

DISCUSSION PAPER ON GENDER BASED VIOLENCE



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There is serious concern about the high levels of gender-based violence, especially sexual violence, in the country and hence Government has sought to reform its laws and policies regarding gender-based violence. It has implemented a comprehensive legislative framework that looks at addressing issues of violence against women and girls in all its manifestations and in its myriad of forms. Priority has been accorded to sexual offences and domestic violence, and considerable attention has been given to crimes such as trafficking in women and children and child pornography. Some specific areas targeted by the law include issues of bail, sentencing, victim empowerment and integrated responses to gender based violence.

The legislative frameworks that are in place since the dawn of democracy that aim at combating, preventing, eliminating and eradicating all forms of violence against women; trafficking and promoting women's rights include the following:

- The Criminal Procedure Act 51 of 1997: This Act further amended the provisions relating to bail to ensure that persons who are accused of having committed serious offences are not released on bail. These offences often involve women and children as victims.
- Criminal Procedure Second Amendment Act 75 of 1995: Deals with, among other things, bail guidelines that cover violence against women
- Film and Publications Act 65 of 1996: provides for the establishment of the Film and Publication Board whose role includes combating child pornography and the negative stereotyping and representation of women
- Criminal Procedure Second Amendment Act 85 of 1997: tightens bail provisions relating to serious crimes, including violence against women.
- The Domestic Violence Act 116 of 1998: seeks to strengthen protection against domestic violence. The Act broadens the scope of cover of what constitutes domestic relationships and domestic violent actions. It defines violence against women as including in addition to physical violence, other forms such as emotional, economic, threatened violence and stalking. The main strength of the legislation lies in protection orders against perpetrators and the possibility of imprisonment of recidivist offenders.
- The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000; This Act defines discrimination on the ground of gender to include gender-based violence.
- The Firearms Control Act 60 of 2000: Enables the State to remove illegally possessed fire arms from society, control supply, possession, storage and transportation and use of firearms and to detect and punish the negligent and criminal use of firearms.
- The Children's Act 38 of 2005: The Act gives effect to certain rights of children as contained in the Constitution, to set out principles relating to the care and protection of children, define parental responsibilities and rights to make further provision regarding children's courts among others.
- Older Persons Act 13 of 2006: Provides for the protection of older persons from all forms of violence including from intimate partners; abuse; and neglect.
- Criminal Law (Sentences) Amendment Act, 38 of 2007: to provide that certain circumstances shall not constitute substantial and compelling circumstances justifying the imposition of a lesser sentence when a sentence must be imposed in respect of the offence of rape;
- The Criminal law Amendment (Sexual Offences and Related Matters) Act 32 of 2007: This Act seeks to protect women and children by, inter alia, criminalizing a wide range of acts of sexual abuse and exploitation. It repeals the common law offence of rape and replaces it with a new expanded statutory offence of rape, applicable to all forms of sexual penetration without consent, irrespective of gender. It also repeals the common law offence of indecent assault and replaces it with a new offence of sexual assault, which contains a wider range of acts of sexual violation without consent. Moreover, the Act targets for punishment of sexual predators that prey on children and people with disabilities. It criminalizes sexual

exploitation or grooming of children and people with disabilities, exposure or display of child pornography or pornography to children and the creation of child pornography.

Among the latest signed legislation in the country are those that particularly address trafficking of women; hate crime against women and girls; and violence against the LGBTI Community. These include:

- Protection from Harassment Act 17 of 2011 which aims to protect victims of harassment (including sexual harassment), in order to put into effect the right of all people in South Africa to be free from all forms of violence from either public or private sources. No longer will you be able to send someone an anonymous SMS with some kind of sexual innuendo or constantly bully a classmate at school without facing legal consequences.
- Prevention and Combating of Trafficking in Persons Act, Act 7 of 2013 gives South Africa, for the first time, a single statute that tackles human trafficking holistically and comprehensively by providing a maximum penalty of R100-million or life imprisonment or both in the case of a conviction.

South Africa has adopted an integrated approach to the management of violence against women and children called an Inter-Departmental Management Team (IDMI). This is a multi-disciplinary expert team, established in 2005 to design and implement programmes aimed at addressing gender-based violence. Its programmes were integrated in the objectives of the National Crime Prevention Strategy, which, with evolution of crime approaches, resulted in the adoption of the Justice Crime Prevention Strategy. This strategy has several components including programmes to address sexual violence as a priority; interdepartmental initiatives to improve criminal justice processes; education and awareness programmes; partnership with civil society; and victim empowerment.

