violence, as well as explored the prevalence of violence globally, regionally (in Africa) and nationally. The chapter commenced with a conceptualisation of domestic violence, indicated that domestic violence is a multidimensional phenomenon, encompassed an appalling list of abusive behaviours, (physical, psychological, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality (Viano, 1992; American Medical News, 1992; Lewis, 1999; Matchak *et al.*, 2011:4; Chhikara *et al.*, 2013:71; Mazibuko & Umejesi, 2015:6585). It was established that domestic violence can also take the form of harassment; stalking; intimidation; damage to property; entering a woman’s residence without permission, and any other controlling or abusive behaviour towards a partner (Bertus, 2014:1). The various forms of domestic violence were described and since domestic violence takes place in a domestic relationship, this concept was also clarified.

A number of international legislation on domestic violence, as well as the statutory and regulatory framework relevant to domestic violence in South Africa was discussed, most notably the Constitution, 1996 and the Domestic Violence Act, 1998. The discussion of the legislative framework revealed that domestic violence violates basic human rights as enshrined in the Constitution, 1996, especially the following rights, included in the Bill of Rights, are violated by domestic violence (RSA, 1996:5): everyone is equal before the law and has the right to equal safety [Section 9 (1)]; everyone has the right to their dignity being valued (Section 10); and everyone has the right to not being exposed to any kind of violence [Section 12 (1) (c)].

A number of diverse theories that contributed to an understanding of the nature of domestic violence were explicated, including:

- Culture of Violence Theory – violence is accepted and seen as a norm in various societies where women are abused on daily basis.

- Family Systems Theory – the family is viewed as a dynamic organisation of interdependent components that continually interact with each and violent behaviour affects everyone in the family.
- Social Learning Theory – violent behaviour is learned through the observation of others as child and modelled as an adult.
- Feminist Theory – men abuse women as an extension of patriarchy, in order to control and dominate them.

It was further established in the chapter that domestic violence is a cyclical process, comprising of three phases (Slabbert, 2010:23; Maselesele, 2011:1; Mazibuko & Umejesi 2015:6587): the tension-building phase (anger, blaming and tension builds up until it reaches conflict); the explosion phase (the violent phase where the abuse -physically, sexually and emotionally - takes place); and the honeymoon phase (where the abuser feels remorse and demonstrates feelings of love and kindness, providing false hope to the victim).

It was also established that domestic violence is eminent in both developed and developing countries. As part of the global perspective on domestic violence, the prevalence thereof in countries such as the USA, Australia, Germany, Bangladesh, Japan, Mexico, Guatemala, Ethiopia, Russia and India were outlined. The pervasiveness of domestic violence in African countries such as Zimbabwe, Botswana, Zambia, Nigeria and Lesotho was also explored. It became evident that despite the enactment of legislation and policy by governments and states to protect women against violence, gender-based violence is still prevalent globally.

In South Africa, it is unmistakable that domestic violence is ubiquitous in spite of the provisions of the Constitution, 1996; Domestic Violence Act, 1998; and other legislation and policies, which aim to protect the victims of domestic violence. Statistics have revealed that violence against women in South Africa is still widespread.

From the theoretical and legislative framework established in this chapter, it is evident that domestic violence against women is present in every society and it is one of the most common crimes that women are exposed to on a daily basis. It can be argued that women

as victims are a barometer of the inescapable culture of violence in society. One of the contributing factors is that a patriarchal mind-set is still prevalent in many societies, including South Africa. Women suffer abuse and become the tragic indicators of the extent to which violence has come to permeate the fabric of society. It can further be argued that violence against women is a social problem which needs to be addressed by all countries, national governments and international organisations. No society can claim to be free of domestic violence and it affects minority groups including refugee women, indigenous and migrant women, and women with disabilities, the elderly and female children.

Since the administration of cases of domestic violence appears to have many shortcomings, that is a lack of effective cooperative governance between SAPS and the DJCD, as alluded to in chapter 1, section 1.2, the following chapter articulates the value of cooperative governance in humanising and augmenting the administration of domestic violence.

CHAPTER 3: COOPERATIVE GOVERNMENT – THEORETICAL AND LEGISLATIVE FRAMEWORK

3.1. INTRODUCTION

The previous chapter focused on the theoretical and legislative framework of domestic violence, as well as the incidence of the latter globally, regionally and in South Africa. This chapter will focus on the administration of cases of domestic violence in South Africa. Attention will be fundamentally on cooperative government between SAPS and the DJCD, because the case study focuses on cooperative government between SAPS, Ikageng and the NW DJCD.

Considering the interdependency and interrelatedness of the functions of SAPS and the NW DJCD with regard to the administrative processes of cases of domestic violence, cooperation between these two government entities is imperative, as alluded to in chapter 1, section 1.2. Also referred to in chapter 1, section 1.2, was the dysfunctional relations between SAPS Ikageng and the NW DJCD which results in inconsistencies, insensitivity and delays in the administrative processes.

This SAPS Ikageng and the NW DJCD shared responsibility is underpinned by the Constitution, 1996, which explicitly stipulates cooperative government between all spheres and all organs of the state (RSA, 1996:21). The Constitution, 1996, also categorises security as a basic right to which all citizens are entitled to, and bestows an obligation on the state to provide that right (RSA, 1996:6). It is, therefore, a basic human right that even the victims of domestic violence are also entitled to.

According to the cooperative government system, the function of providing safety and security is shared between various departments (nationally and provincially) (RSA, 1998:6). Maluleke (2015:20) astutely states that the powers and authority of control and governance are developed proportionally to the spheres and organs of the government to ensure effective service delivery to the citizens. Thus, an analysis of how the concept of cooperative government is understood finds expression in the safety and security system and is critical in defining how the respective departments understand and deliver on their constitutional mandate.

This chapter comprises of a literature review which focuses on the available literature pertaining to cooperative government, the way in which the spheres and organs of the state are distinct, interdependent and interrelated and how they are required to conduct their activities within the parameters of Chapter 3 of the Constitution, 1996. An outline of the statutory and regulatory framework for cooperative government is also provided in the chapter. Furthermore, an overview of the relationship between cooperative government and intergovernmental relations (IGR) is provided. The focus is on the value of cooperative government and its role in cases of domestic violence, especially with respect to SAPS Ikageng and the NW DJCD. The chapter also examines the principles and challenges of cooperative government. Lastly, the historical problems that exist between SAPS Ikageng and the NW DJCD, that is, the protection of victims of gender-based violence, will also receive attention.

To comprehend the meaning and purpose of cooperative government, it is necessary to understand its history and the initial purpose it was intended for. Thus, the next section provides the conceptual framework of cooperative government, which is followed by discussions of: the theoretical framework for cooperative government; evolution of cooperative government; nature of cooperative government and IGR in a democratic developmental state; statutory and regulatory framework for cooperative government with reference to the Constitution, 1996, NDP, 2011, Medium Term Strategic Framework (MTSF), 2014-2019, Intergovernmental Act 13 of 2005, and the Draft Green Paper on Cooperative Governance, 2010. The structures responsible for cooperative government and IGR will also be highlighted.

3.2. CONCEPTUAL FRAMEWORK FOR COOPERATIVE GOVERNMENT

Malan (2012:117) provides that cooperative government should be the conceptual framework through which the aim of promoting a development-orientated state is achieved. Ile (2007:79) accentuates that the Constitution, 1996, requires all spheres of government and organs of state to function within a cooperative government framework, while also setting the scene for a non-competitive structure.

Cooperative government refers to a partnership between the three spheres of government and all organs of state, which requires each to fulfil a specific role (Malan, 2000:17; Mhone & Edigheji, 2003:75; Malan, 2005:229; Edwards, 2008a:68; Malan, 2012:117; Zulu, 2014:29; Maluleke, 2015:21). Venter (2001:192) describes cooperative government as referring to the constitutional prescriptions on the conduct of IGR. Mathebula (2011:840). Sesele (2013:17) agrees with this assertion and adds that cooperative government is simply a government philosophy, based on a reciprocal obligation of the spheres of government to trust, support and assist one another in coordinating service delivery to the community. Cooperative government does not ignore differences of approach and viewpoints between the spheres but encourages healthy debate to address the needs of the people they represent by utilising the available resources to government (Malan, 2000:17; Maluleke, 2015:21).

Sokhela (2006:84) argues that cooperative government is an innovative concept that attempts to address the difficulties experienced by most large bureaucracies in coordinating their government functions and streamlining their administrative activities. Coetzee (2010:86) states that the primary principle of cooperative government is that all spheres of government and organs of state must provide effective, efficient, transparent, accountable and coherent government. Kahn *et al.* (2011:66) also concur with this view and observe that the principle of cooperative government obliges all spheres of government to put their collective national interest above parochial interest and to work together for the common good. Plaatjies (2008:16) asserts that cooperative government encourages partnerships, uniformity, standardisation and harmonisation within and between the local, provincial and national governments with the view to ensure that the various spheres of government and all organs of state complement each other appropriately and adequately with regard to fulfilling their obligations, both separately and collectively.

Zulu (2014:30) argues that one of the most significant steps in moving towards operational cooperative government is the identification of an agreement on generic objectives by all the affected sectors and relevant stakeholders, and this agreement must be followed by the correct identification and development of organisational and coordinating arrangements and programmes that can achieve these objectives effectively. Kahn *et al.* (2011:66) further maintain that coordination is one of the significant elements of

cooperative government because it includes the harmonisation of actions and efforts, which flow from the shared purpose or vision. Cooperative government is hinged on the *cooperation*, which includes the sharing of information, the harmonisation of actions, joint planning and budgeting and collaboration with policy development and implementation (RSA, 2010:6-7). Dlanjwa (2013:9) suggests that cooperation is the golden thread that runs through the constitutional scheme that underlines the spheres of government. Coordination is essential, especially in situations where there is concurrency of responsibilities (Kahn *et al.*, 2011:110).

According to Malan (2005:229) and Maluleke (2015:25-26), cooperative government requires all spheres of government to abide by the following six primary objectives:

- Achieve key national policy goals, with clear objectives being informed by provincial and local circumstances;
- Cost-effective and sustainable service provision, responsive to the needs of the communities and accessible to all;
- Clearly demarcated areas of responsibility and accountability for all state institutions;
- Deliberate management of devolution to provincial and local spheres of government, while exploring asymmetrical options for devolution when capacity is poor;
- The encouragement of creativity in the interests of collaboration and partnership while strengthening both performance and the accountability of the various institutions; and
- The elimination of wasteful and unnecessary duplication - avoiding turf-battles.

It is important for SAPS Ikageng and the NW DJCD to understand their concurrent functions and powers – these entities must complement each other, collaborate with each other and have a common understanding and shared meaning of cooperative government to effectively and efficiently provide safety and security to the victims of domestic violence. It can also be inferred that the victims of domestic violence depend on the cooperation, partnership and uniformity between SAPS Ikageng and the NW DJCD to render effective services by administering and augmenting the process of protecting the victims against gender-based violence. This, in turn, will promote the shared fulfilment of the state's role. It is beyond reasonable doubt that cooperative government is one of the anchoring pillars

of constitutional democracy in South Africa, especially since the dawn of the era of democracy (Hauvori, 2012:1-2).

In the interest of understanding the context of cooperative government, it is necessary to include the historical evolution of cooperative government in the discussion. Thus, the next section provides an overview of the historical evolution of cooperative government and IGR.

3.3. EVOLUTION OF COOPERATIVE GOVERNMENT AND INTERGOVERNMENTAL RELATIONS

According to Mahlatsi (2010:110), there is insufficient evidence of the exact historical moment when the concept of cooperative government and IGR originated. Cooperative government can be traced back to the German *Bundestreue* concept (referring to a federal allegiance), which entailed a set of unwritten principles in which relationships between national and regional governments are based (Edwards, 2008a:66; Mahlatsi, 2010:77; Mathebula, 2011:840; Hauvori, 2012:29). The fundamental thrusts of the *Bundestreue* are trust, partnership and respect for each other (Mathebula, 2011:840). The *Bundenstrue* concept places national and regional jurisdictions under political and legal obligation to assist and support each other, coordinate joint projects and maintain friendly relations (De Villiers, 1995:4, Mathebula, 2004:21; Hauvori, 2012:29).

The cultural and African trace for the current South African principle of cooperative government and the IGR framework is commonly referred to as *Ubuntu* (Mathebula, 2011:841). Based on the principle of *Bundestreue* in the German constitutional system, chapter 3 of the Constitution, 1996, (on cooperative government) was also included in the interim Constitution, 1993 (preceding the Constitution, 1996), and echoed the characteristics of a moral tone of post-apartheid – that there is a need for understanding but not vengeance; a need for reparation but not for retaliation; and a need for *Ubuntu* (humanness) and not victimisation (Greffrath, 2016:170). The general application of *Ubuntu* includes elements such as the equal treatment of persons, communal sharing of amenities, fairness, respect and love for one another, partnership, mutual trust and sharing (Mahlatsi, 2010:77; Mathebula, 2011:841; Ngcobo, 2011:13; Greffrath, 2016:170).

As alluded to in chapter 1, section 1.2, in neglecting their duties by refusing to serve protection orders, the operational police officers at SAPS Ikageng are not acting in a humane manner towards the victims of domestic violence. Moreover, the victims in such instances have to return to the perpetrator and the scene of violence. Similarly, the NW DJCD is failing the victims of domestic violence in terms of treating them in an inhumane manner by not rendering services during the night, weekends and holidays as prescribed in the Domestic Violence Act, 1998. Consequently, the victims are forced to return home to their abusers. It can be concluded that *Ubuntu* serves as a criterion of African culture that could transcend the tribalism which had remained relatively dormant in the face of the common enemy – apartheid – and which now constitutes the basis of the South African rainbow nation (Greffrath, 2016:170).

The concept of cooperative government, through *Ubuntu* principles, acknowledges that the spheres of government do not divide into watertight compartments, especially if their jurisdictions merge (Sindane, 1997:3; Mathebula, 2011:841). In a developmental paradigm that characterises the South African government since 1994, cooperative government would by design recognise the complementary manner in which the various spheres of government should be galvanised for the purpose of good governance and thus, facilitate the derailment and/or curtailing of any notion of national power aggrandisement (Mathebula, 2004:22; Mathebula, 2011:841).

Based on the above discussion, it can be argued that through the notion of *Ubuntu*, SAPS Ikageng and the NW DJCD needs to merge, reconcile and reunite their efforts in a manner that will provide protection to the victims of domestic violence and ensure the success of the implementation of the Domestic Violence Act, 1998, as a national policy.

As part of the history and evolution of cooperative government and IGR, the next section focuses on the origin and nature of cooperative government and IGR in South Africa.

3.3.1. Origin and nature of cooperative government and intergovernmental relations in South Africa

According to Levy and Tapscott (2001:1) and Ngcobo, 2011:13), the adoption of an interim Constitution in 1993 and the final Constitution in 1996, represented the formal and final repudiation of apartheid rule. Following the unbanning of the liberation movements in 1990, the nature of the South African state was one of the key issues of the constitutional negotiations (Mdliva, 2012:2; Zulu, 2014:40).

The intention of the Convention for a Democratic South Africa (CODESA) negotiations in the early 1990s was to bring about an undivided South Africa, free from apartheid and discrimination, to work to heal the divisions of the past, strive to improve the quality of life for all South Africans through economic development and social justice, create a climate of conducive and peaceful constitutional change, and set in motion the drawing of the Constitution, 1996 (Dominy, 2010; Zulu, 2014:43). Incidents beyond the control of negotiators threatened the process amongst others: the leaking of plans to end the independence of the TBVC states (Transkei, Bophuthatswana, Venda, Ciskei); continuing violence; and the murder of Chris Hani, an African National Congress (ANC) stalwart (Ngcobo, 2011:16; Van Eeden, 2014:37).

According to Mahlatsi (2010:79), the liberation movements, including the ANC and its allies, advocated for a unitary state that would be able to accomplish the following: effect and transform a highly unequal society; represent all citizens, particularly of minority groups; and transform the South African society after three centuries of domination. The National Party (NP) and the Inkatha Freedom Party (IFP) favoured a federalist state (Barnes & De Klerk, 1995:26; Mahlatsi, 2010:79; Mdliva, 2012:2-3; Zulu, 2014:41; Maluleke, 2015:38; Tapscott, 2017:3).

Rapoo and Moloi (2008:26) assert that both the Pan African Congress (PAC) and the United Democratic Movement (UDM) strongly advocated the principles of abolishing the provincial system of government in South Africa as a preferred first-level option. In the view of these parties, federalism was an axiom for obstructing majoritarian democracy, for costly corrupt and inefficient systems of government of which apartheid's Bantustans had been demonstrable proof at the time (Mahlatsi, 2010:79). South Africa was attempting to heal

the racial and ethnic divisions created by a violent past, nurtured under apartheid, and in this context, these parties opined that federalism would serve only to create a centrifugal dynamic at the heart of the political system (Mahlatsi, 2010:79). A federal state, which the then government (NP government) proposed, would produce a weak central government while protecting regional interests (Mdliva, 2012:3). According to Mahlatsi (2010:79) and Tapscott (2017:3), those who advocated for federalism were seen as prompting a system that would frustrate majoritarian democracy and reduce the capacity of national government to effect the necessary transformation.

According to Maluleke (2015:39), the multi-party negotiations settled on a cooperative government system as a pact. The eventual compromise that emerged in the interim Constitution, 1993, were later consolidated in the Constitution, 1996, include the following decisions (Mdliva, 2012:3; Zulu, 2014:42):

- The establishment of a decentralised state with a strong central government;
- An Executive, established along with nine provinces, each with an elected Legislature and jurisdiction over a number of functional areas;
- A local sphere of government with limited autonomy on local service delivery matters;
- A national government that is set to supervise provinces and local governments who were to exercise their autonomy within a framework and direction; and
- A paramount role of the national government in fiscal matters, with budget decisions highly centralised and the bulk of state expenditure and decision-making delivered via provincial and local governments (Mdliva, 2012:2; Zulu, 2014:42; Tapscott, 2017:3).

Greffrath (2016:168) posits that the CODESA negotiations conceived numerous agreements and institutions including the following:

- The 1992 referendum, in which white voters were asked whether they supported the continuation of the process which aimed at the development of the Constitution, 1996, through negotiation;
- The first fully democratic elections held on 27 and 28 April 1994;
- The interim Constitution, 1993, was to be followed and replaced by the Constitution, 1996;

- The Reconstruction and Development Programme (RDP), which aimed to build a “strong nation” (ANC, 1994); and
- The establishment of the Truth and Reconciliation Commission (TRC) in 1995 to investigate the “gross violations of human rights during apartheid” (1960-1994).

The abovementioned agreements at the CODESA negotiations provided a framework to draft the Constitution, 1996, wherein Section 41 sets the basic principles of cooperative government that apply to the national, provincial and local spheres of government and all organs of state to provide effective, efficient, transparent, accountable and coherent government and services to the citizens.

3.3.2. Forms of Government

Watts (1994:75-78) in Zulu (2014:20) argue that although nation states are treated as discrete and unified entities, as far as international politics is concerned, each nation state incorporates a range of internal divisions and levels of power. Sokhela (2006:56) submits that national constitutions may be classified according to the methods by which powers are distributed between a country’s national government and local governments that exercise authority over its parts and may, therefore, choose either a unitary or a federal form of government (Asmal, 1994:47 in Sokhela, 2006:61). These two forms of government are discussed below.

3.3.2.1. Unitary System

According to Hattingh (1998:114) and Hauvori (2012:58), the unitary form of government can be traced back to the so-called philosophy of sovereignty. A unitary system of government comprises one level of government above the local level, which makes as well as administers policy (Mahler, 1995:30; Hattingh, 1998:115; Hague & Harrop; 2010:169-170; Mdliva, 2012:19; Maluleke, 2015:17). Hague and Harrop (2010:282) assert that although sub-national governments in a unitary state, whether regional or local, may make policy as well as administer it; they do so at the pleasure of the national government.

Utomo (2009:5) defines a unitary state as a state or country that is governed constitutionally as one single unit. Kahn *et al.* (2011:28) define a unitary system as a state in which authority is centralised on a national level and the lower levels of government have little or no autonomy. Hooghe and Marks (2012:179) argue that a unitary system is one in which decision-making may be deconcentrated or even decentralised, but the final authority rests with the centre. Hague and Harrop (2010:282) add that a unitary state is a state in which sovereignty lies exclusively with the central government

In the modern state, unitary government can be defined as a government in which authority is centralised on a national level and the lower levels of the government have little or no autonomy (Hauvori, 2012:59; Maluleke, 2015:17). The principles that form the basis of cooperative government and IGR in a unitary state include the following (Hattingh, 1998:115-116; Hauvori, 2012:59):

- Supreme power is indivisible and unlimited;
- The national legislative authority is empowered to promulgate, approve and amend laws concerning any aspect affecting the state; and
- The constitution of a unitary form of government would not limit the authority of the national legislative authority, unless the aforementioned agrees with such limitations.

