Refugee Review Tribunal AUSTRALIA

RRT RESEARCH RESPONSE

Research Response Number: ZAF31961 **Country:** South Africa **Date:** 28 June 2007

Keywords: South Africa – Marriage outside tribes – Women – Gender violence – Police – State protection – Honour crimes – Pakistan – Dual citizenship

This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

Questions

- 1. What is the situation in South Africa where a Zulu woman or tribal woman marries outside her tribe and without her family's permission?
- 2. Is there any history of "honour" crimes against the woman?
- 3. Does South Africa have an effective police force?
- 4. Will they act in cases that may be seen as tribal and family related?
- 5. Does the state prosecute crimes which can be seen as private (family) disputes?
- 6. Does Pakistan allow dual citizenship? If so, could a wife go to Pakistan?

RESPONSE

1. What is the situation in South Africa where a Zulu woman or tribal woman marries outside her tribe and without her family's permission?

No information was found in the sources consulted specifically on the situation where a Zulu woman or tribal woman marries outside her tribe and without her family's permission. Sources report that inter-racial marriage in South Africa is rare.

For information on the numbers and the attitudes and treatment of inter-racial marriages in South Africa see question 5 in the attached RRT Country Research Response ZAF31347 (RRT Country Research 2007, *Research Response ZAF31347*, 14 February, quest. 5/ pp.9-11 – Attachment 1).

Of interest is the attached Canadian Immigration and Refugee Board information on the societal treatment of foreigners in South Africa (Immigration and Refugee Board of Canada 2007, ZAF102483.E – South Africa: Societal treatment of foreigners from other African countries, in particular from the Democratic Republic of Congo (DRC); access to equality courts; availability of state protection (2004 – 2007), 29 March http://www.irb-

<u>cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451103</u> – Accessed 25 June 2007 – Attachment 2).

Bride price (lobolo, lobola)

A South African court case noted that *lobolo* is the consideration paid by the bridegroom to the family of the bride before marriage. It may be compared to a dowry or bride price in a Western marriage, but it is not quite the same. *Lobolo* has been described as "the rock on which the customary marriage is founded" (Supreme Court of Appeal of South Africa 2004, *Reportable Case No: 350/2003 – The State and Khehlani Mvamvu*, 29 September, footnote 4/p.4 http://www.supremecourtofappeal.gov.za/judgments/sca_judg/sca_2004/3502003.pdf – Accessed 26 June 2007 – Attachment 3).

Chambers, writing in *Daedalus*, also describes the lobolo transaction as the "cornerstone of the customary marriage system" (Chambers, David L. 2000, 'Civilizing the natives: Marriage in post-apartheid South Africa', *Daedalus*, Fall http://findarticles.com/p/articles/mi_qa3671/is_200010/ai_n8925612/print – Accessed 25 June 2007 – Attachment 4).

Chambers states that:

The customary rules determining how a marriage is formed vary widely across groups but share common characteristics, many of which reach back many centuries. At root, customary marriage marks not the joining of two individuals but the joining of two families or two kinship groups and is a vehicle for ensuring the continuation of the male's family line. In nearly all groups, the groom or members of his family enter into highly stylized negotiations with the parents of the bride and agree on an amount of bridewealth, called lobolo, bogadi, and various other names (hereafter, lobolo), that the groom will convey to the parents of the bride. In the past, the lobolo was nearly always paid in cattle. Today the parties nearly always agree on a sum of money, though the amount is still commonly determined by the current cost of a certain number of cows. The equivalent of several hundred American dollars would be a common figure. That is a very large sum for most black South African men in their twenties (Chambers, David L. 2000, 'Civilizing the natives: Marriage in post-apartheid South Africa', *Daedalus*, Fall http://findarticles.com/p/articles/mi_qa3671/is_200010/ai_n8925612/print – Accessed 25 June 2007 – Attachment 4).

2. Is there any history of "honour" crimes against the woman?

No information was found in the sources consulted of "honour" crimes against women in South Africa. Nevertheless crimes against women in South Africa have been described as "pervasive".

On "honour" crimes, a researcher at the Centre of Islamic Studies and Middle Eastern Law in the United Kingdom stated in an interview with the Association for Women's Rights in Development (AWID) that:

... 'crimes of honour' encompass a variety of manifestations of violence against women including 'honour killings', assault, confinement, imprisonment, and forced marriage, where the claimed motivation, justification or mitigation for the violence is attributed to notions of 'honour' (related to family (natal), conjugal or community 'honour') requiring the preservation of male control of women, particularly women's sexual conduct whether real or perceived...(Duddy, Janice 2005, 'What are 'crimes of honour' and how is it impacting

British society?', Interview with Ms Sanchita Hosali, Researcher for the Centre of Islamic and Middle Eastern Law (CIMEL), Association for Women's Rights in Development (AWID) website http://www.awid.org/go.php?stid=1334 – Accessed 26 June 2007 – Attachment 5).