In a bid to integrate gender equality and prioritize violence against women in the prosecution of crime, the Sexual Offences and Community Affairs (SOCA) Unit was established within the National Prosecuting Authority in 1999. SOCA focuses primarily on sexual offences, domestic violence, trafficking in persons, enforcement of child maintenance, managing of young offenders and other issues involving the victimization of women and children. Their role is to formulate policy, build capacity, increase sensitization and provide scientific and functional training of officials who prosecute these crimes. It also facilitates research and training for prosecuting sexual offences, domestic violence and maintenance cases, and managing young offenders; as well as developing and implementing community awareness programmes and plans for the participation of NGOs in these processes and procedures. Since 2008, SOCA has organized an annual Sexual Offences Indaba, a conference that brings together stakeholders that are involved in the prevention and management of sexual offences.

Within the judiciary, the Sexual Offences Courts have been created to particularly deal with cases involving sexual offences. The first Sexual Offence Court was introduced in South Africa as an innovative measure to improve the prosecution and adjudication of sexual offences. This was a pilot project aimed at responding to an preventing the soaring figures of rape cases as well as acting as an intervention mechanism against the secondary victimization experienced by victims when they engage with the criminal-justice system. The pilot proved a huge success as it maintained a conviction rate of up to 80% over a period of a year. By March 2003, twenty (20) Sexual Offences Courts had been established, and by March 2004, a year later, the number had increased to forty-seven (47) courts. At the end of 2005, there were seventy-four (74) such courts in the country.

It should be noted that the number of these dedicated courts were reduced to only fifty (50) in 2008-2009 due to concerns over the proliferation of specialized courts being better resourced than mainstream courts. A task Team was set up in June 2012 to look at the reestablishment of the Sexual Offences Courts and by 2013, 57 Regional courts had been identified for upgrading and equipment with modern technology to operate as Sexual Offences Courts. This work is going on. It is believed that these sexual offences courts will help address the growing challenge of sexual offences in the country, particularly against vulnerable groups such as the LGBTI groups.

It is also worth noting that the judiciary in general has played an instrumental role in fighting violence against women. Court decisions have informed revision of the legislative and policy framework on gender-based violence such as:

- In *S v Chapman* 1997 (3) SA 341, the Supreme Court of Appeal (SCA) held that rape constituted “a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim...” and that women were entitled to the protection of these rights which were basic to the ethos of the Constitution and to any defensible civilization. The SCA went on to say that “the courts are under a duty to send a clear message to the accused and to other potential rapists and to the community that we are determined to protect equality, dignity and freedom of all women and we shall have no mercy to those who seek to invade those rights”.
- In *S v Jackson* (1998) (1) SALR 470 SCA, the cautionary rule, an antiquated rule of evidence that encouraged courts to treat the evidence of rape victims with circumspection, was declared unconstitutional leading to its abolition.
- In *Masiya v Director of Public Prosecutions Pretoria & Another* 2007 (5) SA 30 (CC), the Constitutional Court extended the definition of rape to include non-consensual anal penetration of the anus of females, which was until then not apparent in the statutory definition of rape.
- In *Carmichele v Minister of Safety and Security and Another* 2001 (4) SA 938 (CC), the Constitutional Court held that the state is obliged by the Constitution and international law to prevent violence against women and to protect the dignity, freedom and security of women. As such, it upheld an application by a woman to have the Minister of Justice and the Minister of Safety and Security held liable for her brutal attack by a man, who at the time, was awaiting trial for having attempted to rape another woman and who had been released on the recommendation of the investigation officer and prosecutor, without bail, despite his history of sexual violence.
- In another case, *Van Eeden v Minister of Safety and Security* 2003 (1) SA (389)(SCA), the Supreme Court of Appeal upheld an appeal by a young woman who sought damages from the state following her sexual assault, rape and robbery by a known dangerous criminal who had escaped from police custody. The Court held that the state had a duty of care to victims of sexual violence in particular and of violent crime in general.