In a unitary system, the real power to make political decisions resides with parliament which has the right to control whatever powers the cities or countries might exercise (Hauvori, 2012:60). Gildenhuis (1991:165) writes that, in a unitary system, governmental relations are mostly a result of enforced duties as prescribed by a constitution or statutes which control lower authorities by virtue of centralised authority (Mdliva, 2012:19-20).

3.3.2.2. Federal System

Hauvori (2012:54) define federalism as the principle according to which the levels of government, general and regional, exist side by side in a state, each possessing certain powers and functions. Barton and Chappel (1985:354) contend that federalism is a system of government in which there is constitutional power between a national government and a state or constituent governments.

Hague and Harrop (2010:273), assert that federalism is a system of government in which legal sovereignty is shared between the central and other levels of government. In addition, Heywood (2007:167) submits that federalism refers to the legal and political structures that distribute power territorially within a state. Starling (2008:109) states that a federal system divides power between central and regional governments, where each government is legally supreme in its own geographically demarcated area of jurisdiction.

Cooperative and double version federalism of a government system includes a process of negotiation and bargaining among governments of relatively equal political status (Mathebula, 2011:847). Citizens of a federal state remain subject to the authority of both the state governments, each of which impacts directly on the citizen (Mdliva, 2012:20). Gildenhuis (1991:1655) asserts that in a federal system, the formal stipulations in the constitution of a state define the authority of governmental institutions at federal, state and local levels (Hauvori, 2012:55).

It is evident from the above definitions, that in the context of aspiring for power sharing between a national government and constituent state governments, the constitution plays a major role in the conduct of IGR relations and how services are delivered to the communities (Sokhela, 2007:61). In the next section the debate of the unitary and federal characteristics of South Africa is expounded upon.

3.3.2.3 Debate: a federal or unitary state in South Africa

The South African government structure, in terms of a federal and unitary government, has a basic unitary system with very strong and broad federal characteristics (Malan, 2000:6; Sokhela, 2006:62; Kahn *et al.*, 2011:29). Cameron (1996:20) and Tapscott (2017:3) assert that the Constitution, 1996, speaks of a single sovereign state, the three-tiered structure of national, provincial and local government, but has many features of a federal system.

Venter and Landsberg (2011:9) hold that the form of the South African state, in essence is unitary with strong national government and legislature. Kahn *et al.* (2011:9) highlight that the primary reason for South Africa to have a basic unitary government and broad federal elements is that the Constitutional Assembly has conferred specific constitutional mandates on provinces and local authorities. Mello and Maserumule (2010:283) posit that

South Africa is a strongly decentralised unitary state with characteristics of a federal state. It can be inferred that in spite of South Africa depicting both unitary and federal characteristics, constitutionally it is one sovereign and democratic state. All spheres of government and organs of state, as defined in the Constitution, 1996, are obliged to cooperate and consult with each other in matters of common concern, including SAPS Ikageng and the NW DJCD. The following section will focus on cooperative government and IGR.

3.3.4. Definitional perspectives of cooperative government and IGR

According to Malan (2005:230; 2012:117), there is a conceptual difference between the concepts cooperative government and IGR. Cooperative government represents the basic values of the government as stipulated in Section 41 (1) of the Constitution, 1996, as well as the implementation of these values through the establishment of structures and institutions (Hauvori, 2012:41; Malan, 2012:117). Cooperative government also refers to partnership government, as well as the values associated with it, which may include national unity, peace, cooperation, effective communication and the avoidance of conflict (Hauvori, 2012:43). Cooperative government, which is constitutionally entrenched, is the key to IGR in South Africa (Edwards, 2008b:920; Edwards, 2008a:67). Thus, cooperative government may be defined as a partnership between the spheres of government required to fulfil specific roles (Malan, 2005:229; Maluleke, 2015:20).

As alluded to in section 3.2, cooperative government is simply a government philosophy, based on a reciprocal obligation of the spheres of government to trust, support and assist each other in coordinating service delivery to the community (Mathebula, 2011:839). Maluleke (2015:14) posits that cooperative government is designed to integrate and unify central and regional politics in all spheres of government and confers a wide range of concurrent powers on both the central and the regional government. Ile (2010:53) underscores that the Constitution, 1996, requires the three spheres of government and all organs of state function within a framework of cooperative government, to set the scene for non-competitive governmental structures.

On the other hand, IGR is one means through which the values of cooperative government may be given statutory and institutional expression (Malan, 2005:230; Malan &

Mammadalizade, 2012:98; Motingoe, 2012:22; Hauvori, 2014:41). IGR is defined by Anderson (1960:6) as a significant body of activities or interactions which ensue between governmental units of all types and levels within a federal system. Malan (2000:15) submits that IGR encompasses all the complex and independent relations among various spheres of government as well as the coordination of public policies among the national, provincial and local spheres of governments through programme reporting requirement, grants-aid, planning and budgetary processes, and informal communication among officials.

Hene (2015:90) submits that IGR in the South African context refer to the interaction of the different spheres of government. Intergovernmental relations are a means through which the values of cooperative government may be given institutional expression (Edwards, 2008a:90). The aim of IGR is to enable governmental activities, through synergy, efficiency and effectiveness to deliver services, sustain democracy, and strengthen delivery across all spheres of government for the common good (Edwards, 2008a:66; Ile, 2010:26).

Mathebula (2011:839) asserts that IGR constitutes a negotiation and consultation process between governments, aimed at harmonising a government's actions and decision-making. According to Edwards (2008a:90) and Malan and Mammadalizade (2012:98), the strategic purpose of IGR is to promote and facilitate cooperative decisions; coordinate and align priorities, budgets, policies and activities across interrelated functions and sectors; and ensure a smooth flow of information among governmental institutions, with a purpose of enhancing the implementation of policy. Mathebula (2011:839) describes IGR as an apprenticeship in negotiation; the art of conflict resolution which is an inevitable dimension of life in society.

The IGR system in South Africa has evolved rapidly since 1994 (RSA, 2010:7; Motingoe, 2012:58). According to the Department of Cooperative Government and Traditional Affairs (COGTA), the current intergovernmental system in South Africa can be classified into three distinct phases: the transformational phase; the operationalization phase; and the consolidation phase (DPLG, 2008:7; RSA, 2010:7; Hauvori, 2012:32-33). Each of these phases is outlined briefly below.

- **Transformational phase (1994-2000)**

The transformational phase was a period of transforming the macro-organisation of the state and creating an IGR system. This phase centred on the creation of a single Public Service, with the primary focus on the creation of specialist intergovernmental forums and processes, especially concerning concurrent functions.

- **Operationalisation phase (2001- 2004)**

During the operationalisation phase, operational substance was given to the concept of cooperative government and a number of non-statutory national and provincial intergovernmental forums. This period was also known for increased organised local government engagement in IGR, as well as increased collaborative work, programmes and projects across the three spheres of government and all organs of state.

- **Consolidating phase (2005 to date)**

The introduction of the Intergovernmental Relations Framework, 2005, which sketched a broad statutory framework for the practice of IGR, provided the establishment of intergovernmental forums and basic framework for the settlement of intergovernmental disputes. This Framework, and other relevant legislation and policies for cooperative government, are discussed in section 3.5 below. However, before the specific South African statutory and regulatory framework is reviewed, the next section provides a theoretical framework for cooperative government, including potential approaches that can be utilised.

3.4. THEORETICAL APPROACHES FOR GOVERNMENTAL RELATIONS

There are various approaches to governmental relations in general. For the purpose of this study, four approaches were identified, as outlined by Hattingh (1998:11-14): the constitutional/legal approach; democratic approach; financial approach; and the normative approach. These approaches are discussed below, with a view to establish which is relevant in the South African democratic developmental context.

3.4.1. Constitutional/ legal approach

This approach is based on the premise that the Constitution, 1996, and other legislative provisions may be utilised as points of departure to study governmental relations (Roux *et al.*, 1997:171; Hattingh, 1998:11; Sokhela, 2006:53; Hauvori, 2012:63; Zulu, 2014:28). The Constitution, 1996, is the supreme law of the country and it guides all actions of political office bearers and officials (Graham, 1998:45; Sokhela, 2006:53; Malan, 2012:116). Section 41 (2) of the Constitution, 1996, requires an Act of Parliament to establish or provide for structures and institutions to promote and facilitate intergovernmental relations and to provide for appropriate mechanisms and procedures to facilitate the settlement of intergovernmental disputes (RSA, 1996:22; Sokhela, 2006:53; Motingoe, 2012:52).

A limitation of this approach is that it accepts the information contained in legislation as accurate and unchanging, until it is amended by new legislation (Hauvori, 2012:64). It also operates on the assumption that relations between governmental institutions only exists within a framework of legislation permitting such relations (Hauvori, 2012:64). The constitutional approach has an advantage of promoting dialogue and exchange information across all spheres of government and organs of state, in this regard, between SAPS and the DJCD. This approach has also led to passing the Intergovernmental Relations Framework Act, 2005, signifying the constitutional approach as the South African one to study cooperative government and IGR, as espoused in the Constitution, 1996 (Sokhela, 2006:53).

For the purpose of this study, it can be deduced that the Constitution, 1996, envisages and binds SAPS and the DJCD to cooperate with one another in good faith by fostering friendly relations; assisting and supporting each other; coordinating their actions; and ensure the effective protection of victims of gender-based violence. Cooperative government and IGR, as enshrined in the Constitution, 1996, are crucial elements in protecting the victims of gender-based violence, because the powers have been allocated concurrently to the two departments. Furthermore, the constitutional obligation of cooperative government between SAPS and the DJCD, there is an additional legal obligation – nationally, domestic violence against women is regulated by the Domestic Violence Act, 1998, derived from constitutional principles. The Domestic Violence Act, 1998 provides prescripts of how state

departments, such as SAPS Ikageng and the NW DJCD should address violence against women (as alluded to in chapter 1, section 1.2).

3.4.2. Democratic approach

The democratic approach to the study of governmental relations accentuates regional and local governments' right to self-determination and autonomy (Hattingh, 1998:11; Hauvori, 2012:65). Malan (2000:34) purports that the significance of having a democracy is highlighted in Section 181, Chapter 9 of the Constitution, 1996, which provides for the establishment of state institutions responsible for the strengthening of a constitutional democracy in South Africa, namely: the Public Protector; Human Rights Commission; Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; Commission for Gender Equality; Auditor-General; and the Electoral Commission (RSA, 1996:92). Furthermore, Section 181 of the Constitution, 1996, Chapter 2 of the Constitution, 1996, comprises the Bill of Rights which is the foundation of the South African democracy (as indicated in chapter 1, section 1.1. And section 3.5.1 below).

As mentioned, proponents of the democratic approach are opposed to the centralisation of authority and strongly support autonomy and independence of government institutions (Hattingh, 1998; Sokhela, 2006:52; Hauvori, 2012:65; Zulu, 2014:27). As mentioned in section 3.3.2.3 above, South Africa has both federal and unitary characteristics with a decentralised cooperative government system. The planning, functions, resources, decision-making and administrative authority from the central government is transferred to lower units (Utomo, 2009:2; Motingoe, 2012:18). The decentralisation of roles and responsibilities between the spheres of government and organs of the state (SAPS Ikageng and the NW DJCD) within the context of cooperative government imposes an obligation on both departments to cooperate with each other and protect the victims of gender based-violence.

For the purpose of this study, it can be inferred that cooperative government for SAPS Ikageng and the NW DJCD is based on the principle of sharing responsibility which can only be achieved if both departments cooperate with each other and share expertise that can improve service delivery to the victims of domestic violence. It can thus be argued that

the democratic approach is appropriate in the South African context since the three spheres of government and all organs of state are constitutionally bound by the principle of cooperative government to collaborate and achieve a well-balanced cooperative relationship. The principle of cooperative government implies that SAPS Ikageng and the NW DJCD have a communal democratic responsibility to trust, support and assist each other to protect the victims of domestic violence.

3.4.3. Financial approach

The financial approach to cooperative government examines the nature of the financial or fiscal relations among and between the different spheres of government and organs of state (Hattingh, 1998:12; Zulu, 2014:28). According to Hattingh (1998:12), financial relations between spheres of government and organs of the state should not be underestimated since funds are transferred from one institution to another by means of legislative prescripts.

Section 214 (1) of the Constitution, 1996, states that an Act of Parliament must provide for the equitable division of revenue raised among the national, provincial and local spheres of government; the determination of each local authority's equitable share of the provincial allocation of the revenue; any other allocations to provinces or the local sphere of government from the national government's share of the revenue; and any conditions on which all those allocations may be made (RSA, 1996:110; Sokhela, 2006:54).

As mentioned in Chapter 1, section 1.2, domestic violence is one of the most expensive health problems which have a significant economic impact (HSRC, 2014:20). The annual cost of domestic violence for the country is estimated at R105 billion. This sum is spent by SAPS and the DJCD through the prosecution of cases and the rehabilitation of perpetrators (HSRC, 2014:20). Therefore, the relations between these two institutions have financial implications. However, the finances currently spent on prosecuting and rehabilitating perpetrators does not bring the expected results, which is the safety and security for the victims of domestic violence (HSRC, 2014:20).

3.4.4. Normative/Operational approach

The normative/operational approach to cooperative government examines the significance of considering all pertinent norms to analyse the total operational reality of governmental relations without one aspect of governmental relations being accentuated at the expense of another (Hattingh, 1998:14; Malan, 2000:35; Sokhela, 2006:55; Zulu, 2014:28). Groups of norms or value objectives are relevant to the normative/operational approach as it entails an investigation of what is or should be desirable (Hattingh, 1998:14; Sokhela, 2006:55).

Every public institution is guided by norms and values that should guide the conduct of public officials which include, among others: equal treatment of persons; communal sharing of amenities; fairness and respect for one another; partnership, mutual trust and sharing; accountability, transparency and humanity (as mentioned in section 3.3). Chapter 10, Section 195 (1) of the Constitution, 1996, provides a number of principles that every sphere of government, organ of state and public enterprise should adhere to, including *inter alia* (RSA, 1996:99):

- Development-orientated and accountable governance;
- Being responsive to people's needs;
- Fostering transparency with timely, accessible and accurate information; and
- Providing services impartially, fairly, equitably and without bias.

The implication of these constitutional requirements for SAPS Ikageng and the NW DJCD is failing to provide safety and security to the victims of domestic violence. SAPS Ikageng and the NW DJCD should also be guided by the obligations bestowed upon them by the Domestic Violence Act, 1998. It is imperative that the needs of the victims of domestic violence are responded to in a timely and impartial manner. It should also be noted that both entities are given a clear mandate of how to protect the victims of gender-based violence, but they deviate from their constitutional responsibilities because there have been numerous incidences of non-compliance amongst SAPS' officials when confronted with incidents of domestic violence (as mentioned in chapter 1, section 1.2).

From the overview of the various approaches to cooperative government, it can be concluded that the four approaches are relevant for the joint administration of cases of domestic violence by SAPS Ikageng and the NW DJCD. Each of these approaches addresses a significant component that needs to be considered in the administration of cases of domestic violence because the Constitution, 1996, is the supreme law of the country, constitutional principles pertaining to cooperative government should be adhered to and all other legal prescripts, as derived from the Constitution, 1996 (such as the Domestic Violence Act, 1998), should be complied with, namely: democratic principles and rights, as stipulated in the Constitution, 1996, and specifically, the Bill of Rights need to be ensured in managing cases of domestic violence; and financial principles as provided for in the legislation should be applied correctly for the mentioned purpose. If not abided by, it will result in fruitless and wasteful expenditure and a failure to comply with legal requirements to spend finances for its intended purposes; and according to specific norms and values, as outlined in Section 195 (1) of the Constitution, 1996, Section 2 of the Domestic Violence Act, 1998 and the Code of Conduct for the Public Service, should be complied with (RSA, 2016c:1).

In addition to these approaches, public institutions are compelled to act within the parameters of statutory and regulatory regulations. The next section provides an overview of the legislation, policies, structures and programmes relevant to cooperative government in South Africa.

3.5. STATUTORY AND REGULATORY FRAMEWORK FOR COOPERATIVE GOVERNMENT

This section provides an overview of the significant legislative and policy guidelines that govern cooperative government and IGR in South Africa. The following statutory and regulatory regulations are included: the Constitution, 1996; the Intergovernmental Relations Framework 13 of 2005; and the Draft Green Paper on Cooperative Governance, 2010. Since cooperative government takes place in the context of the democratic developmental state, the next section provides an overview of this context.

3.5.1. Cooperative government and intergovernmental relations in the democratic developmental state

According to Edigheji (2007:3), for South Africa to be a developmental state, implies equity; justice; enabling a rapid growing economy; and improving the quality of life for all citizens. Particularly relevant to this study, is Edigheji's (2007:3) observation that a developmental state should improve the quality of life for all citizens. This requirement of a developmental state requires the delivery of quality services, including the administrative provided to the victims of domestic violence by SAPS and the DJCD.

In terms of cooperative government, Chapter 3 of the Constitution, 1996, stipulates that cooperative government is the conceptual framework through which the aim of promoting a development-orientated state is achieved (RSA, 1996:21; Malan, 2012:117). Cooperative government should ideally foster an amicable relationship between SAPS and the DJCD to collaboratively provide safety and security to the victims of gender-based violence. Madumo (2012:43) affirms that an integration of government policies is vital for a developmental state.

Gelb (2006:1) in Motingoe (2012:24) argues that one of the tasks that a developmental state should be able to execute is the monitoring and evaluation of progress towards the achievement of its intended objectives. As alluded to in chapter 1, section 1.2, the National Commissioner of SAPS is required to submit monthly reports to parliament, which outlines a number of complaints against SAPS' officials who fail to adhere to the statutory obligations (Morei, 2012:948). It is evident that there is no suitable monitoring and evaluation for the non-compliance of SAPS with the provisions of the Domestic Violence Act, 1998 because an effectively monitored policy results in the anticipated results – providing safety to the victims of gender-based violence.

While the Constitution, 1996, laid a foundation of democratic values, social justice and fundamental human rights, South Africa remains one of the most unequal societies in the world and has not effectively moved from its apartheid-era (Mathebula, 2013:47). It is evident from the discussions in chapter 1 and chapter 2 that women were, and still are, dominated by their male counterparts. Democracy is the founding principles of the South African state, intended and targeted towards achieving equality, promoting the welfare of

citizens, and personifying the adage of “government of the people, by the people for the people” (Mguni, 2016).

A democratic developmental state promotes the principles of democracy, development, self-reliance and unity (Seshamani & Ndhlovu, 2016:767). The Bill of Rights in the Constitution, 1996, ensures the protection of a broad range of rights which include equality and humanity, as alluded to in chapter 1 section 1.1. South Africa as a democratic developmental state is mandated by the Constitution, 1996, through the principles of cooperative government to promote cooperation, collaboration and mutual relations between the spheres of government and the organs of state.

A plethora of legislation and policies, guiding and informing cooperative government and IGR in South Africa, exists, of which the most prominent is the Constitution, 1996, NDP, 2011, MTSF (2014-2019), Intergovernmental Relations Framework, 2005 and the Draft Green Paper on Cooperative Governance, 2010. These statutes are briefly discussed in the sections below.

3.5.2 Constitution of the Republic of South Africa, 1996

As alluded to in the previous section, Chapter 3 of the Constitution, 1996, stipulates the principles according to which cooperative government and IGR must be conducted, and obliges all spheres of government and organs of state to observe and adhere to the principles of cooperative government and to conduct their activities within the parameters that these principles provide (RSA, 1996:21; Malan, 2012:116; Motingoe, 2012:52). Furthermore, the Constitution, 1996, allocates government functions on either an exclusive or shared (concurrent) basis in which all spheres of government and organs of state have to engage as they relate to delivering basic and essential services to the citizens (Layman, 2003:8; Ile, 2007:18; Maluleke, 2015:20).

Section 40 (1) of the Constitution, 1996, stipulates that an Act of Parliament is established for the structures and institutions to promote and facilitate IGR and provide for appropriate mechanisms and procedures to facilitate the settlement of intergovernmental disputes (RSA, 1996:22; Malan, 2005:227; Hauvori, 2012:66; Motingoe, 2012:52). The Constitution,

1996, also stipulates the principles of cooperative government, which is elaborated upon in the next section.