In respect of South Africa the US Department of State also mentions that there is "pervasive violence against women". It reported that domestic violence was "pervasive and included physical, sexual, emotional, and verbal abuse" (US Department of State 2007, '[Introduction]', 'Women' in *Country Reports on Human Rights Practices for 2006 – South Africa*, 6 March – Attachment 6).

Vetten, Researcher and Policy Analyst at the Tshwaranang Legal Advocacy Centre to End Violence Against Women, writes that South Africa's Domestic Violence Act (DVA) defines domestic violence and includes a broad range of behaviours as well as familial and domestic relationships within its ambit (Vetten, Lisa 2006, 'Violence against women in South Africa', *State of the Nation: South Africa 2007*, 10 November, Chapt. 17, p.427,576 http://www.hsrcpress.ac.za/full_title_info.asp?id=2183 – Accessed 7 February 2007 – Attachment 7).

Vetten on domestic relationships and the DVA notes that:

Domestic relationships covered by the DVA include: married, divorced or separated couples; couples living together (including gay or lesbian couples); parents of a child; **family members (including the extended family)**; people who are or were engaged or dating one another – including those circumstances where one party (but not the other) perceives some form of romantic, intimate or sexual relationship to be in existence; children; and people who share or have recently shared the same residence (such as flatmates, housemates) (Vetten, Lisa 2006, 'Violence against women in South Africa', *State of the Nation: South Africa 2007*, 10 November, Chapt. 17, footnote 7/ p.443 http://www.hsrcpress.ac.za/full_title_info.asp?id=2183 – Accessed 7 February 2007 – Attachment 7).

Information on the South African Police Service (SAPS) website also notes that domestic violence takes place in a domestic relationship which can include family members ('Breaking the Silence on Domestic Violence' 2004, South African Police Service (SAPS) website http://www.saps.gov.za/docs_publs/publications/pamphlets/domestic_violence.htm – Accessed 26 June 2007 – Attachment 8).

3. Does South Africa have an effective police force?

The principal law enforcement agency in South Africa is the South African Police Service (SAPS). Municipalities also maintain metropolitan police forces under local control in major cities such as Johannesburg, Durban, Pretoria, and Cape Town ('South African Police Service' (undated), South African High Commission United Kingdom website http://www.southafricahouse.com/OS_SAPS.htm – Accessed 26 June 2007 – Attachment 9; US Department of State 2007, 'Role of the Police and Security Apparatus' in *Country Reports on Human Rights Practices for 2006 – South Africa*, 6 March – Attachment 6).

According to the US State Department human rights report for 2006, SAPS continued a major restructuring and transformation from a primarily public order security force to a more accountable, community service oriented force. However, it was ill-equipped, overworked and poorly trained. SAPS continued to be deficient in mid-level leadership and institutional

memory inhibiting overall performance. There are efforts to reform police practices and reports of police killings, criminal offences and misconduct have decreased (US Department of State 2007, 'Role of the Police and Security Apparatus' in *Country Reports on Human Rights Practices for 2006 – South Africa*, 6 March – Attachment 6).

4. Will the police act in cases that may be seen as tribal and family related?

Sources indicate that police may act in cases that may be seen as tribal and family related; however, societal attitudes, lack of infrastructure, resources and training may hamper the police response.

On violence against women an *IRIN News* article cites an Amnesty International report that in South Africa "violence against women has been regarded as a 'private' matter between the abuser, the victim and the immediate family" ('Women with guns to their heads' 2005, *IRIN News*, 8 March http://www.irinnews.org/report.asp?ReportID=45997&Select Region=Southern Africa&SelectCountry=SOUTH AFRICA – Accessed 10 March 2005 – Attachment 10).

Family related cases

The SAPS website, noting that that domestic violence takes place in a domestic relationship which includes any family members, outlines police responsibilities as follows:

It is the commitment of the SAPS to treat victims of domestic violence with sensitivity and care.

As police officials –

- we will treat victims with respect and protect your dignity;
- listen to what victims have to say;
- not insult or blame or suggest that it was their own fault that they were abused;
- assist you with empathy and care; and
- inform victims of their rights and options.