Examples of Sentencing handed down for prosecutions of sexual offences in 2012/13

- i) The matter of the **State versus Kili**, involved the rape and killing of a 48 year old woman from Lesseyton, Queenstown in her home during the day. The deceased’s boyfriend had left their home to go to his parental homestead, when the accused accosted her. He raped her and cut her throat, severing all neck muscles, blood vessels and even the spinal cord. The Judge handed down a **life sentence** on the murder count and ten years on the rape and refused leave to appeal.
- ii) In **State v Nofemele** the accused abducted and raped twelve children between the ages of two and eight years. He also killed one of the little girls when she started crying while he was raping her. The accused was convicted of 12 counts of rape, 12 counts of abduction and one count of murder. The Western Cape High Court sentenced him to **11 life sentences** and ten years for abduction.
- iii) In the matter of the **State versus Rodolo** which stems from Kenton-on-Sea, the accused went on a rampage during the course of one night, first breaking into the house of the deceased to rob and kill him and thereafter breaking into the house of an elderly female whom he held up at knife point and raped. The accused was arrested in possession of the deceased’s cell phone and this was the only evidence linking him to the murder scene. The accused was given a **life sentence** on the murder trial and a further 22 years effectively on the other charges.
- iv) The South Gauteng High Court convicted and sentenced the accused in the matter of **State versus Rikhotso**. The accused was convicted of multiple charges of kidnapping, rape, and robbery. During a reign of terror in the Soweto area, 12 victims were raped. The accused was subsequently sentenced to **17 life sentences** and an additional 161 years imprisonment, to run concurrently.
- v) The much publicised trial of the so-called “**Sunday Rapist**”, Jacobus Steyn, commenced in the South Gauteng High Court during July 2012. On 19 September 2012 the accused was convicted and sentenced to **five terms of life imprisonment, and a further 170 years imprisonment**.
- vi) In **State versus LL Gagu**, the accused was charged with seven counts of rape, one count of sexual grooming and three counts of exposing children to pornography. The complainants were aged between 10 and 15 years and were young girls who attended a dance school operated by the accused. The accused was convicted of sexual grooming and exposing children to harmful pornography. He was sentenced to four years imprisonment on the sexual grooming count and to five years imprisonment for each count of exposure to pornography. These sentences will run concurrently with the **three life sentences** imposed by the Western Cape High Court in respect of the seven rape convictions.

The annual report of the National Prosecuting Authority 2012/2013

Domestic violence

Domestic violence is one of the prominent forms of violence against women in South Africa. In response to this vice, the Domestic Violence Act 116 of 1998 was enacted to afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide. The Act defines domestic violence in broad terms to include physical, sexual, emotional, verbal and psychological abuse, economic abuse, intimidation, harassment, stalking, damage to property, entry into the complainant's residence without consent, where the parties do not share the same residence, and any other controlling or abusive behaviour where such conduct harms or may cause imminent harm to the safety, health or wellbeing of the complainant. The Act applies to a range of relationships and covers both heterosexual and same sex relationships.

In a bid to reverse the long history of neglect of domestic violence by law enforcement officers, the Act imposes a range of duties on police officers in relation to the protection of victims of domestic violence. Failure to comply with these duties constitutes misconduct and the South African Police Service national commissioner is required to submit six-monthly reports to Parliament on the extent of compliance with these statutory obligations by the police and the disciplinary action taken against non-compliance. Police failure to discharge these duties should also be reported to the Independent Complaints Directorate for which the periodic reports show that cases of substantiated non-compliance have been minimal.

The courts play a significant role in addressing domestic violence in South Africa. The Domestic Violence Act, establishes Domestic Violence Courts to which a victim of domestic violence may apply for a protection order to, inter alia, stop the abuse and to stop the abuser from entering the mutual home, the victim's residence, or the victim's place of employment. The courts have also issued landmark decisions on matters pertaining to domestic violence. In *S v Ferreira* (2004) ZASCA 29, the Supreme Court of Appeal acknowledged the grim complexities of battered women's choices and grappled with how this context needed to be incorporated into legal decision-making. It drastically reduced the sentence of the accused who had hired killers to murder her domestic partner after enduring years of abuse from the partner. In *S v Baloyi* 2000 (2) SA 425 CC, the Constitutional Court declined to declare unconstitutional the reverse onus of proving absence of guilt on a person charged with breach of a family violence interdict.