3.5.2.1. Principles of cooperative government

Section 41 (1) of the Constitution, 1996, sets *inter alia*, the following principles for cooperative government for all spheres of government and all organs of state within each sphere (RSA, 1996:21):

- To provide operative, transparent, responsible and united government;
- To be loyal to the Constitution, 1996, the country and its citizens;
- To respect the constitutional status, establishments, authorities and roles of government in the other spheres of government;
- To exercise powers and perform functions in a way that does not infringe on the integrity of government in another sphere; and
- To cooperate with other state organs in shared trust and good faith by:
 - To nurture and encourage responsive relations;
 - To assist and support each other;
 - To notify each other on issues of mutual interest and conferring with each other;
 - To coordinate activities, arrangements and legislation with each other;
 - To follow agreed upon actions and processes; and
 - To avoid legal actions against each other.

In committing to these principles, cooperative government embodies the fundamental values of government (Malan, 2014:57). The principles of cooperative government require that the three spheres of government and all organs of state work in partnership and constantly communicate with each other to ensure that the needs of the citizens are considered (Edwards, 2008a:92; Sesele, 2013:20; Maluleke, 2015:20). In keeping with the principles of cooperative government, stipulated in Section 41 (1), (2) and (3) of the Constitution, 1996, and outlined above, Gildenhuis and Knipe (2007:295) submit the following aspects should apply when ruling on the basis of cooperative government and IGR:

- **Division of authority**

The division of authority devolution and full autonomy within the limits of the Constitution, 1996, is imperative for the effectivity of national and provincial departments.

- **Allocation of functions**

The primary principle concerning the vertical allocation of functions is that they should be allocated to that sphere of government or department (nationally/provincially) which can be rendered most efficiently and effectively to meet the needs of the community.

- **Allocation of resources**

It is a basic principle of good governance that every government and government department should be financially self-sufficient. Any government department at whatever level cannot be autonomous if dependent on the good graces of the government or other departments for financial resources through grants or subsidies.

Maluleke (2015:20) holds that the principles of cooperative government are intended to underpin and guide all the activities of and relationships between the spheres of government to promote and sustain service delivery. The principles of cooperative government are provided to govern interactions amongst the national, provincial and local spheres government (Kanyane & Nazo, 2008:137). Du Plessis (2008:20) advises that for cooperative government and IGR to succeed, the political buy-in and leadership of political and administrative officials at all spheres of government is needed.

As already indicated in chapter 1, section 1.1, SAPS Ikageng and the NW DJCD are co-responsible for, and bear an equal but distinct responsibility to deliver safety and security to the victims of domestic violence in South Africa. In the light of the above assertions, it can be concluded that the Constitutions (1996), principles reflect the broad guidelines as to how the spheres of government and organs of state should relate and cooperate with each other. The principles of cooperative government oblige SAPS Ikageng and the NW DJCD to have a common understanding and shared meaning of cooperative government

to provide safety and effective administrative service delivery to the victims of domestic violence. It is, therefore, inevitable that the two departments should cooperate to ensure the safety of the victims of domestic violence is not compromised.

As explained in chapter 1, sections 1.1 and 1.2, SAPS and the DJCD have certain concurrent functions to fulfil. One of these is the administration of cases of domestic violence. These concurrent functions are further devolved from the DJCD to its provincial offices. The same applies to SAPS, that is, to devolve these functions to the various police stations. A function is regarded as concurrent if more than one sphere or department of government is responsible for policy-making, legislation, and the administering or monitoring in relation to that function as stipulated in the Domestic Violence Act, 1998 (RSA, 1998:2). In terms of concurrent responsibilities, SAPS and the DJCD are co-responsible and bear equal but distinct accountability for the delivery of safety and security to the victims of gender-based violence as stipulated in the Domestic Violence Act, 1998 and Domestic Violence Regulations of 1998 (RSA, 1998:3-8; Parliament of South Africa, 2012:2; Bertus, 2014:1; Morei, 2014:935; Furusa & Limberg, 2015:4; Lopes, 2016:966). The duties of SAPS towards complaints of domestic violence are stipulated in section 2 of the Domestic Violence Act, 1998 and National Instruction 7/1999 (RSA, 1998:4-11), as alluded to in chapter 1, section 1.2.

In chapter 1, section 1.1, it was mentioned that Section 205 (3) of the Constitution, 1996, outlines the objectives of the police to: prevent, combat and investigate crime; maintain public order; protect and secure the inhabitants of the republic and their property and to uphold and enforce the law (RSA, 1996:105; Retief, 2013:79). The victims of domestic violence are, however, as dependent upon the courts as they are on the police (Lopes, 2016:966). The duties of a magistrate in cases of domestic violence are stipulated in the Domestic Violence Act, 1998 and the Domestic Violence Regulations of 1998 (as alluded to in chapter 1, section 1.2).

The respective duties imposed on SAPS and the DJCD, placed both departments at the forefront of the battle against domestic violence and their functions runs concurrently and cannot be separated from each other. SAPS is duty bound to prevent crime, maintain public order and protect the citizens of the country, including those whose rights are domestically violated by their loved ones. The DJCD employees are obliged to ensure that

victims of domestic violence are provided with necessary support, guidance, assistance in completing protection order forms and ensuring that perpetrators are arrested if an order is violated. Therefore, the two departments are obliged by law to protect the victims of domestic violence.

3.5.3. National Development Plan, 2011

The NDP was devised by the National Planning Commission (NCP) which is part of the Department of the Presidency (Chilenga, 2015:36; RSA, 2016:6; Mathe, 2017:2). The plan articulates a broad indicative 20-year policy with objectives and targets for economic and social development within the framework of South Africa's constitutional democracy (Josie, 2017:4). The strategic perspective of the NDP offers a long-term vision for the country until 2030 and aims to ensure that all South Africans realise a decent standard of living through the elimination of poverty and the reduction of inequality (Zarenda, 2013:3). Chapter 12 of the NDP directs SAPS and the Criminal Justice cluster to conduct their business and envisages building safer communities within which women and children will be able to walk freely and safely, without fear (RSA, 2011a:349; RSA, 2016:30).

As mentioned in chapter 1, section 1.2, the NDP's vision is to turn SAPS into a modernised, transformed, professional and efficient criminal justice system (RSA, 2011a:350; RSA, 2016:11). This can only be achieved through the use of an integrated approach, achieve long-term sustainable safety, and by approaching roots of criminality unflinchingly (RSA, 2011a:350; RSA, 2016:6). No sphere of government or organ of state can function effectively without each other (Hauvori, 2012:19).

As mentioned in chapter 1, section 1.1, the CSP confirmed the failure of SAPS and the DJCD to give effect to cooperative government to serve the public (in this case, the victims of domestic violence). It should also be noted that SAPS Ikageng was one of the stations at which non-compliance was reported (ICD, 2011:4). Discipline and integrity are the pillars of democratic policing and it is thus incumbent on SAPS's leadership and management, including the oversight organs, to ensure that the organisational factors that give rise to persistent problems are addressed through sound governance (RSA, 2016:10). It is, therefore, imperative for the two departments to ensure that the objectives of the NDP are realised as it calls for cooperation in an interdisciplinary manner.

3.5.4. Medium Term Strategic Framework, 2014-2019

The MTSF 2014-2019, is the government's strategic plan for the said period and reflects the commitments made in the election manifesto of the governing party, including the commitment to implement the NDP (Mdliva, 2012:51; Radebe, 2014:3; RSA, 2014:5). The MTSF sets out the actions of the government and the targets to be achieved. It also provides a framework for the other plans of national, provincial and local government.

According to Radebe (2014:3), the MTSF, 2014-2019, does not constitute the sum of what government does, but rather serves as a prioritisation framework, aimed at focusing all government efforts on a set of manageable programmes. The MTSF, 2014-2019, serves as a principal guide to planning and the allocation of resources across all spheres of government. It is structured around fourteen priority outcomes which cover the focus areas identified in the NDP, including the following: quality basic education; the improvement of health care; the reduction of crime; employment creation; skills development; social cohesion; and nation building (RSA, 2014:6-36).

All national and provincial departments, as well as municipalities have to produce a five-year strategic and annual performance plan and report outcomes against these plans (Mdliva, 2012:51; Radebe, 2014:7, RSA, 2014:5). SAPS also drafted a five-year strategic plan that conforms to the requirements outlines in the NDP (SAPS, 2014:14).

The MSTF (2014 - 2019) and SAPS prioritises, together with the JCPS cluster to ensure that the South African citizenry is and feels safe (SAPS, 2014:14). The sub-outcomes of the priorities include (SAPS, 2014:14):

- Reducing the levels of contact crime;
- An efficient and effective Criminal Justice System;
- Effectively defending, protecting, securing and managing South Africa's borders;
- Securing cyberspace;
- Ensuring domestic stability; and
- Reducing corruption in the public and private sector.

SAPS must work collaboratively and in support of the initiatives of other government entities within the Criminal Justice system, intergovernmental sectors and civil society to prevent crime and provide the community safety (RSA, 2016c:10). It can be inferred that the onus is on SAPS and the DJCD to work collaboratively and support of the abovementioned outcomes to ensure that women are and feel safe in South Africa.

3.5.5. Intergovernmental Relations Framework Act 13 of 2005

The Intergovernmental Relations Framework Act, 2005 was passed in August 2005. Prior to its passing, no framework for the resolution of disputes pertaining to IGR existed, and disputes that arose, were resolved through the Courts of Law (Sokhela, 2006:86; Edwards, 2008a:69; Zulu, 2014:51). This Act was enacted as a result of stipulations by the Constitution, 1996, for an Act of Parliament that should regulate the relations amongst the three spheres of government to minimise intergovernmental disputes (RSA, 2005:1; Edwards, 2008a:69; RSA, 2010:5; Hauvori, 2012:80; Mdliva, 2012:75; Phago, 2013:3; Sesele, 2013:10).

Kahn *et al.* (2011:111) maintain that the Act gives effect to the principles of cooperative government as enshrined in Chapter 3 of the Constitution, 1996, by establishing mechanisms for its enactment. The White Paper on Local Government, 1998, also states that the strategic purpose of the IGR system is to promote decision-making; coordinate and align priorities, budgets, policies and activities across the interrelated functions and sectors; and to ensure the smooth flow of information amongst government institutions with a purpose of enhancing the implementation of policies and programmes. Mdliva (2012:21) submits that the intention of the IGR system in South Africa is to promote certainty, predictability, transparency and accountability. Hauvori (2012:79) holds that the Act does not only provide for the establishment of IGR structures, but it also regulates the composition and operations of its forums (which are discussed in section 3.5.5.2 below).

It can be argued that the goal of the Intergovernmental Relations Framework Act, 2005 envisages that SAPS and the DJCD cooperate, communicate and establish one, integrated approach in providing safety to the victims of domestic violence. Subsequently, the objectives and measures of cooperative government and IGR are discussed below.

3.5.5.1. Objectives and measures of cooperative government and intergovernmental relations

Section 4 of the Intergovernmental Relations Framework Act, 2005, stipulates that the objective of the Act is to provide (within the principle of cooperative government as set out in Chapter 3 of the Constitution, 1996), a framework for the national, provincial and local spheres of government, and all organs of state within those governmental spheres to facilitate coordination in the implementation of policy and legislation, including the following (RSA, 1996:21; Layman, 2003:10; RSA, 2005:2; Mdliva, 2012:31; Gopane, 2012:33; Dlanjwa, 2013:17; Zulu, 2014:52):

- **Coherent government** – cooperative government must entail the effective and efficient utilisation of resources, not wastage and duplication, but solve the synergy of collective effort. Cooperation is critically important between SAPS and the DJCD and both should align and harmonise their activities and allow for collaborative consultation with each other, as well as discuss matters of common interest which include the protection of the victims of domestic violence.
- **Effective provision of services** – cooperative government should not be an entangled web of committees and consultations, making it difficult to determine responsibilities. SAPS and the DJCD are co-responsible to protect the victims of domestic violence. The Domestic Violence Act, 1998 is clear on the respective responsibilities of duties and resources must be utilised as effectively and efficiently as possible to avoid waste and a duplication of tasks.
- **Monitoring implementation of policy and legislation** – the system and processes of cooperative government should not impede holding executives accountable for their decisions and actions. There are no monitoring mechanisms of the responsibilities stipulated in the Domestic Violence Act, 1998, for either SAPS or the DJCD, as indicated in chapter 1, section 1.2. The National Commissioner of SAPS has failed to comply with the statutory duty to report to parliament every six months. The task has been transferred to the Civilian Secretariat to provide the oversight functions of SAPS by monitoring and evaluating general police performance.

- **Realisation of national priorities** – the government should be rational and informed of consultation between the spheres of government. Contradictory or overlapping policies should not arise as a result of a lack of oversight, and consultation or poorly informed decisions. The Domestic Violence Act, 1998, as a national policy, must be implemented effectively by SAPS and the DJCD.

The IGR system depends on well-coordinated policy, planning, budgeting, implementation and reporting (Zulu, 2014:52). It can be argued that there is no monitoring and reporting by SAPS's oversight bodies or the DJCD's monitoring system to ensure performance. The success of SAPS and the DJCD to protect the victims of domestic violence requires a holistic approach which requires both departments work together to reach the common good of the country.

3.5.5.2. Structures responsible for cooperative government and intergovernmental relations

According to Reddy (2001:21), there are approximately eight structures and role players, statutory and non-statutory, responsible for cooperative government and IGR in South Africa. The following intergovernmental forums play a significant role in cooperative government and in shaping policy and resource allocation (Mathebula, 2004:149-179; Mello, 2007:93-105; Edwards, 2008a:70; RSA, 2011:30-31; Hauvori, 2012:81-90; Mdliva, 2012:63-66; Motingoe, 2012:60; Dlanjwa, 2013:16; Phago, 2013:3; Hene, 2015:91-92):

- **President's Coordinating Council (PCC)** is the most influential forum, which is chaired by the President and attended by senior representatives from all spheres of government. High on the forums list of responsibilities is the need for greater synergy between the national and provincial government for the development of integrated rural strategies, greater provincial oversight of municipalities, and the delivery of social services.
- **Minister and Members of the Executive Councils (MINMECS)** which are sectoral policy forums, comprise of Cabinet ministers.

- **National Council of Provinces (NCOP)** is a **second** chamber of Parliament and is key to the IGR forum. The task of the NCOP is to represent the provinces to ensure that their interests are taken into account. The NCOP collaborates with the National Assembly (NA) to make and pass new laws and focus on laws which affect the provincial sphere of government.
- **Extended Cabinet**, comprises of the Cabinet, the premiers of provinces, and the chairperson of the South African Local Government Association (SALGA). As the highest cooperative governance mechanism, the Extended Government is responsible for concurrent national functions and their provincial counterparts. SALGA represents the local sphere of government on a number of these forums and advises the Cabinet when it finalises the fiscal framework and the division of revenue on which the MTEF budgets are based.
- **Forum of South African Directors-General (FOSAD)** promotes programme integration on the national and provincial spheres of government as it includes the national and provincial Directors-General.
- **Budget Council and Local Government Budget Forum** acts as advisory bodies on matters of national finances and MINMECS members and is established in terms of the Intergovernmental Fiscal Relations Act, 1997. The national and provincial spheres of government consult on any fiscal, budgetary or financial matters which affect provinces, as well as any legislation that has financial implications for the provinces.
- **Various technical intergovernmental forums** comprise of senior officials who provide technical support to the political forum.
- **Financial and Fiscal Commission** is an independent constitutional institution that provides recommendations to parliament and the provincial legislatures on the division of nationally collected revenues between the three spheres of government.

The abovementioned forums assist in building and maintaining governmental relations amongst spheres and bodies. Khan *et al.* (2011:73) termed these relations as dynamic, complex, interactive and interdependent.

3.5.6. Draft Green Paper on Cooperative Governance, 2010

According to the Draft Green Paper on Cooperative Governance, 2010, issued by the Department of Cooperative Governance and Traditional Affairs (COGTA), cooperative government refers to both the relationships in government, and to the relationships between government and civil society (RSA, 2010:7; Zulu, 2014:45). Motingoe (2012:58) asserts that cooperative government and IGR must ensure that contestations due to different interests are managed proactively. The government must promote the strategic interface between the three spheres of government and all organs of state, as well as the relationship between government and civil society on the national, provincial and local spheres of government (RSA, 2010:6). If this is done effectively, cooperative government will contribute towards improving the state's capacity in partnership with social society to deliver on its national developmental mandate (RSA, 2010:6).

Furthermore, the Draft Green Paper on Cooperative Governance, 2010 states that coordination is a significant element of cooperative government (RSA, 2010:7). Coordination involves the harmonisation of actions and efforts, flowing from a shared purpose of vision, which includes the sharing of goals towards the sharing of information, joint planning and budgeting, and cooperation with regard to policy development and implementation (RSA, 2010:7; Zulu, 2014:45). The Green Paper further states that cooperative government is an integral part of the practice of good governance (RSA, 2010:7; Zulu, 2014:46).

SAPS Ikageng and the NW DJCD are duty bound to protect the victims of gender-based violence as determined by the Domestic Violence Act, 1998. The two departments cannot function independently from each other, they need to partake and cooperate in a reciprocal relationship for the benefit of the victims of domestic violence. However, in practice, a number of challenges are faced with the implementation of cooperative government. The next section elaborates on these challenges.

3.6. CHALLENGES IN THE IMPLEMENTATION OF THE SYSTEM OF COOPERATIVE GOVERNMENT

Bosman (2004:420) in Mahlatsi (2010:113) argue that the architects of the Constitution, 1996, should have foreseen the inevitable uncertainty that might arise when more than one sphere of government or organ of state is required to perform similar tasks. Motingoe (2012:69) affirms that the system of cooperative government is important when national and provincial government programmes must be implemented. Motingoe (2012:69) also asserts that the effect of a weak system of cooperative government leads to poor coordination, which creates incapacity to implement national programmes and a consequent failure to deliver services.

Du Plessis (2008:20) writes that the establishment of a political culture of cooperation, mutual respect and trust is a prerequisite for effective government relations. It is also noted that government officials are not adequately informed and knowledgeable of what the concept of cooperative government entails or how it should be implemented (RSA, 2010:7). As indicated in section 3.5.6, the Draft Green Paper on Cooperative Governance, 2010 stipulates that for cooperative government to function effectively, it needs to be underpinned by political stability, maturity and leadership (RSA, 2010:2). However, this appears not to be the case in practice, as highlighted in chapter 1, section 1.2. Naude and Nealer (2011:112) posit that there is a lack of an integrated approach to cooperative government and optimally coordinated deliberations. Furthermore, there is no synergy between all the participating actors.

The need for quality leadership is critical because the Public Service faces a range of challenges as well as capacity limitations (Ile, 2010:55-56; Malan, 2012:118-119; Govender, 2014:5; Zulu, 2014:80-89; Tapscott, 2017:15-16). This notion is confirmed by Kirby *et al.* (2007:162) in Mahlatsi (2010:102), assert that a lack of capacity is the Achilles heel of IGR. Mahlatsi (2010:114) submits that poor coordination is a problem associated with capacity and management rather than purely procedure. Furthermore, Coetzee (2010:91) states that the competitive forces and functions of the spheres of government impede cooperation between the three spheres and results in unnecessary tension. The result is fragmentation, duplication, inefficient implementation and a lack of accountability (Motingoe, 2012:69).

It can be argued that the national, provincial and local spheres of government, and all institutions of the state, do not work closely together to fulfil the needs of the people of South Africa. It is evident that all spheres of government and organs of the state need to coordinate and strengthen their relations in the implementation of the system of cooperative government and IGR. SAPS and the DJCD, as the custodians of the Criminal Justice cluster should continually strive to cooperate with each other, harmonise their efforts, support and trust each other, and fulfil their constitutional mandates of providing safety and effective administrative service delivery to the victims of domestic violence.

3.7. CONCLUSION

The goal of this chapter was to provide a theoretical background on cooperative government. The chapter commenced with a conceptualisation of cooperative government, which should be the framework through which the aim of promoting a developmental state is achieved (Malan, 2012:117). It was also determined that cooperative government encourages partnership, uniformity, standardisation and harmonisation within, and between, the provincial and national government with the view to ensure that the various spheres of government and organs of state complement each other appropriately and adequately with regard to fulfilling their obligations, both separately and collectively.

The evolution of cooperative government and IGR was discussed, briefly including the origin and nature of cooperative government in South Africa. It was also determined that the cultural trace for the current South African cooperative government and IGR framework is referred to as *Ubuntu* and is based on elements such as the equal treatment of persons, communal sharing of amenities, respect and love for another, mutual trust, and sharing (Mahlatsi, 2010:77; Mathebula, 2011:841; Ngcobo, 2011:13; Greffrath, 2016:170).