To ensure that this has been done -

- we will ask victims to sign the Occurrence Book at the police station;
- provide victims with a notice in a language they understand, and explain how they should proceed;
- make an effort to find someone to speak to the victim in the language he/she understands;
- take a victim's statement in privacy and not in the presence of the abuser or the public;
- decide on the basis of your statement, whether to arrest the abuser and take his/her firearm, as well as determine the victim's needs and how to assist him/her;
- serve a protection order on the person against whom it was made, as directed by the court:
- keep a copy of the protection order and record every arrest made as proof for victims;
 and
- note your complaint in the Incident Register at the station as further proof that you
 reported the matter. This will also enable us to give a report on the progress in your
 case.

At the scene of the incident the Police will:

- Locate the complaint and take reasonable steps to protect the complainant from any further danger.
- Create an environment that is condusive (sic) to communicate.
- Obtain statements from the complainant and witness(es).
- If there is reason to believe that an act of violence has been committed, the respondent must be arrested immediately without a warrant.
- Search the premises and seize (for safekeeping) any firearms and/or dangerous weapons in the possession of the person who has either threatened to kill or injure another person.
- We will also do this if we are satisfied that the offender's mental state, inclination towards violence and/or dependence on alcohol or drugs could influence his/her behaviour and pose a threat to anyone.

What other assistance will the SAPS provide?

We will, where possible, help you find access to –

- medical attention:
- shelter: and
- victim counselling.

We will inform you of -

- the support services that are available in the area;
- alternative shelters if available;
- counselling services, if required;
- medical assistance;
- free services that are available; and
- the time of day these services are available.

We will ensure that a medical officer collects and records any medical evidence in support of a criminal charge ('Breaking the Silence on Domestic Violence' 2004, South African Police Service (SAPS) website

<u>http://www.saps.gov.za/docs_publs/publications/pamphlets/domestic_violence.htm</u> – Accessed 26 June 2007 – Attachment 8).

Vetten also states that the Domestic Violence Act attempts to place a number of obligations upon police (Vetten, Lisa 2006, 'Violence against women in South Africa', *State of the Nation: South Africa 2007*, 10 November, Chapt. 17, p.427 http://www.hsrcpress.ac.za/full_title_info.asp?id=2183 – Accessed 7 February 2007 – Attachment 7).

The obligations are described by Vetten as follows:

Briefly, the police are required to explain to complainants that they are there to provide whatever assistance the circumstances require, which may include helping the complainant to find suitable shelter or obtain medical treatment. In addition they should inform the complainant of her right both to apply for a protection order, as well as lay criminal charges. Where reasonably possible this information should be provided to the complainant in the form of a notice. The notice also sets out the steps required to apply for a protection order, explains

what the complainant should do in the event of a breach and sets out the type of relief or protection the complainant may request from the court. Where complainants cannot read the notice, police officers should read it to them in the language of their choice. They are also obliged to arrest the abuser if he does not obey the protection order (Vetten, Lisa 2006, 'Violence against women in South Africa', *State of the Nation: South Africa 2007*, 10 November, Chapt. 17, footnote 8/ pp.443-444 http://www.hsrcpress.ac.za/full_title_info.asp?id=2183 – Accessed 7 February 2007 – Attachment 7).

Vetten, citing studies on implementation of the DVA in parts of the Western Cape and Gauteng writes:

Effective implementation of the Act has been undermined by a range of factors, with police perceptions of domestic violence figuring prominently as obstacles to women seeking help (Mathews & Abrahams 2001; Parenzee et al. 2001). Parenzee et al. suggest that unwillingness to intervene in 'household disputes' remained pervasive in the SAPS and that domestic violence was rife among police officers. They concluded that progressive legislation, combined with unprogressive attitudes among law-enforcement agents, created negative attitudes towards complainants, resulting in secondary victimisation of abused women and/or a failure to act according to the legal obligations set out in the legislation. Negative attitudes towards complainants were found to be related to complainants' withdrawal of charges. Indeed, in December 2004 the KwaZulu-Natal MEC for Safety and Security, Bheki Cele, announced that police officers would, in future, be instructed to charge all women withdrawing domestic violence complaints with defeating the ends of justice (*The Mercury* 10.12.04).

. . .