In 2009, a review of the implementation of the Domestic Violence Act 1998 was finalised. Following the findings of this review, a Domestic Violence Strategy is currently being prepared. Moreover, in 2008, the Government, in conjunction with the judiciary, launched a set of guidelines for handling domestic violence cases. The guidelines have been circulated widely. The Government in conjunction with the National Prosecuting Authority (NPA) has also been running the Ndabezitha Project, which seeks to train traditional leaders and court clerks on domestic violence matters in rural areas. The Government has also been running awareness campaigns (through the media, booklets, pamphlets, etc.) aimed at sensitising the masses on domestic violence services. The Police Service has also been conducting public education campaigns, with a focus on domestic violence, under its Social Crime Prevention Programme.

Most recently, electronic forms and systems have been developed and approved to be piloted at two Magistrates' Courts after which they will be rolled out to all Magistrates' Courts' service points in order to improve handling of domestic violence cases. The Government is also in the process of developing a booklet called "No More Violence" booklet which is aimed at teaching the role-players at service points as well as victims how to manage and improve in alleviating domestic violence matters and the impact of such crimes on their lives.

Some studies conducted on domestic violence in South Africa has concluded that statistics estimating the prevalence of domestic violence are likely to be under-inclusive as acts of domestic violence are often not reported. There are several factors that contribute to domestic violence, such as poverty and the subsequent stress¹, alcohol use², and a history of violence³. The risk factors of being a victim of domestic violence include violence in childhood⁴, conflict over alcohol use, and liberal ideas on women's role⁵.

1 R Jewkes (2002) 'Intimate Partner Violence: Causes and Prevention' *Lancet* 359 1423 at 1424.

2 R Jewkes op cit. note 3 at 1425.

3 Ibid.

4 R Jewkes, J Levin & L Penn-Kekana op cit. note 4 at 1612.

5 Ibid. at 1613.

Training of Officials

South Africa has measures in place to capacitate officials handling both the victim and the perpetrators of violence in a form of training and workshops. The Sexual Offences and Community Affairs(SOCA) Unit in the National Prosecuting Authority highlights that in 2010/2011 there was an increase in capacitation of prosecutors:

- with a total of 180 prosecutors trained on the comprehensive manual on maintenance matters in line with the Maintenance Act and latest developments in law,
- 349 prosecutors trained on the Child Justice Act,
- 102 prosecutors on integrated Domestic Violence Skills manual training and
- 79 prosecutors were trained on human trafficking related topics.

During the year 2012/2013, they trained the following prosecutors:

- 40 on sexual offences,
- 24 on maintenance,
- 54 on child justice and
- 35 on domestic violence

Police officers also receive training on handling sexual offences, and during 2010/2011, a total of 1 117 police officers were trained in the Sexual Offences First Responders course which aimed at first responders to sexual offences. Other officials included in this training are the community service centre personnel, emergency police service personnel and detectives.

Measures for prevention of Violence

Awareness-raising to the public in general takes place in different forms such as radio and television interviews on sexual offences topics highlighting the measures that are in place for the victims; how implementation of measures are taking place; possible challenges; and the responsibilities of the different role-players. The SOCA Unit in NPA conducts workshop with traditional leaders annually in the “Ndabezitha Imbizo” project. During the 2012/2013 year, two Imbizos were held in Limpopo Province attended by approximately 550 community members as well as in the Eastern Cape attended by 200 community members. The programme predominantly focussed on the Domestic Violence Act, as well as on protection orders, defaulters, general information about the content of legislation and reference to the Thuthuzela Care Centres.

In a bid to sensitize the society on the rights of victims, South Africa also launched the Victims’ Rights Week in September 2010. During this week, which is still held annually in September, government departments within the criminal justice system; coordinated by the Department of Social Development, seek to raise public awareness about victim rights. The public is provided with information about what interventions and services are provided by government to victims of crime. In addition, the week provides government departments with an opportunity to respond to issues faced by the public and crime victims, in a coordinated manner.

Measures of Response and Support

There are currently about 803 police stations in 9 provinces with victim support rooms. Victim Support Rooms are rooms at police stations that police officers are using for interviews, statement taking and consultations with victims of sexual offences, child abuse and domestic violence. During 2010/2011, 10 new Victim Support Rooms were established bringing the number of functioning Victim Support Rooms to 90 in 2010/2011. Furthermore, there were 163 Family and Child Protection units re-established and fully operational across the country in the South African Police Service.