The CODESA negotiations provided for the drafting of the Constitution, 1996, which stipulates the principles of cooperative government and calls on all spheres of the government and organs of state to provide effective, efficient, accountable and coherent government systems, functions and services. The chapter also distinguished between the federal and unitary forms of government. It was established that South Africa has a basic

unitary system with strong and broad federal characteristics (Malan, 2000:6; Sokhela, 2006:62; Khan *et al.*, 2011:29).

A number of theoretical approaches to the study of governmental relations also contributed towards understanding the nature of governmental relations and included: the constitutional; democratic; financial and the normative approach. All these approaches were found to be appropriate for the democratic developmental context of South Africa.

South Africa is regarded as a democratic development state as it promotes the principles of democracy, development, self-reliance and unity (Seshamani & Ndhlovu, 2016:767). A plethora of legislation regulating cooperative government in South Africa was discussed, most notably the Constitution, 1996 and its principles; Intergovernmental Relations Act, 2005; NDP, 2011, MTSF (2014 – 2019); and the Draft Green Paper on Cooperative Governance, 2010. It was established that South Africa is a democratic developmental state that seeks to address inequality and promote the lives of its people.

The Constitution, 1996, provides that the spheres of government are distinctive, interdependent and interrelated and all spheres and organs of state are required to fulfil these constitutional obligations. The NDP articulates broad indicative 20-year policy objectives and targets for economic and social development within the framework of South Africa's constitutional democracy. The MTSF, 2014-2019, outlines the actions and targets of government which must be achieved, as per the NDP. The Intergovernmental Framework, 2005 seeks to provide clarity, focus and certainty of the core concepts of IGR. The Act does not only provide for the establishment of IGR systems but also regulates the composition and operation of these forums. The Draft Green Paper on Cooperative Governance, 2010, submits that cooperative government and IGR must ensure that contestations due to different interests are managed proactively (Motingoe, 2012:58).

Cooperative government legislation clearly stipulates that all spheres of government and organs of state must work together to ensure that services are delivered to the communities. It was further established that there are a number of challenges of implementation of cooperative government in South Africa, which includes poor coordination, fragmentation, duplication, a lack of cooperation, and accountability (as discussed in section 3.6 above).

From the above deliberations, it can be inferred that no sphere of government or organ of state can function effectively without each other. SAPS Ikageng and the NW DJCD should collaborate to ensure that the victims of domestic violence are and feel safe and are served humanely through the administrative processes of domestic violence cases. In the next chapter, the current functioning of cooperative government between SAPS Ikageng and the NW DJCD will be discussed. This cooperation applies to the administration of domestic violence cases expounded upon, based on an empirical investigation that was conducted.

CHAPTER 4: EMPIRICAL RESEARCH: RESULTS AND FINDINGS

4.1. INTRODUCTION

Whereas the preceding chapters outlined the theoretical framework for the study, this chapter focuses on the results acquired from the empirical research. Furthermore, the aim to achieve the research objectives and respond to the research questions outlined in chapter 1, sections 1.3 and 1.4 respectively, the following steps were followed: an in-depth literature study was conducted on domestic violence, as well as the statutory and regulatory framework for pertinent thereto in the South African context (chapter 2); an in-depth literature review was conducted on cooperative government and the statutory and regulatory framework for cooperative government, with specific reference to the constitutional obligations and the context of the democratic developmental state (chapter 3); and an empirical study was conducted, through personal interviews as the data collection instrument (chapter 4).

As discussed in chapter 1, sections 1.6.1 and 1.6.2 respectively, the study followed a qualitative research approach and adopted a case study research design. SAPS Ikageng and the NW DJCD were utilised as case study for the research. The purpose of the personal interviews as a data collection instrument, was to establish the participants' personal experiences, perceptions and awareness of domestic violence as well as their duties in the case of SAPS officials including the NW DJCD employees. Subsequently, the results from the interviews were interpreted and narrated to describe their understanding and experiences. The personal interviews provided data to understanding the nature of cooperative government between SAPS Ikageng and the NW DJCD. The challenges and shortcomings relevant to cooperative government between SAPS Ikageng and the NW DJCD was established, as well as the challenges in the administrative services provided to the victims of domestic violence.

The results acquired through the personal interviews in the empirical study are discussed in the following sections. The chapter concludes with the primary findings from the empirical search.

4.2. RESULTS FROM INTERVIEWS

Semi-structured personal interviews were conducted with the following participants: 10 police officers at SAPS Ikageng; one (1) police officer at the Domestic Violence Office of SAPS Ikageng; two (2) employees at the NW DJCD (one clerk from the court and one magistrate); two (2) social workers; and 10 victims (women) of domestic violence.

All the participants completed a consent form that assured them that the following ethical requirements are abided by: the purpose of the interview was explained to each participant; informed that their participation is voluntary and that they can withdraw from the study at any given time; anonymity was ensured; feedback from the interviews would be reported in group format, hence they will not be identified by name in the study; and the information they provide will be utilised only for the purpose of this research study and not be made available to a third party.

The following sections expound upon the results acquired from the interviews that were conducted with the abovementioned participants. The results from the interviews of the various groups (categories) are discussed per question, as posed during the interviews.

4.2.1. Interviews with operational police officers

As indicated in chapter 1, section 1.6.3, the police officers at SAPS Ikageng were interviewed to acquire an understanding of their experiences and challenges in managing cases of domestic violence, their perceptions of their responsibilities including cooperative government between SAPS Ikageng and the NW DJCD.

4.2.1.1. Duties of operational police officers at SAPS in terms of the Domestic Violence Act, 1998

The following question was posed to the participants: *What are your duties as operational police officers at SAPS in terms of the Domestic Violence Act, 1998?* The purpose of the question was to establish whether the operational police officers understand their roles and duties in terms of the Domestic Violence Act, 1998 and NI 7/1999.

The participants revealed that their duties in terms of Domestic Violence Act, 1998 included to assist the complainant in cases of domestic violence through the completion of the application form for a protection order; provide a place of safety to the victim; open a criminal case if the conduct of the respondent constitute an offence; and explain the procedure of applying for a protection order to a victim, even though it is not compulsory. The participants also indicated that the removal of the respondent from the place of residence and serving of a protection order is the responsibility of the NW DJCD and not SAPS Ikageng. One of the participants revealed that one of her duties is to separate the couple if they are in a physical fight. The participants stated that assisting the victims to complete the applications for protection orders is an agreement between the station commander and the NW DJCD because the form is issued by the DJCD.

It can be inferred from the above that the participants are unaware of their duties or have a limited view thereof in terms of the Domestic Violence Act, 1998. They omitted to reveal the following as part of their duties: serve interim protection orders; explain the contents of the notice in the official language of the complainant's choice, including probable resolves available at his or her disposal as contemplated in Section 6 of the Act; and arrest the respondent, seize any dangerous weapons (RSA, 1998:4-11; Bendall, 2010:104). This also confirms the statement by Mokgopanyane (Personal communications, 18, February 2016) that operational police officers refuse to serve protection orders on respondents, citing that it is the duty of the NW DJCD. It can, therefore, also be argued that the police officers at SAPS Ikageng are not necessarily unaware of their duties related to cases of domestic violence but hold that certain duties should be executed by the NW DJCD. Therefore, they refuse to fulfil these duties.

4.2.1.2. Challenges in terms of cases of domestic violence

The following question was posed to the participants: *What challenges do you experience in terms of cases of domestic violence? Please elaborate.* The purpose of the question was to establish the challenges experienced by operational police officers while responding to cases of domestic violence.

According to the participants, most victims of domestic violence apply for protection orders against the respondents, but they tend to violate the same conditions stipulated for the

respondents in the protection orders. They also revealed that the victims open cases of domestic violence and often withdraw them later or they do not want the respondents to be arrested. The participants also revealed that certain victims arrive at the police station intoxicated, while others highly emotional, and refuse advise on the procedures that must be adhered to when applying for a protection order.

The participants also held that the process of application for a protection order is unrealistic, since the victims are re-assaulted and re-abused while waiting for an interim protection order which takes approximately three months to issue. The participants also held that victims use protection orders as leverage against the respondents. Furthermore, the administration of the protection order should reside under one constituency, because this will enable a swift process to execute the protection order.

SAPS officers are trained on how to manage emotional and obstinate citizens (Du Plooy, personal communications, 18 August 2017) and it is their duty render assistance to the victims of domestic violence, irrespective whether they are intoxicated or emotional. It is also the duty of police officers to find suitable shelter for the victims and advise them of the contents of the protection order, including resolves available to them as stipulated in Section 6 of the Act (RSA, 1998:4-11), including the previous section. The fact that the participants revealed that the victims utilise protection orders as a leverage against the respondents, could be interpreted as sympathy directed towards the respondents rather than the victims.

4.2.1.3. Cooperation between members of SAPS Ikageng and the officials of the North West Department of Justice and Constitutional Development

The following question was posed to the participants: *What is your experience of the cooperation between members of SAPS, Ikageng and the officials of the North West Department of Justice and Constitutional Development? Please elaborate on any positive or negative experiences.* The purpose of the question was to establish the nature of the effectiveness of the cooperation including the nature of the relations between the two departments, as well as and whether their relations are cooperative to manage cases of domestic violence effectively.

All the participants revealed that the cooperation between SAPS Ikageng and the NW DJCD is poor. The participants stated that the clerks of court are occasionally negative and refuse to assist the victims of domestic violence to complete application forms for protection orders. Moreover, they refer the victims back to the police station to complete the forms. The participants also revealed that the court delays issuing interim protection orders including the warrants of arrest for the respondents which eventually results in the victims returning home to the abuser. These aspects were also referred to in chapter 1, section 1.1.

The participants also highlighted that they do not receive feedback from the NW DJCD of the victims' applications of a protection order; and no meetings are held between the community service centre police officers and the NW DJCD. They also revealed that they do not attend any meetings with the NW DJCD, where issues of common interest are discussed. The Constitution, 1996, stipulates that cooperative government is pivotal, and the two entities need to foster friendly relations, inform and assist one another (RSA, 1996:21). Literature has revealed that cooperative government does not ignore differences of approach and views but encourages healthy debate to address the needs of the people (Malan, 2000:17; Mathebula, 2015:21). The onus is on the two departments to come together and discuss how best can they assist the victims of domestic violence as their responsibility to protect the victims of domestic violence runs concurrently.

The participants also revealed that the victims of domestic violence have to return to the court several times, because often their applications for protection orders are lost and have to re-apply. This results in extended waiting periods for the victims to receive a protection order. The participants also highlighted that administration by the court on domestic violence is inexcusable because victims are expected to wait for approximately three months before the protection orders are issued. Consequently, the cycle of violence continues unabated.

As indicated in chapter 1, section 1.2, the clerks of court should be available to assist the victims to complete the application forms for protection orders (RSA, 1998:4; Furusa & Limberg, 2015:16; Lopes, 2016:967). However, the above responses confirm that the employees at the NW DJCD do not assist the victims to complete the application forms for protection orders, but rather refer them back to the police station to ask for assistance. It

can be argued that there is indeed a lack of cooperation between SAPS Ikageng and the NW DJCD in handling the administrative processes of cases of domestic violence with efficiency and dignity. The function of providing safety and security to the victims is shared between various departments, nationally and provincially (RSA, 1998:3-8), as stipulated in chapter 3, section 3.1. Cooperative government in this respect is necessary to achieve a common goal – provide an administrative service to the victims of domestic violence to protect them from their perpetrators. Cooperative government is a constitutional obligation, as enshrined in Section 41 of the Constitution, 1996 (RSA, 1996:21). Therefore, both the SAPS officers and the employees of the NW DJCD are neglecting their constitutional responsibilities if they fail to fulfil their duties with respect to the victims of domestic violence. Moreover, certain duties and responsibilities are also conferred upon SAPS (RSA, 1998:3) and the DJCD (RSA, 1998:5-8) in terms of the Domestic Violence Act, 1998. Several of these duties are neglected if these two departments fail to collaborate effectively with cases of domestic violence.

4.2.1.4. Treatment of victims of domestic violence

The following question was posed to the participants: *Do you think the victims of domestic violence are treated in an efficient and humane manner when they lay charges of domestic abuse? Please explain your response.* The purpose of the question was to establish whether the victims of domestic violence are treated in an efficient and humane manner when reporting incidents of domestic violence and whether the police officers hold that they treat the victims fairly and humanely.

According to the participants, the victims of domestic violence are not treated in an efficient and humane manner, and they try their best to assist these victims. One participant revealed that the domestic violence complaints are not responded to efficiently and it depended on an individual officer's predisposition whether a victim should be efficiently. The participants also revealed that the NW DJCD fails the victims of domestic violence because of the lengthy waiting period before protection orders and the warrants for arrest are availed.

Furthermore, the participants revealed that SAPS Ikageng experiences high volumes of applications for domestic violence. If domestic violence incidents are managed (in terms

of frequency), properly, the administration thereof would improve. This notion is confirmed by official statistics, that during 2016, SAPS Ikageng received 2028 applications for protection orders from victims of domestic violence (SAPS Ikageng, 2016). SAPS Ikageng receives more than 10 applications for protection orders each day and more than 400 protection orders from Ikageng's Magistrates Court each month (SAPS Ikageng, 2016; SAPS, 2016; Motladile, personal communications, 19 February 2016). The Domestic Violence Coordinator at SAPS Ikageng (Motladile, personal communications, 18 February 2016) revealed that domestic violence in Ikageng has reached epidemic proportions, because the police attend to more than 30 complaints of domestic violence each day (SAPS Ikageng, 2016).

The participants also revealed that courts are closed over weekends and during holidays which impedes the administration of cases of domestic violence. Consequently, the victims return to the same place where they suffered abuse, as highlighted in the sections above. All the participants held that domestic violence should be processed by one office (either SAPS Ikageng or the NW DJCD) to prevent sending victims from one office to the other and limit the loss of applications at the NW DJCD offices. This response reflects that the participants do not necessarily demonstrate an attitude of openness to cooperate with the NW DJCD. This is rather alarming because it is a legal obligation for these two departments to cooperate in cases of domestic violence as required by the Domestic Violence Act, 1998 (RSA, 1998:3-8).

Furthermore, the participants also revealed that the applications for protection orders and proof that these orders have been served (return of service⁵) should be captured systematically to ensure that the documents can be retrieved easily from the system. Currently, the policy does not stipulate such but it is a sound suggestion to ensure the provision of an improved service to the victims of domestic violence.

From the interviews held with the police officers at SAPS Ikageng, it can be deduced that the participants are unaware of all their duties or have a limited perception thereof in terms of the Domestic Violence Act, 1998. It can also be argued that the police officers at SAPS Ikageng are not necessarily unaware of their duties related to cases of domestic violence,

⁵ *Return of service* refers to the proof that the papers from court has reached the respondent (Sibisi, 2016).

but may decide that certain duties should be managed by the NW DJCD. Therefore, they refuse to fulfil these duties. Furthermore, certain comments by some of the participants revealed an underlying insensitivity towards the victims of domestic violence.

It was also evident that SAPS Ikageng and the NW DJCD do not comply with the provisions of the Domestic Violence Act, 1998, in fulfilling their duties. Also, they fail to fulfil their constitutional obligation in terms of cooperative government. It was also revealed that SAPS officers often blame the NW DJCD employees of inefficiency and do not demonstrate an attitude that is open to collaboration.

4.2.2. Interviews with police officers in the Domestic Violence Office, SAPS Ikageng

As revealed in chapter 1, section 1.1, the Domestic Violence Office employs only two (2) police officers (Motladile, personal communications, 9 February 2016). One of these officers, the Domestic Violence Coordinator, was also interviewed. In chapter 1, section 1.6.3, the police officer at the SAPS Ikageng Domestic Violence Office was interviewed to acquire an understanding of her experiences and challenges in managing cases of domestic violence. She expressed her perceptions of the officer's responsibilities at the Domestic Violence Office including cooperative government between SAPS Ikageng and the NW DJCD.

4.2.2.1. Duties of domestic violence officers in terms of the Domestic Violence Act, 1998

The first question posed to the participant from the Domestic Violence Office at SAPS Ikageng was the following: *What are your duties at SAPS in terms of the Domestic Violence Act, 1998?* The purpose of the question was to establish the role and duties of police officers in the Domestic Violence Office terms of Domestic Violence Act, 1998 and to confirm whether the officials are aware of their duties.

The participant stated that her role is to ensure that the Domestic Violence Act, 1998 is implemented correctly by the police officers at SAPS Ikageng. She also stated that she is responsible for the coordination of applications for cases of domestic violence in Ikageng.

The interview with the participant revealed that she is aware and understand what is expected of her and other police officers in terms of the Domestic Violence Act, 1998. It can be argued that although the Domestic Violence Coordinator is aware of her duties and responsibilities with regard to the administration of cases of domestic violence, she does not necessarily receive the required support from the operational police officers who often neglect their duties, as established in the interviews with these officers (sections 4.2.1.1 – 4.2.1.4 above). It should also be highlighted that not all police officers implement the Domestic Violence Act, 1998 correctly because some are themselves perpetrators in violent acts (Operational police officer, personal communications, 9 September 2017). This finding is supported by the CSP, which revealed that police officers are also perpetrators of domestic violence (CSP, 2013:4).

4.2.2.2. Cooperation between SAPS Ikageng and the North West Department of Justice and Constitutional Development

The researcher posed the following question to the Domestic Violence Coordinator: *What is your view of the adequacy and/or effectiveness of interdepartmental cooperation between SAPS Ikageng and the North West Department of Justice and Constitutional Development (NW DJCD) in terms of administering domestic violence cases? Do you share information, assist each other, etc.? Do you ever meet as departments and discuss challenges that you encounter in executing your duties?* The purpose of the question was to establish the level of cooperation between SAPS Ikageng and the NW DJCD in administering cases of domestic violence.

The participant revealed that the SAPS Ikageng (the Domestic Violence Office) meet and share information with the NW DJCD. She also indicated that the Victim Empowerment Programme (VEP) and the Case Flow Management meetings are held each month to discuss challenges experienced by both departments. It was also revealed that in certain instances, the magistrate assists to process applications, and instances of urgency, the magistrate would make a ruling immediately as well as issue an interim protection order. The participant (the Domestic Violence Coordinator), however, revealed that there is no other contact or interdepartmental cooperation with the NW DJCD. Also, the operational police officers are not part of the meetings held between the Domestic Violence Office and the NW DJCD and apparently also not privy to the information provided at these meetings.

The operational police officers (in their interviews) revealed that they do not receive feedback from either SAPS Ikageng's Domestic Violence Office or the NW DJCD of issuing protection orders or progress in terms of registered cases. It can, therefore, be argued that relations between the operational officers at SAPS Ikageng and their Domestic Violence Office are strained since the operational police officers are not kept abreast of any information discussed in meetings with the NW DJCD. It can further be argued that it is strongly advisable that these relations be dealt with before proper cooperation with another department (NW DJCD) can take place.

4.2.2.3. Challenges with protection orders in cases of domestic violence

The Domestic Violence Coordinator at SAPS Ikageng was also asked the following question: *What are the challenges you experience with regard to the application and serving of protection orders in terms of the Domestic Violence Act, 1998 and NI 7/1999?* The purpose of the question was to establish the challenges experienced by the Domestic Violence Office at SAPS Ikageng in terms of applications for protection orders and the serving thereof. The aim of this question was also to establish the extent to which the challenges experienced by the Domestic Violence Office correspond or differ from those by the operational police officers.

According to the participant's response, a lack of vehicles and human resources at SAPS Ikageng is a deterrent to effective and efficient administrative process, especially the issue of protection orders and arrest of respondents. It was revealed that only one vehicle utilised to serve more than 400 protection orders per month. The participant also stated that Ikageng experiences high volumes of applications for protection orders and at times, the victims are sent back home because they run out of application forms. This is another indication that the victims are subjected to secondary victimisation by SAPS Ikageng and the NW DJCD, which leads to and fuelling of more abuse at home.

According to the participant, the police officers' attitudes towards victims of domestic violence is disgraceful and riddled with negative arrogance because they refuse to assist to serve protection orders. The participant revealed that the only way to ensure that operational police officers serve protection orders is when they are threatened with

procedures that will be taken against them due to non-compliance with the law. The participant also revealed that senior police officials do not want to take responsibility for members under their command because they refuse to institute disciplinary steps against police officers who refuse to serve protection orders as stipulated in the Domestic Violence Act, 1998. Moreover, the participant expressed strong feelings towards commanders and cited them as ignorant because they openly state that they were not trained on the contents of the Domestic Violence Act, 1998.

