



Litigating Police Perpetrated Violence Against Women

Webinar Notes - 13.12.2022



Chair:

Harriet Wistrich

Director of Centre for Women's Justice, Founder of International Feminist Legal Network

Speaker:

Bronwyn Pithey

Bronwyn is an admitted Advocate in the High Court of South Africa, working for the Women's Legal Centre (WLC) in Cape Town, South Africa. WLC is an African feminist public interest law centre. Bronwyn leads the Women's Right to be Free from Violence Programme and is currently involved in several constitutional litigation cases challenging the constitutionality of legislation, the implementation of judgments and laws, and access to justice for marginalised and vulnerable women. Prior to the WLC she was an advocate in the Sexual Offences and Community Affairs Unit of the National Prosecuting Authority of South Africa from 2000 to 2015. She has been intricately involved in the development and drafting of numerous pieces of legislation regarding violence against women. She is the co-editor of the Sexual Offences Commentary on the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (Juta). She holds LLB and LLM degrees from the University of Cape Town.

Contributor:

Tamar Ezer

Tamar Ezer is the Acting Director and a Lecturer in Law with the [Human Rights Clinic](#) and the Faculty Director of the [Human Rights Program](#) at the University of Miami. Prior to that, Ezer taught and supervised projects at Yale Law School as a Lecturer in Law, Visiting Scholar with the Schell Center for International Human Rights, and Executive Director of the Solomon Center for Health Law and Policy.- Additionally, Ezer served as Deputy Director of the Law and Health Initiative of the Open Society Public Health Program, where she focused on legal advocacy to advance health and human rights in Eastern and Southern Africa, Eastern Europe, and Central Asia.



Litigating Police Perpetrated Violence against Women

In all jurisdictions the police are expected to play a key frontline role in protecting women from male violence and investigating crimes with a view to prosecuting perpetrators of violence against women. Yet there is growing evidence that significant numbers of police officers are abusers themselves - both in their official roles and in their off-duty lives. This webinar raised the discussion as to why this might be, with international case studies.

Vicarious Liability

Bronwyn began the discussion discussing vicarious liability that extends to employers i.e. Minister of Safety and Security (or Minister of Police) who are not responsible for the acts or conducts for those who are employed in the police service. In South Africa, the law is a hybrid of Roman-Dutch law and UK-English laws. With the introduction of the law of the constitution, their common law has developed and the cases Bronwyn shares explore how.

1. *K versus the Minister of Safety and Security*

Women's Legal Centre represented the applicant. **K** was out with her partner; they had a row and she asked him to drop her home to which he refused. **K** went to a shop at a petrol station to ask to use a phone but was refused. During her plea, a uniformed police officer walked in, and he said he would offer her a lift home even though he had other officers in the car. **K** believed that the police officer was genuine and agreed to the lift. However, once she was in the car, they did not take her home, they instead took turns to rape her. All three officers were criminally prosecuted and sentenced to life.

K then sought damages under delict from the Minister of Safety and Security (MoSS) and the Women's Legal Centre (WLC) supported her case, but it was rejected. The rejection was appealed but was yet again unsuccessful. As a result, it was taken to the constitutional court. Here is where the issue of vicarious liability was then brought to the surface, where the employer could be held accountable for acts or conducts of the employer but there must be a link to the actions of the employee and their employer. The police argued that the officers were not in any course acting within the scope of their employment. WLC rebutted this stating that there was a sufficient link between their conduct and the business of the employer because of their intentions (subjective test) and the business of the employer (objective test). Normative factors and the rights of victims were taken into consideration by the constitutional court and found a sufficient link between the conduct and the employer. A summary of facts include that the officers were in uniform, they were driving a marked police vehicle, trust was created, and they offered her help. Subsequently the police were also found liable in this case and damages were paid to **K**.

You can read the full judgment here: [Judgment](#)



2. *F versus the Minister of Safety and Security*

WLC did not represent **F** but were a friend of the court, raising similar issues to the case of K. This case involved **F**, a 13/14-year-old girl, who was looking for a ride home after a night out. She was with her friend and a few others at the time. The man who offered the ride when she was looking, was in an unmarked car, had a radio and police files in the car. When asked why he had these, he stated he was a private detective, off-duty. Feeling reassured that he was an officer, **F**, her friend, and the others got into the car. All were dropped home except her; he raped her. He was also criminally prosecuted and sentenced.

Here, the link between the conduct and the business of the employer was established because he offered **F** assistance, using his title to establish trust. The court found the police vicariously liable in this matter tying in not just the factual factors but the constitutional obligations of the police and constitutional rights of the victim. Little emphasis was placed on the fact the officer was off duty because the officer introduced himself as an officer.

You can read the full judgment here: [Judgment](#)

In both cases the issue of trust (that the public are entitled to place in the police), on or off duty status, simultaneously committing an offence and therefore omitting to protect and serve and, the police conduct, and employer liability were surfaced and investigated.