By October 2009, at least 6 provinces had One-Stop Service Centres of Abuse in South Africa and 109 shelters throughout the country accommodating and rendering psychosocial services to women and their dependent children who are victims of abuse. These are Government funded facilities with Minimum Standards for Shelters for Abused Women developed by the Department of Social Development. During 2011; 13 of these shelters were strengthened to host victims of human trafficking and trained personnel to assist trafficking victims. These shelters provided services to 59 trafficking victims referred by government – the only body authorized by judicial authorities to refer crime victims to private shelters. Government identified 22 additional shelters that could potentially care for trafficking victims and began their assessment for accreditation. It also began provision of a nine-week rehabilitation program to address the psycho-social well-being of trafficked victims in the care of these shelters. However, more still need to be done to improve the quality, care and services at these centres. Accessibility to such centres should be looked at as most of these centres tend to be concentrated in urban areas whereas rural areas still remain neglected.

The number of Thuthuzela Care Centres(TTCs) in the country has increased from 10 in 2007-2008, 17 in 2008-2009, 28 in 2009-2010, to about 35 fully operational sites during 2012- 2013 year. Since these Centres were established, the process of reporting and prosecuting sexual offences has improved remarkably. Secondary trauma to victims of sexual offences has also reduced significantly. In 2011, the UN Secretary-General, Mr. Ban Ki Moon, recognized the ‘Thuthuzela model’ as a ‘world best practice model’ in the field of gender violence management and response.

Conviction rates in the prosecution of sexual offences reported at TCCs was 60.7% in 2011/12 and improved to 61.03% in 2012/2013. This improvement did not reach the target of 63.5% that the NPA set for itself. This can be attributed to various factors including case flow management challenges and a substantial drop in the number of dedicated courts, a decrease in the provisioning of specialised services due to vacancies of prosecutor posts, and a considerable increase in sexual offence matters reported at TCCs. Currently the Ministerial Advisory Task Team on Sexual Offences (MATTSO) is in process of reviving these dedicated sexual offences courts.

Ke Bona Lesedi Court Preparation programme’s objective is to prepare state witnesses for court in all matters, including the sexual offences, by Court Preparation Officers (CPOs). It serves to contribute towards a reduction of secondary trauma and as such it contributes to the improvement of conviction rates.

Nexus between GBV and HIV

Women with abusive and controlling partners are at increased risk of contracting HIV and other sexually transmitted illnesses / diseases due to an inability to negotiate safe sex or condom use. A survey conducted among 1366 South African women showed that women who were beaten by their partners were 48% more likely to be infected with HIV than those who were not, and those women living in abusive relationships were often unable to seek voluntary testing and counselling services as they risk long term ill health if they are unable to disclose their HIV status to their abusive partner, or seek or comply with medical treatment⁶.

Statistics

South Africa’s definition of rape in the Criminal Law Amendment (Sexual Offences and Related Matters) Act 32 of 2007 is very broad, covering a wide range of sexual abuse. Statistics for rape incidents in the period 2009-2012, per 100 000 of the population, shows that there was a decrease by 2.9 percentage points over a three year period, with a 3.7 percentage point decrease recorded for 2011-2012 alone. This category includes rape, compelled rape, acts of consensual sexual penetration with certain children (12-16 years). For every 100 000 people in South Africa, there were 94.9 reported cases of rape for 2011-12.

6 DWCPD: Draft Document for the Establishment of the National Council Against Gender Based Violence, 2012

Table on ⁷Female Adult Victims (adult women 18 years and older): Selected Contact Reported Crime Figures)

| Crime Category | 2006/7 | 2007/8 | 2008/9 | 2009/10 | 2010/11 | 2011/12 | % decrease |
|---------------------|---------|---------|---------|---------|---------|---------|------------|
| Murder | 2602 | 2544 | 2436 | 2457 | 2594 | 2286 | -11.9 |
| Attempted murder | 3362 | 3016 | 2966 | 3008 | 2842 | 2416 | -15 |
| All sexual offences | 34 816 | 31 328 | 30 124 | 36 093 | 35 820 | 31 299 | -12.6 |
| Common assault | 100 390 | 94 286 | 91 390 | 94 176 | 89 956 | 87 191 | -3.1 |
| Assault GBH | 69 132 | 64 084 | 61 509 | 62 143 | 60 630 | 57 345 | -5.4 |
| Total | 210 302 | 195 258 | 188 425 | 197 871 | 191 842 | 180 537 | -5.9 |

The table above highlights, that the greatest number of reported cases by adult women is common assault followed by assault with grievous bodily harm (GBH), and all sexual offences. The Crime Report does not provide for disaggregated data in terms of domestic violence and sex, such that it stands to reason that common assault is high because cases of domestic violence reported to the police is being recorded under this category and assault with GBH.