The participant also revealed that victims of domestic violence are occasionally either brutally killed or assaulted while waiting for a protection order to be issued. Another challenge includes victims who withdraw protection orders in court and are thereafter killed.

From the interview with the participant from the Domestic Violence Office, it can be inferred that the negative and uncooperative attitude of the operational police officers impedes the implementation of the national policy. The victims are returned home because of inadequate number of application forms; victims are treated with insensitivity and subjected to secondary victimisation and fuelling of more abuse at home which constitutes misconduct by the police officers. Commanders are obliged by Domestic Violence Act, 1998 and NI 7/199 to institute disciplinary steps against members who refuse to comply with duties imposed by the Act, but fail to do so.

It can be argued that SAPS fails the victims of domestic violence dismally by neglecting their duties through, *inter alia*, refusal to serve protection orders. It can also be argued that non-compliance by SAPS Ikageng police officers which goes unreported by commanders, also makes the commanders part of the abuse and secondary victimisation suffered by the victims of domestic violence. It should also be noted that the CSP in 2013, revealed that certain police officers are perpetrators of domestic violence (CSP, 2013:4; Morei, 2014:936), as mentioned above. Moreover, it should also be noted that SAPS Ikageng is one of the police stations at which non-compliance was reported (ICD, 2011:12). It can also be concluded from the participant's responses that delays by the court to issue interim or final protection orders occasionally leads to unnecessary fatalities. This delay is inhumane and insensitive to the victims of domestic violence.

4.2.2.4. Treatment of victims of domestic violence

The following question was posed to the participant from the Domestic Violence Office: *Do you think the victims of domestic violence are treated in an efficient and humane manner when they apply for protection orders? Please explain your answer.* To a great extent this question was already answered in the previous section. However, additional issues were highlighted by the participant that was mentioned in the responses to the previous question.

The participant stated that although the Domestic Violence Act, 1998 and NI 7/1999 instructs that the processing of applications for protection orders must be finalised within 48 hours of when the application is submitted, this is not the case in practice. This matter was also referred to in chapter 1, section 1.1. The participant also accentuated the lack of resources as a major problem and revealed that, at the time of the interview, it was a week since any protection orders had been served because the vehicle utilised for the purpose was not roadworthy.

Furthermore, it was also revealed that the NW DJCD is not on call for 24 hours and operational police officers return victims home during the night, weekends and holidays and inform them to return the following Monday when the court is in operation. The participant reiterated that the victims of domestic violence are treated inhumanely, insensitively and callously by operational police officers. This inhumane act must be treated with the utmost contempt and resolved with immediate effect.

It can be argued that the police officers fail the victims of domestic violence with their shameful attitudes and non-compliance of legislative requirements. It is evident from the participant's response that the police officers ignore their professional duty. Furthermore, according to the participant, police officers are prejudice and demoralise the victims of domestic violence by not assisting them when they seek assistance. The police officers are duty bound to provide safety and security to the victims of domestic violence as stipulated in the Domestic Violence Act, 1998 (RSA, 1998:3-8). It can be concluded that apathy and outright hostility by police officers occasionally leads to fatal consequences.

4.2.3. Interviews with employees at the North West Department of Justice and Constitutional Development (Clerks of Court)

The interview was conducted with one employee at the NW DJCD. As indicated in chapter 1, section 1.6.3, the purpose of the interview with the employee at the NW DJCD was to acquire an understanding of his/her experiences and challenges in dealing with cases of domestic violence, the perceptions of the responsibilities of employees at the NW DJCD, and views on cooperative government between SAPS Ikageng and the NW DJCD.

4.2.3.1. Employee duties at the North West Department of Justice and Constitutional Development in terms of the Domestic Violence Act, 1998

The first question posed to the participant was as follows: *What are your duties as an employee at the North West Department of Justice and Constitutional Development (NW DJCD) in terms of the Domestic Violence Act, 1998?* The purpose of the question was to determine the role and duty of employees at the NW DJCD in terms of the Domestic Violence Act, 1998 and establish whether the employees are aware of their duties and comply therewith.

The participant revealed that her role in the NW DJCD includes the prevention of crime in the community, collect the application forms for protection orders from the victims of domestic violence, and open files on cases of domestic violence. The participant also stated that as the clerk of the court, she submits the file to the magistrate who issues a court date. After the magistrate issues a court date, the subpoena is prepared for SAPS to serve on the respondent and ensure that the return of service is received from the SAPS. The participant also stated that if the respondent does not attend the court proceedings, then the magistrate can issue a warrant of arrest.

Section 4(7) of the Domestic Violence Act, 1998 stipulates that the application for a protection order must be lodged at the magistrate court and the victims should be assisted by the clerk of the court to complete the application for a protection order. Judging by the participant's response, this is not the case. It is evident that the clerk of the court fails to explain to, and inform the victims of domestic violence about their constitutional rights in terms of the Domestic Violence Act, 1998, to receive protection orders during the night,

weekends and public holidays. Therefore, it can be argued that full compliance of the legislative procedures by the NW DJCD has not been abided by.

4.2.3.2. Measures taken to ensure safety of victims of domestic violence after issuance of protection order

The next question was posed to the participant from the NW DJCD. *After a protection order is issued to a victim of domestic violence, what measures do you take to ensure that he/she is protected?* The participant revealed that after the magistrate issues an interim protection order and, as the clerk of court, she ensures that that it is sent to SAPS Ikageng through the Domestic Violence Office to enable the Service to serve the respondent.

Based on the response from the clerk of the court, it can be argued that the NW DJCD liaises with the Domestic Violence Office at SAPS Ikageng and not with the operational police officers as the first point of contact with the victims. In section 4.2.1.3 above, it was revealed that the participants (operational police officers) have no contact with the NW DJCD but are expected to assist in the completion of application forms, serve protection orders, and arrest the perpetrators. The Act provides that the DJCD must liaise and work with the SAPS to ensure that victims of domestic violence are and feel protected. It can be inferred that the NW DJCD disregard the operational police officers who are the first point of contact when a complaint of domestic violence is reported. This uncooperative behaviour by the NW DJCD results in operational police officers adopting a negative attitude towards the victims and the system itself.

4.2.3.3. Completion of application forms for protection orders

The next question posed to the participant was: *Who assists the victims of domestic violence with the completion of the application forms for protection orders?* The question was posed to establish the person/s responsible to assist to the victims of domestic violence complete application forms for protection orders and determine whether the duties according to the Domestic Violence Act, 1998 are complied with. The participant was adamant that both the operational police officers at SAPS Ikageng and the courts of clerk at the NW DJCD are co-responsible to assist the victims with the completion of application forms for protection orders.

However, according to Section 7 the Domestic Violence Act, 1998, it is the responsibility of the clerks of the court to assist the victims complete the application forms for protection orders. The clerk of court is, however, trying to shift this responsibility to the police officers at SAPS Ikageng. A similar inference to the one made with respect to the duties of the operational police officers in section 4.2.1.1 can be made to the clerks of court. The latter are either unaware or aware of their duties but hold that certain duties belong to SAPS Ikageng. Therefore, they refuse to fulfil these duties.

4.2.3.4. Cooperation between members of SAPS, Ikageng and officials of the North West Department of Justice and Constitutional Development

The following question posed to the participant was: *How do you experience the cooperation between members of SAPS Ikageng and the officials of the NW DJCD? Please elaborate on any positive or negative experiences.* The purpose of the question was to establish whether the employees at the NW DJCD share the same views of poor cooperation between the two departments as the police officers at SAPS Ikageng.

The participant stated that there is cooperation between SAPS Ikageng and the NW DJCD. She further revealed that the police assist to complete applications and serve protection orders. The Domestic Violence Act clearly state that the clerk of court should be available to assist the victims to complete protection order forms. It is evident that the SAPS Ikageng assist the victims to complete applications.

It was also revealed by the clerk of court that the police officers play a critical role over weekends when the court is not in operation. She referred to the fact that the victims of domestic violence are always assisted by SAPS Ikageng, instead of the NW DJCD during weekends. Section 7 of the Domestic Violence Act, 1998, submits that protection orders can be obtained during weekends and after ordinary court hours (RSA, 1998:4 but it was highlighted in section 4.2.1.4 that in practice, this is not the case. Consequently, the victims often suffer hardship when their applications for a protection order are not attended to immediately (as alluded to in sections 4.2.1.4 and 4.2.2.4). The NW DJCD is failing the victims of domestic violence by not rendering services during the evenings, weekends and holidays (Motladile, personal communications, 10 February 2016; Morei, 2014:936). This

neglect of the courts to assist the victims of domestic violence outside office hours is inhumane and delays the administrative process of complaints and the receipt of protection orders in a timely and urgent manner. It can be inferred and strongly argued that cooperation is prevalent but certain administrative duties are neglected by the NW DJCD e.g. Assist victims to complete an application for a protection order by the NW DJCD.

4.2.3.5. Treatment of victims of domestic violence

The last question posed to the participant from the NW DJCD was the following: *Do you think the victims of domestic violence are treated in an efficient and humane manner during the administrative processes of cases of domestic violence? Please explain your answer.* The purpose of the question was to determine whether the NW DJCD perceives their service to the victims of domestic violence as efficient, fair and humane, as well as establish the reasons for their perceptions.

Treating someone in a humane manner entails acting compassionate, kind, considerate, sympathetic, understanding and gentle (Webster, 2017). The court takes more than three months to issue a protection order while the victims suffer more abuse during this time (as mentioned in section 4.2.1). The undue delay in court processes, therefore, places the victims at risk of further harm (Lopes *et al*, 2013:20). The clerks of court do not complete application forms for protection orders for the victims of domestic violence, instead the police officers assist. The negligence of duties by the clerks of court clearly reflects that the victims of domestic violence are treated inefficiently and inhumanely. Furthermore, efficiency implies achieving the required results in a well-organised manner (Webster, 2017). This is not currently the case as revealed of the service the clerks of court provide to the victims of domestic violence. It can, therefore, be argued that the victims of domestic violence are not treated humanely and sensitively by the employees at the NW DJCD.

4.2.4. Interview with Magistrate

The purpose of the interview with the magistrate was to determine the factors considered by the magistrate which deter the prosecution of an accused perpetrator against whom charges have been laid.

4.2.4.1. Timeframes of administrative process for domestic violence cases

The first question posed to the magistrate at the NW DJCD was the following: *What are the realistic timeframes in managing administrative process of cases of domestic violence and how long does it generally take for the application for a protection order to be approved? Please explain your answer.*

According to the participant, an interim protection order can be granted and served on the same day that an applicant applies for such an order. It was also revealed that a realistic time frame to issue a protection order is three months which is due to the high volume of applications received. Only one magistrate presides over 500 cases per month.

In practice, however, not all applicants are granted protection orders on the same day of the applications being submitted. The statistics revealed (also see section 4.2.2.3) that DJCD experience high volume of applications for domestic violence and one magistrate presides over 500 cases. Naturally the magistrate is overworked and cannot cope with extremely high volume of applications. Most of the protection orders which are issued on the same day that the application is submitted, is due to the applicant been assisted by the Domestic Violence Office at SAPS Ikageng. The Domestic Violence Office, however, does not have the human resource capacity to assist all the victims of domestic violence in this respect.

4.2.4.2. Harm to victims of domestic violence while waiting for issuance of protection order

The next question posed to the magistrate was: *Have there been cases of a victim of domestic violence being harmed while waiting for a protection order to be issued? Please elaborate on your answer.* The participant revealed that it was possible that harm can befall the victims of domestic violence while awaiting the issuing of a protection order, but that she was not aware of such incidents.

From the responses during the interview held with the participant of the Domestic Violence Office (indicated in section 4.2.2.4, it was revealed that the victims are often harmed while

they wait for protection orders to be issued and some are even killed during this time. It is, therefore, evident that the magistrate is either not aware of the damage caused by the delayed process of issuing protection orders timeously, or she prefers not to reveal that she is aware thereof. Regrettably, the reality of waiting for a protection order for such an extended period of time results in more suffering and abuse to those that are already victims and seek help. As also alluded to in section 4.2.1.4, the justice system is failing the victims of domestic violence.

4.2.4.3. Cooperation between members of SAPS, Ikageng and officials of the North West Department of Justice and Constitutional Development

The following question was posed to the magistrate: *What is your experience of the cooperation between members of SAPS, Ikageng and the officials of the North West Department of Justice and Constitutional Development (NW DJCD)? Please elaborate on any positive or negative experiences.*

The participant revealed that most of the cases of domestic violence are delayed in court because there is no return of service in the applicants' files which indicates that the respondent was not served with the notice to appear in court and a new date has to be allocated. She also revealed that it is the responsibility of the SAPS to ensure that the respondent is served with the papers and return of service is filed in the docket. According to the participant, the lack of a return on service has an impact on cash flow management. It was also revealed that more than 500 cases of domestic violence are prosecuted each month by one magistrate, who is occasionally overworked.

The participant did not respond to the question (pertaining to the cooperation between SAPS Ikageng and the NW DJCD), in spite of having repeated it on several occasions. Cooperative government is about the cooperation, collaboration, teamwork and uniformity. From the magistrate's response to the next question, it was evident that she held that the cooperation between the two departments is unsound, since she suggested that an improvement of this relationship would improve matters. This was alluded to in her response to the next question.

4.2.4.4. Suggestions to improve intergovernmental cooperation between SAPS, Ikageng and the North West Department of Justice and Constitutional Development

The following question was posed to the participant: *Are there any suggestions you can propose that would improve inter-departmental cooperation between members of SAPS, Ikageng and the officials of the NW DJCD?*

The participant revealed that the NW DJCD needs SAPS Ikageng to ensure that the return of service is filed in the court file. The participant did not make any further suggestions as to how interdepartmental cooperation between the two departments can be improved although she was probed to respond to the question.

It was unclear from the response whether there is cooperation between SAPS Ikageng and the NW DJCD. However, her comment that SAPS Ikageng needs to ensure that the return of service is filed in the applicants' court files, can be interpreted as an aspect she considers detrimental to the relationship between the two departments. Cooperative government is about effective communication, avoiding conflict and assisting each other coordinating service delivery in the community (as indicated in chapter 3, section 3.2). The two departments need to engage each other at all levels through a healthy debate because they are both responsible for the safety of victims of domestic violence.

4.2.5. Interviews with victims of domestic violence

As alluded to in chapter 1, section 1.6.3, the purpose of the interviews with the victims of domestic violence was to: (1) determine whether these women experience administrative process as effective and efficient when they report an incident of domestic violence and apply for a protection order; and (2) given the fact that these women are typically injured, traumatised and vulnerable at the time they engage with the authorities, the purpose of the interviews also was to establish whether they perceive the treatment they receive from the police officers at SAPS Ikageng and the officials at the NW DJCD as just, useful, supportive and sympathetic. Due to the need for sensitivity towards these victims, interviews were selected as an instrument to collect data as opposed to the completion of a questionnaire.

Furthermore, the researcher was accompanied by a social worker who could intervene should the necessity arise because the interviewees could become emotional.

4.2.5.1. Administrative assistance and service from SAPS

The first question posed to the victims of domestic violence was: *What was your experience of the administrative assistance and service you received from the police officials at SAPS Ikageng when you laid charges of domestic abuse and applied for a protection order? Please elaborate on any positive or negative experiences you encountered, e.g., were you treated efficiently and in a humane and sensitive manner?*

The second question posed to the participant was similar, but specifically related to the conduct and assistance the victim received from the NW DJCD employees – *What was your experience of the administrative assistance and service received from the Clerk of the court when you laid charges of domestic abuse and applied for a protection order? Please elaborate on any positive or negative experiences encountered, e.g. Were you treated efficiently and in humane and sensitive manner?* Since the process is perceived by the participants as one experience (case of domestic violence), these two questions were dealt with simultaneously.

The participants revealed that the police officers assisted them to complete the application forms for a protection order. They also revealed that, when they arrived at court, they met with the clerk of the court who told them to return a week later to collect the court date for the first appearance before the magistrate. They further stated that when they went back to the court the following week, they were told to return home, and a court date was not provided. The following was expressed by one victim (personal interview, 2017):

'I went to SAPS Ikageng and met with a police officer who assisted me in completing the protection order form. The police officer then sent me to court to deliver the form and in the NW DJCD, I met with a security guard who told me that the clerk of court was not available and he took the form from me and I went back home. The very same night my niece started to verbally insult me and when I called the police there was no response. I was told that the vehicle was attending another complaint and it will come after attending to pressing matters'.

Another participant revealed that the police officer did not explain the procedure that is followed when one applies for a protection order because she still waits the court to call her to appear in court, while simultaneously, she is subjected to more abuse. The participant revealed that four months have passed and she still waits the court to call her.

One of the participants revealed that when she went to lay a charge against her boyfriend, one police officer told her that she was wasting her time because the perpetrator would never be arrested. Unfortunately, he was not arrested for his transgressions. She further revealed that the police officers act as magistrates because they tend to interfere in domestic issues and even pass judgement without one even appearing in court.

Another participant revealed that she was sent home by the police officer on duty on several occasions and no docket had been registered in her name. She also revealed that the abuser came to her house and was apparently assaulted by her parents who were later arrested and detained by the police. She also indicated that the abuser was threatening her and wants to marry her by force.

Two of the other participants revealed that they had opened a case against their abusers. The investigating officers revealed that the cases would not stand in court. Consequently, the cases were withdrawn. They revealed that they went to report the matter at the SAPS Provincial office and were told that the prosecutor had refused to prosecute the matter.

Another participant stated that she had opened a case against the abuser several months ago and had to date received no progress report of the case from the investigating officer. She mentioned that she was afraid of the abuser even though they were separated. She also revealed that she was heartbroken about the service she received from SAPS Ikageng and the court because she is scared to walk to the shops and work since she is unable to protect herself.

One participant stated that she applied for a protection order against her abuser. Her experience with the clerk of the court as well as the magistrate was negative during the entire court proceedings. She revealed that the abuser was allowed to pose questions and call witnesses while the magistrate laughed at her. She stated that she had never felt more

humiliated and victimised in her life than at that moment. The participant also revealed that she, as the complainant was not given a chance to state her case. She concluded that she was victimised by the law that is supposed to protect her.

The other participants revealed that the clerk of the court shouted at them for no apparent reason and would send them home when they enquired about the court dates. Most of the participants revealed that they had been waiting for several months to receive a court date and repeatedly told to return the following week when they enquire about the date. All the participants also indicated that treatment they receive from SAPS Ikageng and the NW DJCD has had a detrimental effect on their personal lives. They fear their abusers and do not know how to protect themselves.

From the above responses, it is evident that neither the police officers at SAPS Ikageng nor the employees at the NW DJCD treat the victims of domestic violence with dignity. It is evident that both departments neglect their constitutional obligations as entrenched in the Domestic Violence Act, 1998. The literature revealed that the Minister of Police admitted that SAPS neglect many cases of violence against women by failing to accept cases of gender-based violence; fail to investigate reported cases and lose dockets (Merten, 2017). The Minister of Police also revealed that something was wrong in the administration of justice at police stations (Merten, 2017).

4.2.5.2. Timeframe of application for a protection order

The following question was posed to the participant: *Did your application for a protection order serve immediately in court or was it delayed? If it was delayed, what were the consequences thereof?*

From the responses received to the previous two questions, it was evident that these women's cases were continuously delayed. According to the participants, no protection order was served immediately in court. They had to wait for three months before they appeared in court. They also revealed that they continue to suffer abuse while they wait to appear in court. One participant revealed that she was brutally assaulted by her boyfriend and had a miscarriage as a result. The abuser also wanted to marry her by force.

From the participants' responses, it is evident that the administration process of applying for a protection order is inefficient and the victims of domestic violence are treated insensitively. The Domestic Violence Act, 1998 inhibits SAPS and the DJCD to render effective and efficient services to the victims of domestic violence (RSA, 1998:3-8). The poor treatment of the victims of domestic violence, the negligence of duties and delays with issuing court dates and protection orders, reveal that the two departments lack respect for the rule of law. Moreover, the victims have lost faith in the justice system. This is in essence a violation of their human rights, as enshrined in the Constitution, 1996, especially the following Sections of the Bill of Rights (RSA, 1996:5): everyone is equal before the law and has the right to equal safety [Section 9 (1)]; everyone has the right to their dignity being valued (Section 10); and everyone has the right to not being exposed to any kind of violence [Section 12 (1) (c)]. Section and this is regarded as violation of human rights which leads to discrimination and prejudice against women, as alluded to in chapter 1, section 1.1.