The under-resourcing of courts and police stations emerges as another factor hampering the implementation of the Act (Parenzee et al. 2001; Vetten 2005). Too few personnel, in combination with a lack of police vehicles, fax machines and photocopiers are cited as placing additional burdens on law-enforcement agents. Magistrates have also expressed frustration with their resource constraints, pointing to increases in all components of legal work without corresponding increase in staff numbers (Artz 2003)(Vetten, Lisa 2006, 'Violence against women in South Africa', *State of the Nation: South Africa 2007*, 10 November, Chapt. 17, footnote 8/ pp.431-432 http://www.hsrcpress.ac.za/full_title_info.asp?id=2183 – Accessed 7 February 2007 – Attachment 7).

The US State Department has reported that under legislation the serving of protection orders on abusers is facilitated, police are required take victims to a place of safety. However, societal attitudes, lack of infrastructure, resources and training for law enforcement officers hampered the implementation of domestic violence legislation (US Department of State 2007, 'Women' in *Country Reports on Human Rights Practices for 2006 – South Africa*, 6 March – Attachment 6).

Tribal cases

News articles have reported police acting in cases, including investigating a murder, clamping down on illegal initiation schools and intervening in tribal clashes, which could be seen as tribal related.

In July 2006 it was reported that in the Eastern Cape province police and the provincial health department clamped down on illegal initiation schools in which deaths had occurred. Police reportedly arrested 16 people in connection with the deaths and were investigating murder

and kidnap charges (Tshivhidzo, Edwin 2006, 'Eastern Cape Clamps Down On Illegal Initiation Schools', allAfrica.com website, source: BuaNews (Tshwane), 3 July http://allafrica.com/stories/printable/200607030677.html – Accessed 26 June 2007 – Attachment 11).

In March 2006 police investigated the murder of an African National Congress (ANC) treasurer and school principal who reportedly had received death threats and there were alleged "'accusations that he had sold out the Nyawo tribe to the ANC" ('ANC treasurer in KZN gunned down' 2006, *SAPA (South African Press Association)*, 24 March – Attachment 12).

In August 2004 police intervened in violent clashes between the Xhosas and Sothos using rubber bullets and stun guns (Essop, Philda 2004, '5 Hurt in Tribal Clashes 70 Shacks Torched', allAfrica.com website, source: Cape Argus (Cape Town), 24 August http://allafrica.com/stories/printable/200408240665.html – Accessed 26 June 2007 – Attachment 13).

5. Does the state prosecute crimes which can be seen as private (family) disputes?

Country information indicates that the state prosecutes crimes which can be seen as private (family) disputes. However, there is backlog in the court system and some courts treat gender violence cases trivially.

The National Crime Prevention Strategy of 1996 established as a national priority crimes of violence against women and children and instituted legislative reforms in this area (Vetten, Lisa 2006, 'Violence against women in South Africa', *State of the Nation: South Africa 2007*, 10 November, Chapt. 17, p.426 http://www.hsrcpress.ac.za/full_title_info.asp?id=2183 – Accessed 7 February 2007 – Attachment 7).

The South African Constitutional Court has also held that the Constitution imposes a direct obligation on the state to protect the right of all persons to be free from domestic violence. Vetten notes that a number of significant gains have been made at the level of law and policy in relation to violence against women. However, Vetten suggests that checks or sanctions promised by laws are simultaneously weakened by ineffectual implementation (Vetten, Lisa 2006, 'Violence against women in South Africa', *State of the Nation: South Africa 2007*, 10 November, Chapt. 17, p.428,430,434 http://www.hsrcpress.ac.za/full_title_info.asp?id=2183 – Accessed 7 February 2007 – Attachment 7).

Five family courts representing specialist legal facilities to address domestic violence have been set up in South Africa. Family court centres include a family violence court (Vetten, Lisa 2006, 'Violence against women in South Africa', *State of the Nation: South Africa 2007*, 10 November, Chapt. 17, p.427, footnote 5/ p.443 http://www.hsrcpress.ac.za/full_title_info.asp?id=2183 – Accessed 7 February 2007 – Attachment 7).

According to Vetten, a 2002 survey of 1,000 women who had experienced abuse only 11% sought legal advice, making legal assistance the form of help least sought by women (Vetten, Lisa 2006, 'Violence against women in South Africa', *State of the Nation: South Africa 2007*, 10 November, Chapt. 17, p.434 http://www.hsrcpress.ac.za/full_title_info.asp?id=2183 – Accessed 7 February 2007 – Attachment 7).