Assault and sexual offences are difficult to capture in any household survey conducted because of their sensitivity, and as a result they are normally under-reported. The victims of crime survey results show that most perpetrators were known people from areas other than the area of residence of the victim (selected individuals). Nearly a third (29.9%) of the victims of assault was attacked by a known community member in their area, their spouse or partner (20.9%), while only 10.5% stated that the perpetrator(s) was an unknown community member. When it comes to sexual offences, 38, 4% of victims were victimized by a known community member(s) in the area of residence.⁸

In 2010, most incidents of assault (35.7%) occurred at home, while 18.6% occurred in the streets outside offices/shops. A third (33,6%) of sexual offences (including sexual assault, rape and domestic sexual abuse) occurred in a field or in parks, followed by 29,8% that took place at home. It was recorded that 18.5% of sexual offences took place at someone else's home.

One fifth (20,6%) of the victims who were assaulted thought that the motive was jealousy; a further 17.4% thought money or other financial motives or sudden personal anger motivated the assault, whilst 12.1% asserted that they were assaulted because of long-term personal anger. Other motives mentioned by a negligible proportion of victims were attempted rape, racial, ethnic or political motivation that led to the assault, and outstanding debt. More than 90% of the perpetrators of sexual offences used physical force, followed by using a gun (31.5%) and a knife (24.5%).

Table on Gender and Age Distribution: Selected Contact Reported Crime Figures – 2011/12⁹

| Crime | Children | | Adult Women | | Adult Men | | Total |
|------------------|----------|------|-------------|------|-----------|------|---------|
| | No | % | No | % | No | % | No |
| Murder | 793 | 5.1 | 2286 | 14.6 | 12 530 | 80.3 | 15 609 |
| Attempted Murder | 758 | 5.1 | 2416 | 16.3 | 11 685 | 78.6 | 14 859 |
| Assault GBH | 10 630 | 5.5 | 57 345 | 29.8 | 124 676 | 64 | 192 651 |
| Common Assault | 12 645 | 7 | 87 191 | 48 | 81 834 | 45 | 181 670 |
| Sexual Offences | 25 862 | 40.1 | 31 299 | 48.5 | 7353 | 11.4 | 64 514 |
| Total | 50 688 | 10.8 | 180 537 | 38.5 | 238 078 | 50.7 | 469 303 |

The table above shows that while for men there are more reported incidences of murder, attempted murder and assault with GBH, for women and children sexual offences are the leading crimes reported, with that for women being the highest incident rates. One can also infer that men are better able to access the justice system which may result in underreporting of certain crimes by women and vulnerable children.

GBV against women in the LGBTI Community

South Africa is the fifth country in the world and the first in Africa to recognize same sex marriages. The legalized rights of lesbian women to adoption as parents, the extension of partner benefits and the right to marriage is provided for within the Civil Union Act. A recent challenge that faces South Africa in its efforts to combat violence against women is the rising prevalence of physical and sexual attacks against lesbians, especially black lesbians. Sexual attacks against lesbians are particularly carried out under the guise of trying to 'cure' lesbians of their sexual orientation. The matter has further been aggravated by the somewhat unsatisfactory response of the criminal justice system to such attacks.

By May 2009 there were 20 documented cases of murder of lesbians in South Africa, of which only two had gone to trial. Both cases had committed and qualified prosecutors who failed to see the way that transgressing of normative gender roles contributed to the murders. Since then there has been an increase in the number of murders of lesbians due to hate crimes and "corrective rape". In 2011, the court was able to successfully prosecute four men for such an act and each sentenced to a jail term period of eighteen years.

⁸ Statistics – SA Victims of Crime Survey (2011)

⁹ South African Police Service Crime Report: 2010/11-2011/12

Lesbian issues are gendered issues and indeed issues of human rights and dignity. The overwhelming hostile climate surrounding lesbians in South Africa is not in fact a legal one, but that of discrimination and social injustice. South Africa's democratic transition proved to be a watershed period for rights around sexual orientation in the country. The current legal position on homosexuality is that the Constitution of the Republic of South Africa guarantees equality for all and prohibits discrimination based on gender, sex, race and sexual orientation among other grounds. It further provides for the protection of all citizens, including gays and lesbians. These rights were extended in 1998 when Parliament of South Africa passed the Employment Equity Act, protecting citizens against labour discrimination on the basis of sexual orientation. In the same year, the Constitutional Court ruled that the law prohibiting homosexual conduct between consenting adults in private was unconstitutional.