4.2.5.3. Challenges in processing cases of domestic violence

The following question was posed to the participants: *What were the biggest challenges in processing cases of domestic violence and how do you think these processes can be addressed?*

The participants revealed that the biggest challenge experienced is the delay of a court date and receiving of an interim protection order. The participants also indicated that the process of applying and the issuing of a protection order must be expedited to avoid further abuse. Furthermore, participants were of the view that the attitudes of SAPS officials and the clerk of the court needed attention and all victims of domestic violence must be treated with dignity.

It is evident that delays of court proceedings expose the victims to further abuse. The courts are not open during weekends and during holidays which further impedes service delivery.

4.2.6. Interviews with social workers

Interviews were conducted with two social workers from the Department of Social Justice to gather information of their experiences when dealing with traumatised victims during the referral phase by the court. The two social workers who were interviewed work specifically at the Ikageng court (NW DJCD). Three questions were posed to the social workers. These questions were aimed at establishing the underlying factors that play a role in domestic violence. The questions were also aimed at establishing the relevance of the theories discussed in chapter 2. Section 2.6.1 – 2.6.4 - domestic violence cases in Ikageng: Culture of Violence Theory; Social Learning Theory; Family Systems Theory and Feminist Theory.

4.2.6.1. Factors in cases of domestic violence

In your experience in supporting the victims of domestic violence, which role would you say do the following factors play in cases of domestic violence?

- *A culture of violence in the South African society.*
- *Other dynamics and relationships between the members of the family were also dysfunctional.*
- *Violence against women as behaviour learned in the parents' house such as a father that abused the mother (e.g. The son may repeat this behaviour with his own wife or the daughter may tolerate this behaviour in her own marriage as it is what was modelled to her).*
- *Violence against women as behaviour that was socially observed as acceptable in a community and then modelled later in life.*
- *The role of a very patriarchal society of the prevalence of male dominance, sexism and gender inequality.*
- *Men use domestic violence as method of power and control to influence their partners' current or future behaviour.*

The purpose of the question was to establish the factors that primarily play a role in cases of domestic violence, outlined as possible factors in the following theories: Culture of Violence Theory; Social Learning Theory; Family Systems theory; and Feminist Theory.

Table 4.1: Factors in domestic violence

Factors in domestic violence as indicated by social workers	Corresponding theory
People get used to being abused and it has become a culture in society that men abuse women	Culture of Violence Theory
Cultural rituals like initiation place men in powerful positions	Culture of Violence Theory
Violence is not inborn; it is learned through modelling and observation from an early age	Social Learning Theory
Men use violence to dominate and control women	Feminist Theory
Men want to be recognised for their superiority and dominance over others	Social Learning Theory
Men fail to take responsibility for their actions and make excuses that what they did was because they were intoxicated	Culture of Violence Theory
Certain families are dysfunctional and violence affects all members within the family system, including children	Family System Theory
Past experiences play a role in the behaviour of men who abuse their wives	Social Learning Theory
The intention of male violence against women is to dominate and control; women are viewed as a commodity	Feminist Theory

The results illustrated in table 4.1 above confirm particular aspects of Culture of Violence Theory. Through observation, violence is learnt at an early age in life and men use violence to solve their problems which at a later stage becomes a way of life. The presence of Culture of Violence Theory is also confirmed by men who attended initiation school, considering themselves as superior with the ultimate aim to perpetuate patriarchy. It can be deduced that violence is learnt at an early age in life and men use such to solve their problems. Moreover, at a later stage, it becomes a way of life. Children who observe their parents fighting imitate or model the behaviour (social learning theory). They will at times become abusive parents and abuse others. Men use violence as a method of asserting

power and maintaining dominance over the victim (Feminist Theory). It can be deduced that gender will always play a role between men and women.

4.2.6.2. Type of cases of domestic violence

The second question posed to the social workers was the following:

What type of cases of domestic violence do you encounter?

- *Physical abuse*
- *Sexual abuse and marital rape*
- *Emotional, verbal and psychological abuse*
- *Economic and financial abuse*
- *Intimidation*
- *Harassment*
- *Stalking*
- *Damage to property*
- *Entry into a woman's house without permission*

The purpose of the question was to establish which type of abuse is primarily reported by the victims of domestic violence in Ikageng. The participants revealed that physical and emotional abuses are prevalent among women who report cases of domestic violence. They also revealed that sexual abuse is prevalent but underreported. Literature has revealed that sexual abuse is underreported because most such cases do not lead to conviction, fear of retaliation or intimidation by the perpetrator; many survivors lack access to services; and extreme suffering that goes with psychological trauma including stigmatisation (Davis, 2015).

It can be deduced that men abuse women physically and emotionally. Sexual abuse goes underreported because of various reasons: women fear victimisation by the assailant, including personal humiliation and stigmatisation by the community. The social workers revealed that they did not deal with cases of domestic violence that related to economic

abuse, intimidation, stalking, harassment, damage to property and entry into premises without consent because these were seldom reported by the victims.

4.2.6.3. Stages of domestic violence

The following was the last question posed to the social workers:

In conversation with you, did any of the domestic violence victims reveal the following?

- *An initial state of tension built up between the abuser and the victim before it reached a stage of conflict.*
- *A violent stage of the abuser's behaviour escalated and the tension that built up erupted into abuse and battering and violence became part of the relationship.*
- *The victim usually tried her best to calm the abuser by becoming nurturing and compliant and held the belief that conciliatory behaviour would inhibit the anger and abuse from escalating.*
- *The victim blamed herself for the abuse against her.*
- *The victim generally continued to tolerate the abuse and felt that she had invested so much in the relationship that she wanted to have faith in her partner and the battering would never occur again.*
- *At some stage, the abuser asked for forgiveness and became loving, kind and remorseful, until the violence erupted again.*
- *The victim felt that her life was meaningless.*

The purpose of the question was to establish whether parallels can be drawn of cases of domestic violence in Ikageng with the cycle of violence, as discussed in chapter 2, section 2.5. According to the participants, most victims of domestic violence go through the cycle of violence although the pattern differs: the tension-building phase, the explosion phase and the honeymoon phase. They stated that in their experience with women who suffered domestic violence, tension would build up and the abuser would get angry for no apparent reason. The victim blames herself for the abuse. These are both characteristics of the tension building phase. The participants also stated that the abuser's behaviour would

escalate to a point during which the victim is physically and/or emotionally abused – the explosion phase.

The participants also revealed that a victim will typically apply for a protection order and before the court appearance; the abuser would convince the victim to withdraw the case – the honeymoon phase. The participants also held the view that most victims perceive their partners (abusers) as the centre of their lives and consider the purpose of a protection order as a tool to neutralise the situation.

The participants also stated that during referral, they would advise the victims to create a safety plan when and if abuse re-appear. They also highlighted that the victims always complained about the service rendered by SAPS Ikageng, especially at night. They would have to wait for hours before a complaint is attended to. The participants also raised the concern that the court takes too long to issue interim protection orders. Since these women have nothing to protect themselves with while waiting for the interim protection order to be issued, they hold the view that victims are safer when they are placed at Thuthuzela Centres.

The literature on the cycle of violence confirms that it is an ongoing process of behaviour, actions and events are repeated (Collins, 2000:1-2; Vogt, 2007:21; Slabbert, 2010:22-23; Maselesele, 2011:1; Mazibuko & Umejese, 2015:6587). Women are trapped in an abusive relationship and always hesitate to leave (Maselesele, 2011:1).

The abuser gets angry for no reason and the victim becomes nurturing and complains (Retief, 2013:55; Davies & Dreyer, 2014:4). The victim blames herself for the abuse while the abuser's behaviour escalates and battering occurs (Collins, 2000:1-2; Mazibuko & Umejese, 2015:6587). It can also be argued that during the process of application of a protection order, the victim will become remorseful and ask for forgiveness with the intention of influencing the victim to withdraw the charges.

4.3. SUMMARY AND DEDUCTIONS FROM EMPIRICAL DATA

The data was gathered as discussed in chapter 1, section 1.6.3.1. And section 1.6.3.2 the researcher ensured that the principle of triangulation was adhered to where more than one data collection method was utilised namely: literature review, document analysis and structured interviews.

The data collected from personal interviews was utilised to gather information which ensured validity and reliability as indicated in chapter 1, section 1.6.5. The data collected from the participants was reported through narratives, feelings and perceptions. The empirical data provided the basis on which the research problem can be responded to. As indicated in chapter 1, section 1.6.5, the analysis of data adhered to the following principles:

- Data obtained from the interviews was structured and interpreted.
- The data was clarified by eliminating diversions and repetitions.
- Essential and non-essential information was classified.
- Data was analysed.
- The researcher would bring her own understanding of the data to light, by drawing information from the literature study and theoretical analysis.
- The researcher would provide new perspectives on the phenomena investigated in consideration of the primary purpose of the study as background.
- Emerging themes were established and contextualised from the analysed data.

As mentioned in chapter 1, section 1.6.3.2, certain themes emerged from the responses provide by the participants during personal interviews. These are discussed below.

4.3.1. Theme 1: Knowledge of Domestic Violence Act, 1998

All the participants in the study seemed to have limited knowledge of the Domestic Violence Act, 1998. The operational police and the clerk of the court struggled to outline their duties as prescribed in the Act. The response from the clerk of the court included (“*one of my duties in terms of domestic violence is **stopping crime form occurring in the community***”). The operational police officers revealed that assisting victims in completing

applications and serving protection orders is not their duty but that of the courts. The magistrate and the clerk of the court maintained that it was the police officers' duty to serve protection orders on the respondents.

These findings correlate with research conducted by Morei (2014:936) and CSVR (2016:14) that there is uncertainty amongst the SAPS and DJCD of who must serve protection orders. Consequently, the victims have to do so themselves which exposes them to further violence at the hands of their abusers. Officials at SAPS Ikageng neglect to comply with the legislative directives, especially at the time the NDP refers to turning the police into a professional service (RSA, 2011a:43).

The statutory and regulatory framework revealed that the clerks of court should assist the victims to complete application forms; receive application forms during weekends and public holidays; issue interim protection orders if the court is convinced that the respondent has committed an act of violence (RSA, 1998:4). However, in practice, the NW DJCD employees are under the impression that the legislation is not implementable due to limited if no resources and refer the victims back to a nearby police station to request assistance (Taranto *et al.*, 2013:34; Lopes, 2016:966). As mentioned in chapter 1, section 1.2, the Domestic Violence Act, 1998 stipulates that the application for protection orders may be brought during weekends and public holidays, (RSA, 1998:4; Lopes, 2016:967; Motladile, 10 February 2016). This finding correlates with research conducted by Heinrich Boll Foundation and Tshwaraganang Legal Centre, (2009); ICD (2011:4); Matthews (2012:1); and Morei (2014:936), that courts only operate during working hours and not accessible to persons wanting to apply for a protection order after hours.

Research conducted by the HSRC reveals that SAPS officials are non-compliant with the provisions of the Domestic Violence Act (HSRC, 2014:24). SAPS has been severely scrutinised for non-compliance due to police officers' reluctance to issue protection orders and make arrests (ICD, 2011:4; Matthews, 2012:1; Taranto *et al.*, 2013:5; CSP, 2013:4; Furusa & Limberg, 2015:6, Lopes, 2016:967), as indicated in chapter 1, section 1.2. This neglect to assist the victims of domestic violence is inhumane and delays the process of processing the complaints and receiving a protection order in a timely and urgent manner.

4.3.2. Theme 2: Theoretical premises confirmed

The participants (specifically the social workers), revealed that violent behaviour is learned, not inherited. They also revealed that children who experience violent behaviour in childhood will likely be violent (Social Learning Theory). Literature posits that people learn from observing and modelling behaviour and he or she is likely to continue (Vogt, 2007:15; Kaddam & Chuandhari, 2011:262; Okenwa-Emengwa *et al.*, 2016:1).

The participants revealed that men use force against women with the intention to dominate and control because they want to be seen as powerful and authoritative. Men use violence to solve their problems (Feminist Theory). This finding compares with research conducted by Maselele *et al.*, 2009:2520, Slabbert, 2010:23; Mashiri, 2013:95), that violence is perceived as a problem-solving method, shared with “macho” male friends by many perpetrators (Culture of Violence Theory). The participants also revealed that violence is not inherited, rather learned through modelling and observation. This also correlated with the literature that when behaviour is learned through observation, one forms an idea of how new behaviours are performed on later occasions as this coded information serves as a guide for action – Social Learning Theory (Cunningham *et al.*, 2002:15; Holt *et al.*, 2008:13; Slabbert, 2010:24; McLeod, 2011, CSV, 2016:11). The participants also revealed that domestic violence has a negative effect on all individuals within a family (Family Systems Theory). This statement is corroborated by Hyde-Nolan and Juliano (2012:14) that what affects one individual affects the entire family and what affects the family also affects each member.

From the above discussion, it can be argued that the theories served as a guide to give broader meaning to domestic violence. It can be concluded that men use violence against women as a demonstration of power and control (as mentioned in chapter 2, section 2.6.4). This finding is corroborated by Tanga and Gutura (2016:600), that in South Africa, domestic violence is viewed as gender-based violence that is based on power relations between men and women and disseminated by culture and tradition that nurture male dominance.

The participants (social workers) also accentuated the cycle of violence that most women found themselves trapped in. They revealed that the perpetrators become irritable, edgy

and possessive as the victim tries to blame herself for the abuse (tension-building phase). This finding correlates with research conducted by Mazibuko and Umejesi (2015:6587), indicating that the victim blames herself for the situation. During the explosion phase, battering occurs and violence becomes part of the relationship (Collins, 2000:1-2; Mazibuko & Umejesi, 2015:6587). During the honeymoon phase, the abuser becomes loving and apologetic with the intention of influencing the victim to withdraw the protection order (Monaisa, personal communications, 19 September 2017). This finding corresponds with research conducted by Slabbert (2010:23); Davies and Dreyer (2014), that when the abuser calms down and asks for forgiveness, the victim generally drops the charges and accepts the abuser's apology. It can be concluded that the cycle of violence is recurring and follows a certain predictable pattern (as mentioned in chapter 2, section 2.5).

4.3.3. Theme 3: Challenges related to the implementation of the Domestic Violence Act, 1998

The police in the domestic violence office revealed that: *“there are no resources (vehicles/manpower) available when protection orders need to be served on respondents, it has been a full week since we have served protection as Ikageng experience more than 400-500 applications of protection orders per month”*. This finding correlates with the research conducted, that SAPS fails to attend to domestic calls of violence. It was revealed that there were inadequate number of vehicles to attend to call-outs or they would be attending to other pressing matters (Heinrich Boll Foundation and Tshwaraganang Legal Centre, 2009; ICD, 2011:4; Matthews, 2012:1; Taranto *et al.*, 2013:5; Monaisa, personal communications, 19 September 2017).

The participant from the domestic violence office and the victims of domestic violence revealed that a range of challenges include a negative attitude by the operational police officers to serve protection orders and commanders under whom those members reside do not want to institute disciplinary steps as stipulated in the Domestic Violence Act, 1998 and NI 7/1999, including the delay of the court to issue protection orders. The literature reveals that there have been reports of negative, discriminatory attitude by the police and court officials towards victims of domestic violence, resulting in the secondary victimisation (Heinrich Boll Foundation and Tshwaraganang Legal Centre, 2009; ICD, 2011:4; Matthews, 2012:1; Taranto *et al.*, 2013:5).

The 2011 ICD report revealed that SAPS Ikageng is one of the stations guilty of non-compliance and failure to comply with the obligations imposed on the SAPS by the Domestic Violence Act (ICD, 2011:4). Failing to comply with the obligations imposed by the Domestic Violence Act, 1998 is considered misconduct. Moreover, it is misconduct by SAPS Ikageng police officers for failing to adhere to statutory obligations. As mentioned in chapter 1, section 1.2, stations audited by the CSP in 2013, and police officials revealed that they have limited knowledge of the Domestic Violence Act, 1998. The training they had received of how to implement the Act was academic and not practical (CSP, 2013; Morei, 2014:936). It can be argued that the SAPS Ikageng police officers also experience the same difficulty in implementing the Domestic Violence Act.

4.3.4. Theme 4: Ineffective cooperation between SAPS Ikageng and the North West Department of Justice and Constitutional Development

The participants (both the operational officers from SAPS Ikageng and the clerk of the court) revealed that there is no cooperation between the SAPS Ikageng and the NW DJCD. They also revealed that their role is limited to assisting victims with the completion of forms. There are no meetings held between the two departments, except those with Domestic Violence Office of SAPS Ikageng and the NW DJCD. This finding correlated with research conducted by CSP in 2013 that one of the most significant challenges identified with implementation of the Domestic Violence Act, 1998 was the distinct lack of support from other government departments, especially the DJCD. It can be argued that the CSP report confirms the failure of the SAPS and the DJCD to give effect to cooperative government to serve the public (in this case, victims of domestic violence).

Section 10 of the Constitution, 1996, stipulates that everyone has a right to dignity valued and explicitly makes provision for cooperative government of all organs of state in Section 41 (1) (RSA, 1996:21). No sphere can function effectively without the cooperation with others because of the interrelatedness of some government functions (RSA, 1996:1267; Edwards, 2008a:68; Malan, 2014:56). In this respect, SAPS Ikageng and the NW DJCD had failed dismally. The police refuse to serve protection orders from the court and the NW DJCD employees do not assist the victims to complete application forms but instead refer them to court (Taranto *et al.*, 2013:6). The participants also revealed that the process of

applying for a protection order is impractical because the police officers refuse to serve a protection order; the clerks of the court also do not assist the victims to complete the forms; victims sent to and fro between the court and their homes. It is claimed that there is lack of resources and cooperation between the two departments. It can be argued that both institutions have deviated from their mandates as enshrined in both the Constitution, 1996, and the Domestic Violence Act, 1998 (as mentioned in chapter 1, section 1.2).

4.3.5. Theme 5: Efficient and humane treatment of victims of domestic violence

The operational police officers revealed that the victims of domestic violence are not treated humanely but are trying their best to do so, citing court delays in issuing protection orders places victims in further danger of being abused because they have to return home to the abuser. This finding corresponds with research conducted by Heinrich Boll Foundation and Tshwaraganang Legal Advocacy (2009), ICD (2011:4) and Matthews (2012:1). It was revealed that undue delays in court processes at times also place the victims at risk of being harmed and has a negative impact on the livelihood of employed persons who need to take time from work to attend the court case. Furthermore, it was evident that the police officers at SAPS Ikageng placed the blame on the clerks of the court for failure to serve the victims of domestic violence; inhumane treatment and vice versa. It appears that both groups (from both departments) do not perceive their actions objectively but and rather blame the other in the 'cooperative' relationship.

The victims of domestic violence highlighted that the clerk of the court would continuously tell them to return home instead of issuing a court date. This abuse is described by one of the victims: *"I find it difficult to cope and the clerk of court returned me back home when I went to fetch the date, I cannot go anywhere as I feel like a hostage in my house. I don't have anything that I can protect myself with"*. The other victims revealed that the clerk of the court shouted at them for no reason and she seemed to harbour a negative attitude towards them. The police officers also revealed that the clerk of the court is at times adopt a negative attitude when they try to engage with her. This finding corresponds with the research conducted by Taranto *et al.* (2013:5). It was revealed that the clerks of the court do not fulfil their duties which raise questions of respect for the training, the time they have at their disposal to attend to matters of domestic violence, and how their performance is evaluated or monitored.

One victim made the following remarks about the magistrate” *I appeared in court with my boyfriend when the magistrate stated that I am after the promotion money of my boyfriend. She laughed at me and so was the prosecutor and my boyfriend’s friends. I never felt so humiliated in my life and I have lost trust in the police and the courts”*. This finding correlates with the research conducted by the HSRC. It was revealed that the victims of domestic violence complained that the prosecutors are ill-prepared and insensitive, and the clerks of the court are abrupt and unwilling to assist the victims (HSRC, 2014:24; Mokgopanyane, personal communications, 15 July 2016). Furthermore, the victims reported that magistrates tend to have negative attitude towards them, as a result of a lack of knowledge and understanding of the complexities of domestic violence. Mogstad *et al.* (2016:9) maintain that victims of domestic violence are subjected to negative statements by judges of the courts which are greatly shaped by gendered perceptions. This suggest that women are actively involved in their own victimisation.

From the above discussion, it can be argued that at the DJCD, there is lack of an effective justice system, as noted by the CSVr (2016:14) and the victims of gender-based violence are obstructed from seeking help and further increase the risk of more violence and even femicide.