“Blue wall of Silence”

Tamar leads the second half of the discussion introducing the “blue wall of silence”; a culture of policing that protects fellow officers from investigation. This is heavily problematic with officers acting as frontline responders to gender-based violence. ‘Do No Harm’ is a guiding principle used in medical care, recommended for the justice system in the U.S.

1. *A & B versus Georgia*

Tamar worked in collaboration with the European Human Rights Advocacy Centre (EHRAC) on **A & B** case which was presented before the European Court of Human Rights (ECHR). The survivor was experiencing physical and psychological abuse from her ex-partner who was a police officer. He threatened to kill her and her family and used his badge and service weapon as a form of intimidation, stating that if she reported him, he would bring charges against her father and brother. Nonetheless, over the course of 3 years, she and her family made several calls to the police. Officers were called in to investigate but did so while her former partner was present. Her ex-partner mocked her during the interview and left with the investigating officers. She was then told that “wife beating is commonplace and of not much importance. She should not contact them again or risk being fined for wasting police time”.



In 2014, her ex-partner shot her and killed her. Her mother and son brought a case that went before the ECHR, and this is where Tamar and the Human Rights Clinic (HRC) put in an intervention that put a focus on officer perpetration. Police officers are uniquely positioned to perpetrate gender-based violence (GBV) enabled by the state because of their authority, access to state weapons and resources, which the Human Rights law already acknowledges. HRC called for systemic measures for gender-based violence i.e. zero tolerance policy, monitoring of current officers, internal structures to prevent hiring of individuals with a history of gender-based violence, a system for handling investigation of fellow officers (which includes removing weapons during an investigation) to be put in place.

In October 2022, a decision from ECHR was published and agreed that as an officer of the law, a more thorough investigation was required. The family were awarded damages and although an acknowledgement for policy measures was shared, it was said to be left to the state of Georgia supervised by the committee of ministers, of what that would be.

You can read the full judgment here: [Judgment](#).

The Human Rights Clinic also wrote a report on the human rights analysis of officer responses to gender-based violence reports: [law enforcement responses to GBV](#).

Police Super-complaint

In the final segment of the discussion, Harriet introduced the UK initiative of police super-complaints, where designated organisations raise issues on behalf of the public about harmful patterns or trends in policing, holding the police as a body accountable for how matters are being policed also. Police Perpetrated Violence (PPV) cases, however, have not often successfully been acknowledged or investigated.

Centre for Women's Justice have used the super-complaint method to raise awareness of PPV and suggested recommendations, which are yet to have any legal status. Litigation around these matters have become a staple work for CWJ, and a project initiative with recruit Ruth Brander who is leading on PPV research. Currently two hundred women have come forward as victims of PPV.

Discussion

Ruth raises the concern that has been highlighted through the CWJ PPV super-complaints, on how PPV is investigated. Often the police force will investigate their own officers which has proven problematic. Another issue highlighted, is family proceedings, where the officer uses their position to influence the investigation.

Tamar shares information on the International Association of Chiefs of Police (IACP), a global group that have developed guidance on how to conduct internal investigations. Currently data on PPVA in the U.S is poor and complicated because reporting varies from state to state. PPV training is not necessarily mandated, there is inadequate resourcing and is overall viewed as the least important of crimes.



Bronwyn explored the concept of an independent body, highlighting South Africa's constitutional provision for a creation of an independent statutory body called the Independent Police Investigative Directorate. The IPID investigates complaints of brutality, criminality, and misconduct within the South African police. They are also mandated to report every year, so statistics are available.

Harriet shares the awareness raised through the super-complaint process and the response to the Sarah Everard case. Media interest has sparked, and the conversation is happening more frequently but emphasises real action is yet to be taken. While vicarious liability is widely acknowledged and applied when an officer is in uniform, it doesn't necessarily apply to an off-duty officer. Ruth suggests that there should be an extension of vicarious liability to officers who offend in their home or use their status to gain access to privileged information and perpetrate.

Awareness needs to continue to be raised, litigation in PPV cases is vital in holding the state to account and potentially seeing real reform in how it is investigated and how victims are protected.

Further links of research and data below:

Harriet Wistrich:

CWJ super complaint

<https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/5e65fd0ba29cd069c4f3ca3c/1583742221663/super-complaint2+report.FINAL.pdf>

Tamar:

Human Rights Clinic intervention: <https://miami.app.box.com/v/toradze-intervention>

Assessment of law enforcement responses to GBV in Canada-

<https://miami.app.box.com/s/2hcz74el18qnlgpv929k18ieqpgiovr7>

Assessment of law enforcement responses to GBV in Brazil-

<https://miami.app.box.com/s/bmg20obmtme2gpx7n5a8jj3qpi2bj0u5>