In South Africa lesbian women remain extremely vulnerable to attack at every level of society. Violence against people whose sexualities may be described as marginal is not adequately addressed in terms of interventions. Notably black lesbians are the subject of much violence in townships and some urban settings in South Africa. Such violence is being precipitated by culturally sanctioned homophobia and hate-speech, often resulting in physical, mental and emotional harm inflicted on such women (and mostly by men). Consequently these women face issues such as disempowerment, stigmatization, rejection, ignorance and isolation. Some reasons for the continued marginalization of lesbians and the LGBTI community in general include the perception that homosexuality is un-African. It also includes the perception that homosexuality should be criminalized and religious and cultural intolerance resulting from what is "correct behavior" or not.¹⁰

The National Prosecuting Authority has acknowledged that 'hate crimes' of a sexual nature need to be prioritised by government as one of the first steps in addressing the matter of violence against lesbian women. In response to hate crime against lesbians and gays individuals, South Africa has established a National Hate Crime Task Team in May 2011 to begin work in July 2011. The elected representatives of the task team included six persons of the judiciary, the police and the social development department, African Human Rights Commission, the Foundation for Human Rights and six representatives of well-known Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) organisations. Activities of the team include develop a legislative intervention plan, a public awareness strategy and LGBTI sensitive shelter.

Reorganizing the limited progress made since the establishment of the task team, in June 2013, the task team developed a programme of action, following a series of intensive workshops in. These workshops also saw the finalization of its Terms of Reference. The action plan includes the development of a long-term strategy to address violence against LGBTI people as well as the monitoring of pending and unresolved criminal cases involving LGBTI victims. Training and sensitization has been identified as one of the priority areas.

Trafficking in Women and Girls

With regard to trafficking in women and girls, South Africa is aware of it being a source, transit route and final destination of trafficked victims. In recognition of the grave consequences of this phenomenon, South Africa signed the Prevention and Combating of Trafficking in Persons Act, Act 7 of 2013 on 29 July 2013, giving South Africa, for the first time, a single statute that tackles human trafficking holistically and comprehensively. The new law provides for a maximum penalty of R100-million or life imprisonment or both in the case of a conviction. Prior the signing of this law, an interim measures were put in place were several pieces of legislation were used to address the problem of trafficking in persons including the Sexual Offences Act, Prevention of Organized Crime Act 121 of 1998 and the Children Act 38 of 2005.

The Prevention and Combating of Trafficking in Persons Act, Act 7 2013 also have the effect of domesticating the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons. In a nutshell, the law will seek to fulfil four main objectives: to provide for an offence of trafficking in persons and other offences associated with trafficking in persons to prevent and combat the trafficking in persons within or across the borders of the Republic; to provide for measures to protect and assist victims of trafficking in persons; and to provide for the establishment of the Intersectoral Committee on Prevention and Combating of Trafficking in Persons.

10 Human Sciences Research Council (HSRC): 2010: THE COUNTRY WE WANT TO LIVE IN – hate crimes and homophobia in the lives of Black lesbian South Africans; Occa

The government convicted two sex trafficking offenders and began five prosecutions in 2012, in contrast to 2010 when it initiated 22 prosecutions and convicted nine offenders. In July 2011, the Pretoria regional court sentenced a convicted trafficker, discovered in February 2008 to have trafficked three Mozambican girls into commercial sex, to life imprisonment – the most severe penalty ever applied in a trafficking case in South Africa. In February 2012, Mitchell’s Plain magistrate’s court sentenced a Cape Town man to 23 years’ imprisonment – 15 years on the human trafficking charge – for the sex trafficking of a Swazi woman after fraudulently offering her a job.

Furthermore, the government began the prosecution of five suspected traffickers and apprehended an additional five suspected traffickers, including two allegedly complicit police officers and two suspected labor trafficking offenders. A number of cases, however, remain pending from previous reporting periods and prosecution efforts continued to focus largely on sex trafficking cases. One labor trafficking case remains pending prosecution from the previous reporting period. In February 2012, the Durban task team conducted a successful raid on a brothel, facilitating the rescue of 16 females – including eight children, some as young as 13 – and arresting and charging four offenders with sex trafficking and drug and prostitution offenses. Prosecutors dropped the charges against one suspect, while the other three alleged offenders remain in custody awaiting a bail hearing. In October 2011, Western Cape police arrested two police officers and one additional suspect in Nelspoort for the alleged sex trafficking of South African girls between the ages of 12 and 15. The Cape Town vice squad, under the jurisdiction of provincial authorities, arrested eight suspected trafficking offenders in four cases, including the only new labor trafficking case identified by South African authorities during the year.