4.5. CONCLUSION

The chapter reported the finding of the empirical search. Furthermore, it revealed the results acquired from the personal semi-structured interviews with the following participants: 10 police officers at SAPS Ikageng; one (1) police officer at the Domestic Violence Office of SAPS Ikageng; two (2) employees at the NW DJCD (one clerk of court and one magistrate); two (2) social workers; and 10 victims (women) of domestic violence. The personal interviews provided data to assist in understanding the nature of cooperative government between SAPS Ikageng and the NW DJCD. The challenges and shortcomings pertaining to cooperative government between SAPS Ikageng and the NW DJCD was established, as well as the shortcomings in the administrative services provided to the victims of domestic violence.

Through the findings of the research, five (5) themes emerged:

Theme 1 revealed that the participants have limited knowledge of their duties in terms of **the Domestic Violence Act, 1998**. This was revealed by their responses related to the police officers' duties at SAPS Ikageng and the NW DJCD employees. This study established that SAPS Ikageng and the NW DJCD have no knowledge of how to implement the Act, which is also an indication why the two departments are not working together. They are operating in silos which inhibit the proper safety of the victims of domestic violence.

Theme 2 reflected on the confirmation of **theoretical premises** with regard to domestic violence. The theories in question provided a rich context on which recommendations can be based. The participants' (specifically the social workers) responses revealed truths based on the following theories: Culture of Violence Theory, Social Learning Theory, Family Systems Theory and Feminist Theory. The results acquired from the interviews with the social workers also revealed the relevance of the cycle of violence and its recurring nature.

Theme 3 reflected on the **challenges to implement the Domestic Violence Act, 1998**. It was evident from the participant's responses that the implementation of the Act remained a problem. As indicated in section 4.4.1, there is uncertainty of who should serve protection orders and who should assist victims in completing the forms.

Theme 4 reflected on the **cooperation between the relevant stakeholders** – SAPS Ikageng and the NW DJCD. It was abundantly clear that there is no cooperation between the two departments. SAPS, *inter alia*, refuses to serve protection orders from the court and the NW DJCD employees refuse to assist the victims to complete application forms (Taranto *et al.*, 2013:4; HSRC, 2014:24). This delays the administrative process to issue protection orders.

Theme 5 reflected on the **efficient and humane treatment of the victims of domestic violence**. It was evident from the participants' responses and the literature review that victims are not treated in a humane and efficient manner. The study also revealed that the police officers delay serving protection orders on respondents and the court delays issuing protection orders, thereby, placing the victims in imminent danger (as discussed in section

4.2.2). It was also revealed that the waiting period to issue a protection order at the NW DJCD is three months. In this time, the victims live in fear of their abusers and are often continue to suffer abuse while some are even killed during this period. The literature and the interviews revealed that the SAPS officers' behaviour including the NW DJCD employees is insensitive and callous.

The study also revealed that poor communication is one of the major deterrence's between SAPS and the NW DJCD in administering the applications of protection orders. It is clear that the operational police officers are not informed of the decisions taken between the Domestic Violence Office of SAPS Ikageng and the NW DJCD, which occasionally leads to discrepancies and negative attitudes towards the victims of domestic violence.

It also emerged from the interviews that there is a lack of leadership at SAPS Ikageng. The police officers are not managed properly by their commanders. The commanders do not want to institute disciplinary action against members who fail to execute their duties in terms of the Domestic Violence Act, 1998; thus, also contributing towards subjecting victims to secondary victimisation. The literature revealed that the need for quality leadership is critical as the Public Service faces a range of challenges as well as capacity limitations (Ile, 2010:55-56; Malan, 2012;118-119; Govender, 2014:5; Zulu, 2014:80-89; Tapscott, 2017-15-16).

Furthermore, the literature review and interviews also revealed that there is no cooperation between SAPS Ikageng and the NW DJCD. It is imperative that the two departments come together and ensure that contestations due to different interests are managed proactively (Motingoe, 2012:58). The literature reveals that the weak system of cooperation leads to poor coordination within and between the different spheres of government, thereby creating incapacity to implement national programmes and a consequent failure to deliver basic services (Du Plessis, 2008:18; Edwards, 2008a:75; RSA, 2010:45; Ile, 2010:56; Motingoe, 2012:69-70) (as mentioned in chapter 3. Section 3.6).

During the extensive review of literature and the interviews conducted with the respondents, it was revealed that the solution to the current situation between SAPS Ikageng and the NW DJCD is to ensure that the two departments collaborate to implement the Domestic Violence Act, 1998 as stipulated. These statutory bodies are obligated to

provide various services to the victims of domestic violence. However, these obligations are clearly not backed up by other departments (CSV, 2016:14). It can be concluded that SAPS and the DJCD are not well-trained to manage cases of domestic violence.

The next chapter will present a summary and outline the findings of the research. Recommendations pertaining to humanising and augmentation of the administrative process of cases of domestic violence through cooperative government between SAPS Ikageng and the NW DJCD will be provided.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1. INTRODUCTION

The study aimed to address the following research problem: *A lack of effective cooperative government between SAPS Ikageng and the NW DJCD, as well as neglect of responsibilities by employees from both the government entities, result in ineffective and delayed administrative processes in cases of domestic violence, causing inefficient service delivery and inhumane treatment of the victims thereof.* To respond to the research problem, the study was conducted in keeping with the following research objectives:

- To establish a theoretical framework that explicates domestic violence (chapter 2);
- To determine the theory and value of cooperative government and its role in cases of domestic violence, especially SAPS Ikageng and the NW DJCD (chapter 3);
- To establish the statutory and regulatory framework for domestic violence (chapter 2) and cooperative government in South Africa (chapter 3);
- To establish the efficiency of the administrative services provided to the victims of domestic violence, as well as how the victims are treated by SAPS Ikageng and the NW DJCD (chapter 4);
- To determine whether there is cooperative government between SAPS Ikageng and the NW DJCD in terms of the administration of cases of domestic violence (chapter 4); and
- To offer recommendations on cooperative government between SAPS Ikageng and the NW DJCD to enhance the efficiency and humanisation of the administrative processes of cases of domestic violence (chapter 5).

An in-depth literature review was conducted on domestic violence (chapter 2), as well as cooperative government (chapter 3); statutory and regulatory framework for domestic violence and cooperative government in South Africa was established (chapter 2 and chapter 3); and an empirical study was conducted, using semi-structured, personal interviews as instruments to collect data (chapter 4). In this final chapter of the study, a summary of the preceding chapters is provided, including the primary findings. Furthermore, recommendations are made to assist SAPS Ikageng and the NW DJCD to

enhance the efficiency and humanisation of the administrative processes of cases domestic violence through cooperative government. This chapter also provides probable areas for future research, highlights the contribution of the study, and provides a final conclusion.

5.2. SUMMARY AND PRIMARY FINDINGS OF THE STUDY

Each chapter addressed one or more research objective that was directed by the research problem the study set out to investigate (see section 5.1 above). In pursuing the research objectives, certain conclusions, based on both the theoretical and empirical research could be made which led to the findings of the study. Below, the most significant topics and arguments of the study are summarised per chapter and research objective, including the primary findings.

Chapter 1 provided an introduction and orientation to the research, stating the challenges associated with cooperative government and the administrative processes followed in cases of domestic violence. As part of the rationale of the study, the chapter provided statistics on the prevalence of domestic violence and accentuated the ubiquity of domestic violence in South African society, including Ikageng. The chapter also provided a valuable overview of the status of cooperative government between SAPS Ikageng and the NW DJCD in terms of the administration of cases of domestic violence. Furthermore, the responsibilities of SAPS and the DJCD in terms of domestic violence were briefly outlined as part of a comprehensive background to the study. The chapter focused particularly on how the neglect of the constitutionally requisite relationship between SAPS Ikageng and the NW DJCD affects the administrative process of cases of domestic violence and the humanity and dignity with which the victims are treated.

The democratic rights of citizens, relevant to this study, as enshrined in the Bill of Rights of the Constitution, 1996, was delineated by highlighting the following rights (RSA, 1996:5): everyone is equal before the law and has the right to equal safety [Section 9 (1)]; everyone has the right to their dignity being valued (Section 10); and everyone has the right to not being exposed to any kind of violence [Section 12 (1) (c)]. Furthermore, the chapter provided a brief introduction to the central theoretical arguments of the study, including the

following theories that expound upon the underlying reasons for domestic violence: Culture of Violence Theory; Social Learning Theory; Family Systems Theory; and Feminist Theory.

The adopted research methodology was detailed and justified. The study followed a qualitative research approach with a case study research design. SAPS Ikageng and the NW DJCD were used as the case study for the research. Semi-structured personal interviews were used as the data collection instrument. The personal interviews focused on establishing the participants' personal experiences, perceptions and knowledge of domestic violence, as well as their duties in this respect, that is, SAPS officials and the NW DJCD employees. Personal interviews were conducted with: 10 operational police officers at SAPS Ikageng; one (1) police officer at the Domestic Violence Office of SAPS Ikageng; two (2) employees at the NW DJCD (one clerk of court and one magistrate); two (2) social workers; and 10 victims (women) of domestic violence.

The study utilised purposive, non-probability sampling, commonly associated with qualitative research (Creswell *et al.*, 2012:90). Non-probability sampling refers to sampling of the selection of elements not random (Terre Blanche *et al.*, 2012:139). With purposive sampling (also referred to as judgement sampling), a specific case, group or individual is selected for the particular features it exemplifies that are of concern for a specific study (De Vos *et al.*, 2011:391). Through purposive sampling, the researcher's own judgement was utilised to select the sample. Consequently, the participants were selected decisively because of their perceived knowledge, understanding or experience of the phenomena of domestic violence and/or cooperative government.

Chapter 2 provided a theoretical and legislative background on domestic violence, as well as explored the prevalence of violence globally, regionally (in Africa) and nationally. The chapter addressed the following research objectives of the study:

- To establish a theoretical framework that explicates domestic violence; and
- To establish the statutory and regulatory framework for domestic violence.

The chapter commenced with a conceptualisation of domestic violence. It was explained that domestic violence is a multidimensional phenomenon, which encompasses a list of

abusive behaviours, (physical, psychological, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality (Viano, 1992; American Medical News, 1992; Lewis, 1999; Matchak *et al.*, 2011:4; Chhikara *et al.*, 2013:71; Mazibuko & Umejesi, 2015:6585). It was determined that domestic violence can also take the form of harassment; stalking; intimidation; damage to property; entering a woman's residence without permission, and any other controlling or abusive behaviour towards a partner (Bertus, 2014:1). It was established that physical abuse is the most reported form of abuse (SAPS, 2011:6-12; Stone *et al.*, 2013:3; Jura & Bukaliya, 2015:64; SAPS, 2016:8). The various forms of domestic violence were described. Since domestic violence takes place in a *domestic relationship*, this concept was also clarified.

International legislation on domestic violence, as well as the statutory and regulatory framework relevant thereto in South Africa, was discussed, most notably the Constitution, 1996, and the Domestic Violence Act, 1998. In consideration of the discussion of the legislative framework, it became clear that domestic violence violates basic human rights, as enshrined in the Constitution, 1996, specifically the following rights, included in the Bill of Rights, are violated by domestic violence (RSA, 1996:5): everyone is equal before the law and has the right to equal safety [Section 9 (1)]; everyone has the right to their dignity being valued (Section 10); and everyone has the right to not being exposed to any kind of violence [Section 12 (1) (c)].

A number of diverse theories that contributed towards an understanding of the nature of domestic violence was expounded upon, including:

- Culture of Violence Theory - violence is accepted and perceived as a norm in various societies where women are abused on a daily basis.
- Family Systems Theory - the family is viewed as a dynamic organisation of interdependent components that continually interacts with each and violent behaviour affects everyone in the family.
- Social Learning Theory – violent behaviour is learned through observing others as a child and modelled as an adult.
- Feminist Theory - men abuse women as an extension of patriarchy to control and dominate them.

It was further established in the chapter that domestic violence is a cyclical process, which comprises of three phases (Slabbert, 2010:23; Maselesele, 2011:1; Mazibuko & Umejesi 2015:6587): (1) the tension-building phase (anger, blaming and tension builds up until it reaches conflict); (2) the explosion phase (the violent phase where the abuse -physically, sexually and emotionally - takes place); and (3) the honeymoon phase (where the abuser feels remorse and demonstrates feelings of love and kindness, providing false hope to the victim).

The chapter outlined international legislation on domestic violence and focused on five countries in this respect – the USA, UK, Italy, France and Canada. The scholarly literature revealed that domestic violence cuts across countries, social class and ethnic groups (Kluwer, 2008; Manganara, 2017). As part of the global perspective of domestic violence, its prevalence in countries such as Australia, Germany, Bangladesh, Japan, Mexico, Guatemala, Ethiopia, Russia and India was also discussed. Furthermore, the pervasiveness of domestic violence in African countries such as Zimbabwe, Botswana, Zambia, Nigeria and Lesotho was also explored. It was established that domestic violence is eminent in both developed and developing countries. Furthermore, the literature review revealed that women in most African countries are considered men's property and violence against them is often sanctioned under the guise of cultural practices and norms (Abayomi, 2014:9; Adogu *et al.*, 2015:62). It became evident that despite the enactment of legislation and policy by governments and states to protect women against violence, gender-based violence remains globally pervasive.

In South Africa, it is unmistakable that domestic violence is ubiquitous, in spite of the provisions of the Constitution, 1996, the Domestic Violence Act, 1998, as well as other legislation and policies, aimed to provide protection to the victims of domestic violence. Statistics revealed that violence against women in South Africa remains widespread (Davies & Dreyer, 2014:1).

The theoretical and legislative framework established in this chapter revealed that domestic violence against women is present in every society and is one of the most common crimes that women, globally and in South Africa, are exposed to on daily basis. It can be argued that women, as the victims of domestic violence, are a barometer of the

inescapable culture of violence in society. One of the contributing factors is that a patriarchal mind-set is still prevalent in many societies, including South Africa. It can be argued that violence against women is a social problem which needs to be addressed by all states, governments and international organisations.

Chapter 3 provided a theoretical background on cooperative government. The chapter addressed the following two research objectives:

- To determine the theory and value of cooperative government and its role in cases of domestic violence, especially SAPS Ikageng and the NW DJCD; and
- To establish the statutory and regulatory framework for cooperative government in South Africa.

The chapter conceptualised cooperative government, indicating that it should be the framework through which the aim of promoting a developmental state is achieved (Malan, 2012:117). The chapter focused on the origin, nature of cooperative government in South Africa; evolution of IGR and cooperative government; principles of cooperative government; and definitional perspectives of cooperative government and IGR. The chapter also highlighted the value and significance of cooperative government. It was also determined that cooperative government encourages partnership, uniformity, standardisation and harmonisation within, and between, the provincial and national government with the view to ensure that the various spheres of government and organs of state complement each other appropriately and adequately to fulfil their obligations, both separately and collectively (Plaatjies, 2008:16).

The evolution of cooperative government and IGR was discussed briefly, including the origin and nature of cooperative government in South Africa. It was also established that the cultural trace for the current South African cooperative government and IGR framework is referred to as *Ubuntu* and is based on elements such as the equal treatment of persons, communal sharing of amenities, respect and love for another, mutual trust, and sharing (Mahlatsi, 2010:77; Mathebula, 2011:841; Ngcobo, 2011:13; Greffrath, 2016:170).

It was also revealed that the CODESA negotiations in the early 1990s led towards drafting the Constitution, 1996, which comprise of the principles of cooperative government; requires the spheres of the government and all organs of state to provide effective, efficient, accountable and coherent government systems, functions and services. Chapter 3 also distinguished between the federal and unitary forms of government and it was determined that South Africa has a basic unitary system with strong and broad federal characteristics (Malan, 2000:6; Sokhela, 2006:62; Khan *et al.*, 2011:29).

A number of theoretical approaches to the study of governmental relations also contributed towards understanding the nature of governmental relations which included: constitutional; democratic; financial and the normative approach. All these approaches were found to be appropriate for the democratic developmental context of South Africa.

South Africa is regarded as a democratic development state because it promotes the principles of democracy, development, self-reliance and unity (Seshamani & Ndhlovu, 2016:767). A plethora of legislation regulating cooperative government in South Africa was discussed, most notably the Constitution, 1996 and its principles; Intergovernmental Relations Act, 2005; NDP, 2011, MTSF (2014 – 2019); and the Draft Green Paper on Cooperative Governance, 2010.

The Constitution, 1996, provides that the spheres of government are distinctive, interdependent and interrelated and the spheres of government and organs of state are required to fulfil these constitutional obligations. The NDP articulates a broad 20-year policy with objectives and targets for economic and social development within the framework of South Africa's constitutional democracy. The MTSF, 2014-2019, delineates the actions and targets of the government that need to be achieved, as outlined in the NDP. The Intergovernmental Framework Act, 2005 seeks to provide clarity, focus and certainty of the core concepts of IGR. The Intergovernmental Framework Act, 2005 does not only provide for the establishment of IGR systems but also regulates the composition and operation of these forums. The Draft Green Paper on Cooperative Governance, 2010, submits that cooperative government and IGR must ensure that contestations due to different interests are managed proactively (Motingoe, 2012:58).

The legislation on cooperative government clearly stipulates that all spheres of government and organs of the state must work together to ensure that services are delivered to the communities. It was further established that there are a number of challenges regarding the implementation of cooperative government in South Africa, including poor coordination, fragmentation, duplication, a lack of cooperation, and accountability (Mahlatsi, 2010:14; Motingoe, 2012:69).

From the above deliberations, it can be inferred that no sphere of government or organ of state can function effectively without each other. SAPS Ikageng and the NW DJCD should collaborate to ensure that the victims of domestic violence are and feel safe and served efficiently and humanely through the administrative processes of cases of domestic violence.

Chapter 4 served as the empirical chapter of the study and addressed the following research objectives:

- To establish the efficiency of the administrative services provided to the victims of domestic violence, as well as how the victims are treated by SAPS Ikageng and the NW DJCD; and
- To determine whether there is cooperative government between SAPS Ikageng and the NW DJCD in terms of the administration of cases of domestic violence.

The chapter revealed the results acquired from the personal semi-structured interviews which included the following participants: 10 police officers at SAPS Ikageng; one (1) police officer at the Domestic Violence Office of SAPS Ikageng; two (2) employees at the NW DJCD (one clerk of court and one magistrate); two (2) social workers; and 10 victims (women) of domestic violence. The personal interviews provided data to understanding the nature of cooperative government between SAPS Ikageng and the NW DJCD. The challenges and shortcomings of cooperative government between SAPS Ikageng and the NW DJCD was established, including those in the administrative services provided to the victims of domestic violence.

Five (5) themes emerged from the findings of the study:

Theme 1 revealed that the participants have **limited knowledge of** their duties in terms of **the Domestic Violence Act, 1998**. This was revealed by their responses of the duties imposed on the police officers at SAPS Ikageng and the NW DJCD employees. This study established that SAPS Ikageng and the NW DJCD have no knowledge of how to implement the Act. It can be inferred, that the two departments are not working together and operating in silos which inhibits the proper safety of the victims of domestic violence.

Theme 2 reflected on the confirmation of **theoretical premises** of domestic violence. The theories that emerged during the interviews provided a rich context on which the recommendations can be based. The participants' (specifically the social workers) responses revealed truths from the following theories: Culture of Violence Theory, Family Systems Theory, Social Learning Theory and Feminist Theory. The results acquired from the interviews with the social workers also revealed the relevance of the cycle of violence and its recurring nature.

Theme 3 reflected on the **challenges related to the implementation of the Domestic Violence Act, 1998**. It was evident from the participant's responses that the implementation of the Act remains a problem. As indicated in section 4.4.1, there is uncertainty of who should serve protection orders and who should assist the victims to complete the forms.

Theme 4 reflected on the **cooperation between the relevant stakeholders**, which is SAPS Ikageng and the NW DJCD. It became evidently clear that there is no cooperation between the two departments. SAPS, *inter alia*, refuses to serve protection orders from court and the employees from the NW DJCD refuse to complete application forms for the victims (Taranto *et al.*, 2013:4; HSRC, 2014:24). These delays the administrative process of protection orders.

Theme 5 reflected on the **effective and humane treatment of the victims of domestic violence**. It was evident from the participants' responses and the literature review that victims are not treated in a humane and efficient manner. The study revealed that the police officers delay to serve protection orders on respondents and the court delays issuing

protection orders. Consequently, the victims remain in imminent danger (as discussed in section 4.2.2). It was also revealed that the waiting period to issue a protection order at the NW DJCD is three months. During this delay, the victims live in fear of their abusers and often suffer abuse while some are even killed during this period. The literature and the interviews revealed that the behaviour of the SAPS officers and the NW DJCD employees is insensitive and callous (Operational police officer, personal communications, 15 July 2016).