Vetten writes:

...Indeed, law and policy intended to increase women's access to justice and punish behaviour that was formerly tolerated may well encourage more women to come forward, as may policies to bring about an improvement in police and prosecutorial treatment of women – particularly when a good deal of publicity advertises the introduction of such policy and law...(Vetten, Lisa 2006, 'Violence against women in South Africa', *State of the Nation: South Africa 2007*, 10 November, Chapt. 17, p.430 http://www.hsrcpress.ac.za/full_title_info.asp?id=2183 – Accessed 7 February 2007 – Attachment 7).

Information accessed on the SAPS website states that a victim of domestic violence is able to lay criminal charges at a police station. The police will ensure that medical evidence is collected to support a criminal charge ('Breaking the Silence on Domestic Violence' 2004, South African Police Service (SAPS) website

http://www.saps.gov.za/docs_publs/publications/pamphlets/domestic_violence.htm - Accessed 26 June 2007 - Attachment 8).

However, the US State Department notes that there are serious delays in the court system. South Africa's Department of Justice's annual report for 2005-06 indicated that the backlog of court cases rose by 11% in district courts over the previous year and 2% in regional courts (US Department of State 2007, 'Arrest and Detention', 'Trial Procedures' in *Country Reports on Human Rights Practices for 2006 – South Africa*, 6 March – Attachment 6).

The South African Deputy President recently stated that some of the country's courts treated gender violence cases as "trivial" and alleged offenders were "let off the hook" (Mtshali, Thokozani 2007, 'Action plan to fight violence against women', *Cape Argus*, 9 March – Attachment 14).

6. Does Pakistan allow dual citizenship? If so, could a wife go to Pakistan?

Information accessed from Pakistan's Ministry of Interior website indicates that Pakistan does not have dual nationality arrangements with South Africa ('Pakistan Citizenship' 2006, Government of Pakistan: Ministry of Interior website, 18 December http://www.pakistan.gov.pk/divisions/ContentPrint.jsp?DivID=23&cPath=221_227&ContentID=754 – Accessed 25 June 2007 – Attachment 15).

List of Sources Consulted

Internet Sources:

Google search engine http://www.google.com.au/
International Center for Research on Women http://www.icrw.org/
Tshwaranang Legal Advocacy Centre http://www.unifem.org/
UNIFEM http://www.unifem.org/

Databases:

FACTIVA (news database)
BACIS (DIMA Country Information database)
REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)
RRT Library Catalogue

List of Attachments

- 1. RRT Country Research 2007, *Research Response ZAF31347*, 14 February, quest. 5/pp.9-11.
- 2. Immigration and Refugee Board of Canada 2007, ZAF102483.E South Africa: Societal treatment of foreigners from other African countries, in particular from the Democratic Republic of Congo (DRC); access to equality courts; availability of state protection (2004 2007), 29 March http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=451103 Accessed 25 June 2007.
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- 5. Duddy, Janice 2005, 'What are 'crimes of honour' and how is it impacting British society?', Interview with Ms Sanchita Hosali, Researcher for the Centre of Islamic and Middle Eastern Law (CIMEL), Association for Women's Rights in Development (AWID) website http://www.awid.org/go.php?stid=1334 Accessed 26 June 2007.
- 6. US Department of State 2007, Country Reports on Human Rights Practices for 2006 South Africa, 6 March.
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- 8. 'Breaking the Silence on Domestic Violence' 2004, South African Police Service (SAPS) website

 http://www.saps.gov.za/docs-publs/publications/pamphlets/domestic_violence.htm –

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- 9. 'South African Police Service' (undated), South African High Commission United Kingdom website http://www.southafricahouse.com/OS_SAPS.htm Accessed 26 June 2007.
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- 11. Tshivhidzo, Edwin 2006, 'Eastern Cape Clamps Down On Illegal Initiation Schools', allAfrica.com website, source: BuaNews (Tshwane), 3 July http://allafrica.com/stories/printable/200607030677.html Accessed 26 June 2007.
- 12. 'ANC treasurer in KZN gunned down' 2006, SAPA (South African Press Association), 24 March. (FACTIVA)
- 13. Essop, Philda 2004, '5 Hurt in Tribal Clashes 70 Shacks Torched', allAfrica.com website, source: Cape Argus (Cape Town), 24 August http://allafrica.com/stories/printable/200408240665.html Accessed 26 June 2007.
- 14. Mtshali, Thokozani 2007, 'Action plan to fight violence against women', *Cape Argus*, 9 March. (FACTIVA)
- 15. 'Pakistan Citizenship' 2006, Government of Pakistan: Ministry of Interior website, 18 December http://www.pakistan.gov.pk/divisions/ContentPrint.jsp?DivID=23&cPath=221_227&ContentID=754 Accessed 25 June 2007.