It was also established that poor communication is one of the major deterrence's between SAPS and the NW DJCD in administering applications for protection orders. It is clear that the operational police officers are not informed of the decisions taken between the Domestic Violence Office of SAPS Ikageng and the NW DJCD. This results in regular inconsistencies. Furthermore, the interviews also revealed that there is a lack of leadership at SAPS Ikageng, that is, the police officers are not managed properly by their commanders. The commanders do not want to institute disciplinary steps against members who fail to execute their duties in terms of the Domestic Violence Act, 1998. Consequently, they are also responsible for subjecting victims to secondary victimisation. The literature revealed that the need for quality leadership is critical because the Public Service faces a range of challenges as well as capacity limitations (Ile, 2010:55-56; Malan, 2012;118-119; Govender, 2014:5; Zulu, 2014:80-89; Tapscott, 2017-15-16).

Furthermore, based on the literature review and interviews, it was revealed that there is no cooperation between SAPS Ikageng and the NW DJCD. It is imperative that the two departments come together and ensure that contestations due to different interests are managed proactively (Motingoe, 2012:58). The literature revealed that the weak system of cooperation leads to poor coordination within and between the different spheres of government, creating an incapacity to implement national programmes and a consequent failure to deliver basic services (RSA, 1998:35; Du Plessis, 2008:18; Edwards, 2008a:75; RSA, 2010:45; Ile, 2010:56; Motingoe, 2012:69-70) (as mentioned in chapter 3. Section 3.6).

In consideration of the literature review and interviews conducted during the study, it became evident that the solution to the current situation between SAPS Ikageng and the NW DJCD, is to ensure that the two departments collaborate to implement the Domestic

Violence Act, 1998, as obligated to provide various services to victims of domestic violence. However, these obligations are clearly not supported up by other departments (CSV, 2016:14). It can be concluded that SAPS and the DJCD are not well-trained to manage cases of domestic violence.

Chapter 5 is the concluding chapter the study. The chapter provides a summary of the preceding chapters (above), as well as the primary findings of the study and recommendations to improve the administration of the domestic violence process through cooperative government. This chapter addresses the following research objective:

- To offer recommendations on cooperative government between SAPS Ikageng and the NW DJCD to enhance the efficiency and humanisation of the administrative processes of cases of domestic violence.

To address the aforementioned research objective, and based on the primary findings of the study, specified above, particular recommendations can be provided to improve cooperative government between SAPS Ikageng and the NW DJCD to enhance the efficiency and humanisation of the administrative processes of cases of domestic violence. Section 5.3 below provides the recommendations.

5.3. RECOMMENDATIONS

Based on the literature review on domestic violence (chapter 2) and cooperative government (chapter 3), the requirements and guidelines as set out in the statutory and regulatory framework for domestic violence (chapter 2) and cooperative government (chapter 3) respectively, as well as the empirical research that was conducted by means of semi-structured personal interviews (chapter 4), the following recommendations can be provided for the improvement/implementation of cooperative government between SAPS Ikageng and NW DJCD to administer the process of cases of domestic violence efficiently and to treat the victims thereof domestic in a humane manner.

Recommendation 1: Cooperative government, as prescribed by the Constitution, 1996

SAPS Ikageng and the NW DJCD need to collaborate and fully commit to cooperative government to render effective services to the victims of domestic violence. This shared responsibility by SAPS Ikageng and the NW DJCD is underpinned by the Constitution, 1996, the supreme law of the country, which explicitly provides for cooperative government between all spheres of government and all organs of state (RSA, 1996:21). A constitutional obligation cannot be regarded as an option; it is a mandatory imperative that should be complied with. Further to this, the Constitution, 1996, in its Bill of Rights, is unambiguous in stipulating the protection of the rights of all citizens. Particularly the following human rights are relevant to domestic violence and the protection of these rights should, therefore, be ensured by the SAPS police officers and the NW DJCD employees in administering cases of domestic violence (RSA, 1996:5):

- Section 9 (1) – everyone is equal before the law and has the right to equal safety;
- Section 10 – everyone has the right to their dignity being valued; and
- Section 12 (1) (c) – everyone has the right to not being exposed to any kind of violence.

Women are constitutionally entitled to the same rights as men, but the incidence of domestic violence infringes the principles that lie at the heart of morality, inherent dignity and worthiness of all humans (Thomas & Beasley, 2011:37); and the inalienable right to be free from fear. In light of the democratic spirit of the Constitution, 1996, the encroachment on the dignity of women through domestic violence is not only inhumane, but also inconsistent with the rights they are entitled to by proviso of the Bill of Rights, as well as a gross neglect of constitutional responsibilities by those who should protect them.

Cooperative government does not ignore differences of approaches and perceptions between the different spheres of government and organs of state, but encourages healthy debate to address the needs of the people they represent (Malan, 2000:17; Maluleke, 2015:21). As revealed by the results acquired from the empirical investigation, no healthy debate or conversations are currently taking place between SAPS Ikageng and the NW

DJCD. Effective communication will assist to minimise the barriers between SAPS Ikageng and the NW DJCD so that functions can be executed smoothly to provide for the effective and efficient administration of cases of domestic violence and the democratically acceptable treatment of the victims of domestic violence. Effective communication will also reduce unnecessary competition among the role players in domestic violence and will facilitate harmonious cooperation. Effective communication can be stimulated through regular meetings between the relevant role players from both government entities. At these meetings, the challenges experienced with the administrative processes of cases of domestic violence can be shared and solutions thereto can be found collaboratively.

To ensure cooperative government, as enshrined in the Constitution, 1996, the police officers at SAPS Ikageng and the employees at the NW DJCD should subscribe and commit to the following principles:

- **Teamwork** – a silo mentality and blame shifting in the administration of cases of domestic violence is ineffective, causes divisions, and is inconsistent with the constitutional imperative of cooperative government;
- **Service ethos** – the focus of attention should not be on either government entity, but on the citizens who are entitled to service delivery and particular human rights (the victims of domestic violence), as stipulated in the Constitution, 1996; and
- **Ubuntu** – the intention of cooperative government underscores the principle of *Ubuntu* – understanding but not vengeance; reparation but not for retaliation; humanness and not victimisation (Greffrath, 2017:170).

When public servants (police officers at SAPS Ikageng and employees at the NW DJCD) truly subscribe to the abovementioned principles, cooperative government would not be a challenge. However, it can be argued that to ensure that the employees of a government institution reflect these principles in their actions and behaviour, the leadership of the institution should model these principles. The next recommendation specifically pertains to the required leadership for successful cooperative government.

Recommendation 2: Effective and accountable leadership

The interviews held with the participants revealed that commanders in SAPS do not take responsibility of the members under their command. The members refuse to serve protection orders in terms of the Domestic Violence Act, 1998. Moreover, no disciplinary measures are taken against them. The commanders need to institute disciplinary steps against non-compliance as stipulated in the Act (see chapter 4, section 4.3.1.2). The managers need to demonstrate their ability to take decisions to lead employees.

As mentioned in the previous recommendation, effective cooperative government can only be attained if the leadership of these two government institutions model principles such as teamwork (collaboration), service ethos and *Ubuntu*. It can be argued that leaders that exhibit ethical behaviour would be more likely to create a sense of responsibility and accountability amongst their subordinates. Furthermore, the leadership of these government entities should demonstrate their commitment to cooperative government and drive the implementation thereof.

Recommendation 3: Monitoring and evaluation

It is also recommended to implement monitoring and evaluation measures and mechanisms to ensure compliance of the police officers and the clerks of the court according to the constitutional principles of cooperative government and their statutory duties outlined in the Domestic Violence Act, 1998. The monitoring and evaluation of the implementation of the Domestic Violence Act, 1998, is critical to ensure that the Act as an intervention tool in domestic violence is fully effected. The monitoring and evaluation will also assist to track the progress, implementation successes and failures and outputs in ensuring that the two institutions adhere to and comply with professional ethics and their statutory responsibilities.

It can also be argued that a monitoring and evaluation system will not reap the required benefits of compliance and cooperative government, if not complemented with punitive measures for non-compliance. It is, therefore, also recommended that strict disciplinary measures be coupled with the monitoring and evaluation system of the implementation of the Domestic Violence Act, 1998. The effective monitoring and evaluation of the

administrative processes of cases of domestic violence can significantly improve the efficiency of the service delivery to the victims of domestic violence. It can also enhance the humane treatment of the victims of domestic violence, by ensuring that officials who do not comply with particular ethical and professional behaviour, will be formally disciplined.

Recommendation 4: Improve the capacity of government institutions

It is recommended that particular attention is given to capacitating SAPS Ikageng and the NW DJCD through the provision of resources and by providing the necessary training to police officers and the clerks of the courts. In terms of the resource capacity, these two government entities should ensure that adequate and well-trained employees are available to manage the case load of cases of domestic violence. It should be established whether the delays in the establishment of a court date and the issuing of protection orders is due to the lack of staff at the NW DJCD. If this is the case, the Department should make a concerted effort to appoint additional staff to assist. It is also recommended that compulsory training be availed for current employees to ensure they have extensive knowledge of the provision of the Domestic Violence Act, 1998, and are fully aware of and well-trained to fulfil their duties.

Furthermore, it is recommended that critical resources such as vehicles to attend to call-outs are availed to SAPS Ikageng. It was revealed during the interviews that that only one police vehicle is available to respond to domestic violence call-outs. Since a vehicle can only attend to one call at a time, several other calls are left unattended, given the number of cases of domestic violence, SAPS Ikageng attends to on a daily basis – 19 (SAPS Ikageng, 2016). Training and debriefing of role players is also critical. Furthermore, as is the case with the clerks of court, the operational police officers at SAPS Ikageng should also be trained in terms of their roles and responsibilities as required by the provisions of the Domestic Violence Act, 1998.

Advanced training will ensure that the skills needed to assist the victims of domestic violence are constantly improved and redeveloped. Training will also address weaknesses, expand the knowledge base of officials, ensure that domestic violence practitioners are well-informed of the requirements of the Domestic Violence Act, 1998, and perform their

duties professionally. Seminars and workshops should be held regularly to empower the practitioners with the implementation of the Act. There is also a need to review the current training programme (a five-day course) because it is inadequate, based on the results acquired from the interviews. It was revealed that significant shortcomings exist in the administration of cases of domestic violence.

5.4. SIGNIFICANCE OF THE STUDY

It is generally acknowledged and reported that despite some of the most advanced legislation on domestic violence in South Africa (such as the Domestic Violence Act, 1998), effective support is not provided to the victims of domestic violence and legislative resolves presently available to the victims of domestic violence, have proved to be unsuccessful (RSA, 1998:1; Maselesele *et al.*, 2011:2518; Taranto *et al.*, 2013:2; CSP, 2013:4; Morei, 2014:928; The Conversation Africa, 2015). The study makes valuable recommendations of how cooperative government between SAPS Ikageng and the NW DJCD can be improved. The strengthening of this relationship will contribute towards the augmentation of the administrative process of cases of domestic violence that will benefit the victims thereof and result in more humane treatment.

The locus (SAPS Ikageng and the NW DJCD) and the focus of the study (cooperative government/administration/service delivery to the victims of domestic violence) rests in the domain of public administration in practice and Public Administration as an academic discipline. Therefore, through the recommendations made in the study, a contribution was made to the body of scholarly knowledge in Public Administration. The critical analysis of the Constitution, 1996, and accompanying legislation, such as the Domestic Violence Act, 1998, is included in the purview of Public Administration. Thus, recommendations on the improvement of the constitutional principle of cooperative government also contributed towards the scholarly knowledge of Public Administration, as well as the practice of public administration.

5.5. FUTURE RESEARCH

While this study focused on assessing the role of SAPS Ikageng and the NW DJCD in rendering efficient administrative services in a humane manner to the victims of domestic violence through cooperative government, future researchers can broaden the research on domestic violence by focusing on the following aspects:

- The root causes of domestic violence specifically in Ikageng, because domestic violence is recorded in high volumes in this geographic area (Interview participants, 2017).
- Establish monitoring and evaluation measures and mechanisms for SAPS and the DJCD to ensure effectiveness; and surpass challenges and shortcomings in the administration of cases of domestic violence cases.
- The role of leadership in the effective administration of cases of domestic violence.

5.6. CONCLUSION

The study conducted research on two particular phenomena and the relation to each other – cooperative government and domestic violence. The significance of both of these phenomena can be traced to the supreme law of the country, the Constitution, 1996. Cooperative government is a constitutional imperative, as stipulated in Chapter 2, Section 41 of the Constitution, 1996 (RSA, 1996:21). The Constitution, 1996, also encapsulates safety as a basic right towards all citizens (RSA, 1996:5). Furthermore, the prevalence of domestic violence in the South African society infringes the constitutional rights of dignity, equality and the right to be free from violence, as enshrined in the Bill of Rights of the Constitution, 1996 (RSA, 1996:5).

The study focused on cooperative government between SAPS Ikageng and the NW DJCD with regard to the efficient rendering of administrative services to the victims of domestic violence. An extensive literature study, as well as empirical research was conducted. The literature study was conducted to establish the theoretical, as well as the statutory and regulatory framework for domestic violence and cooperative government in South Africa. The empirical study was conducted to establish whether SAPS Ikageng and the NW DJCD

provide the victims of domestic violence with efficient administrative services through cooperative government. The empirical study was also focused on establishing whether the victims of domestic violence are treated in a humane manner by these two government entities. The study adopted a qualitative research approach with a case study research design. Semi-structured personal interviews were utilised as the data collection instrument.

The primary findings of the study revealed that cooperative government is essential to address the fissure between the SAPS Ikageng and the NW DJCD. However, these two government entities do not collaborate harmoniously and supportively in practice. Various reasons were revealed for the lack of proper cooperative government between SAPS Ikageng and the NW DJCD. The most significant was that employees at both government institutions neglect their responsibilities to administer cases of domestic violence and/or prefer to hold employees at other institutions responsible for these duties. The empirical research also revealed that the victims of domestic violence are treated with discontent and insensitivity.

The study provides several recommendations on cooperative government between SAPS Ikageng and the NW DJCD to enhance the efficiency and humanisation of the administrative processes of cases of domestic violence. The following recommendations were made: SAPS Ikageng and the NW DJCD should implement the constitutional principle of cooperative government, as prescribed by the Constitution, 1996; the two government entities should ensure that the leadership is effective and accountable; monitoring and evaluating the provisions of the Domestic Violence Act, 1998 should be implemented; and the capacity of both departments should be improved in terms of resources (adequate and committed employees), as well as training of police officers at SAPS Ikageng and the clerks of the court at the NW DJCD to ensure they have the necessary knowledge and skills to fulfil their duties, as stipulated by the Constitution, 1996 and the Domestic Violence Act, 1998.

All the research objectives, set out at the beginning of the study were achieved. The researcher anticipates that both SAPS Ikageng and the NW DJCD will take note of the findings of the study and consider implementing the recommendations. The study is also believed to make a scholarly contribution to the body of knowledge in the academic

discipline of Public Administration. It is hoped that Public Administration students will benefit from this research.

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INTERVIEW QUESTIONS

Operational police officers at SAPS, Ikageng

1. What are your duties as operational police officers at SAPS in terms of the Domestic Violence Act?
2. What challenges do you experience in terms of cases of domestic violence? Please elaborate.
3. What is your experience of the cooperation between members of SAPS, Ikageng and the North West Department of Justice and Constitutional Development officials? Please elaborate on any positive or negative experiences.
4. Do you think the victims of domestic violence are treated in an efficient and humane manner when they lay charges of domestic abuse? Please explain your response.

INTERVIEW QUESTIONS

Police officials in the Domestic Violence Office at SAPS, Ikageng

1. What are your duties at SAPS in terms of the Domestic Violence Act, 1998?
2. What is your view of the adequacy and/or effectiveness of interdepartmental cooperation between SAPS, Ikageng and the North West Department of Justice and Constitutional Development (NW DJCD) in terms of administering cases of domestic violence?
Do you, *inter alia*, share information, and assist each other? Do you ever meet as departments to discuss challenges you encounter in executing your duties?
3. What are the challenges you experience in the application and serving of protection orders in terms of the Domestic Violence Act, 1998 and National Instruction 1/1999?
4. Do you think the victims of domestic violence are treated in an efficient and humane manner when they apply for protection orders?
Please explain your response.

INTERVIEW QUESTIONS

**Employees at the North West Department of Justice and Constitutional
Development
(Clerks of the Court)**

1. What are your duties as employees at the North West Department of Justice and Constitutional Development (NW DJCD) in terms of the Domestic Violence Act, 1998?
2. After a protection order is issued to a victim of domestic violence, what measures do you take to ensure that the victim is protected?
3. Who assists the victims of domestic violence to complete the application forms for protection orders?
4. What is your experience of the cooperation between members of SAPS Ikageng and the officials at the NW DJCD?
Please elaborate on any positive or negative experiences.
5. Do you think the victims of domestic violence are treated in an efficient and humane manner during the administrative processes of cases of domestic violence?
Please explain your response.

INTERVIEW QUESTIONS

Magistrate at the Department of Justice and Constitutional Development

1. What are the realistic timeframes to manage the administrative process of cases of domestic violence and how long does it generally take for the application for a protection order to be approved?
Please explain your response.
2. Have there been cases of victims of domestic violence who were harmed while waiting for a protection order to be issued?
Please elaborate on your response.
3. What is your experience of the cooperation between members of SAPS, Ikageng and the officials at the North West Department of Justice and Constitutional Development (NW DJCD)?
Please elaborate on any positive or negative experiences.
4. What suggestions can you offer to improve the inter-departmental cooperation between members of SAPS, Ikageng and the officials at the NW DJCD?

INTERVIEW QUESTIONS
Victims of domestic violence

1. What is your experience of the administrative assistance and service you received from the police officials at SAPS Ikageng when you laid charges of domestic abuse and applied for a protection order?
Please elaborate on any positive or negative experiences you encountered, e.g., were you treated efficiently and in a humane and sensitive manner?

2. What is your experience of the administrative assistance and service from the Clerks of Court when you laid charges of domestic abuse and applied for a protection order?
Please elaborate on any positive or negative experiences you encountered, e.g., were you treated efficiently and in a humane and sensitive manner?

3. Did your application for a protection order serve immediately in court or was it delayed?
If it was delayed, what were the consequences, either physically or emotionally?

4. What were the biggest challenges you encountered during your case of domestic violence and how do you think these processes can be addressed?

INTERVIEW QUESTIONS

Social workers

1. In your experience in supporting the victims of domestic violence, which role would the following factors play in cases of domestic violence?

- A culture of violence in the South African society.
- Other dynamics and relationships between the members of the family were also dysfunctional.
- Violence against women as behaviour learned in the parents' house such as a father that abused the mother (e.g. The son may repeat this behaviour with his own wife or the daughter may tolerate this behaviour in her own marriage as it is what was modelled to her).
- Violence against women as behaviour that was socially observed as acceptable in a community and then modelled later in life.
- The role of a very patriarchal society where male dominance, sexism and gender inequality prevail.
- Men use domestic violence as a method of power and control to influence their partners' current or future behaviour.

2. What type of cases of domestic violence do you encounter most?

- Physical abuse
- Sexual abuse and marital rape
- Emotional, verbal and psychological abuse
- Economic and financial abuse
- Intimidation
- Harassment
- Stalking
- Damage to property
- Entry into a woman's house without permission

3. Did any of the victims of domestic violence reveal the following to you?

- An initial stage of tension between the abuser and the victim before it reached a stage of conflict.
- A violent stage of the abuser's behaviour escalated and the tension erupted into abuse and battering and violence became part of the relationship.
- The victim tried her best to calm the abuser by being nurturing and compliant and believed that conciliatory behaviour would prevent the anger and abuse from escalating.
- The victim blamed herself for the abuse against her.
- The victim generally continued to tolerate the abuse and felt that she had invested so much in the relationship that she wanted to have faith in her partner and the battering would never occur again.
- At some stage, the abuser asked for forgiveness and became loving, kind and remorseful, until the violence erupted again.
- The victim felt that her life was meaningless and without purpose

ANNEXURE G

CONSENT FORM

I, _____ (name and surname), agree/do not agree (delete which is not applicable) to be interviewed for a Master's research study in Public Management and Governance, titled: **A cooperative government approach to domestic violence: the case of SAPS, Ikageng and the North West Department of Justice and Constitutional Development.**

I give consent to participate in the study with the following understanding:

- The purpose of the interview was explained to me.
- My participation is voluntary.
- My anonymity is ensured. Feedback of the interviews will be reported in group format in the study; therefore, I will not be identified by name.
- The information I provide will be used only for the purpose of this research study and not availed to any third party.

Interviewee

Signature: _____

Date: _____