Stereotyping

South Africa is cognizant that gender-based stereotyping and prejudice is rooted in the gender discourses of masculinity and femininity with concomitant prescribed behaviours, norms and attitudes that ultimately lead to discrimination and gender-based violence. It is an articulation of, or an enforcement of, power hierarchies and structural inequalities that are informed by belief systems, cultural norms and socialization processes.

Violence could take the form of trafficking in women and girls for sex trade, forced prostitution, domestic and forced labour and sex tourism. Although violence is a traumatic experience for any human being, gender-based violence is preponderantly inflicted by men on women and girls, including other vulnerable people – such as people with disabilities, children and the elderly. It both reflects and re-inforce inequalities between men and women and compromises the health, dignity, security and autonomy of its victims and survivors. More and more recently in South Africa, incidents of violence against disabled women and girls, “corrective rape” on lesbians, rape of elderly women (especially grandmothers) and sexual offences against young girls are occurring and receiving widespread media coverage in the country.

A South African three-province survey¹¹ found that 35% - 65% of women had been injured by their intimate partners. This study shows that the health impact of gender based violence on women can be as high as some of the leading causes of injury; consequences are especially serious in the areas of both reproductive and mental health. Similarly, studies estimating the socio-economic costs of gender based violence have documented its impact on earnings due to death, loss of productivity, job loss, lost productivity of the abuser due to incarceration, and loss of tax revenues due to death and incarceration.

Public educational material and measures

The South African Government has rolled out initiatives and campaigns that seek to dismantle sex stereotypes. These include the following:

- The National Education Curriculum has particularly been reviewed to eliminate gender stereotyping and other forms of bias and discrimination. In this regard, a Manifesto on Values, Education and Democracy was released in 2000. The Manifesto contains strategies designed to promote the values of democracy, equity, non-racism, non-sexism, human dignity, accountability, the rule of law, respect and reconciliation.
- Other strategies employed to tackle gender stereotyping include the 16 Days Activism Campaign and the 365-Day National Action Plan, launched in 1997, against gender-based violence. Awareness campaigns have been conducted particularly through the media. To sensitise the society on the prevention and stemming of sexual violence, South Africa launched in 1999, the 16 Days of Activism Campaign to End Violence against Women and Children also represents an annual campaign to address the scourge. This campaign has been run successfully for the last thirteen years, increasing yearly in the number of people that it is able to reach. The campaign includes road shows to farm dwellers and fundraising activities. The fundraising is done for the benefit of civil society organizations that provide services to women victims of violence. Various organizations across the country have been assisted through fundraising to build community centres and shelters for abused women and children. Inclusion of men as partners in the campaign has been important. In 2007, the 365-Day Action Plan to end Gender Violence was launched to ensure that sensitisation of the society on gender based violence runs throughout the year.
- The Commission on Gender Equality and the South African Human Rights Commission have equally been involved in educational programmes that seek to combat sex stereotyping through public education and material production.
- The courts have also played a critical role in transforming societal beliefs and attitudes through some of their landmark decisions that have fundamentally changed customary and religious practices that violate women's rights.
- Since 2003, some activists have been spearheading a focus on the lives of black lesbians, living in working-class and poor neighbourhoods. A campaign called "The Rose has Thorns" was started which looked at chronicling the lives of black, lesbian women, mostly in Alexander township, and provided ongoing legal and social support to those who had been raped and assaulted.
- One-in-Nine campaign, a campaign designed to advocate against misogyny and homophobia.
- In 2005, Sonke Gender Justice, a male focused NGO addressing how the role of men and boys is critical in advancing women, started the One Man Can campaign.

Support to victims of violence

An important component of South Africa's response to sexual violence is the support offered to the victims of such crimes. In this regard, the Sexual Offences Act establishes the legal framework for the adequate and effective protection of victims of sexual violence. In terms of the Act, victims of sexual offences are entitled to post exposure prophylaxis (PEP). They are also entitled to apply for an order that the alleged offender be tested for HIV and that the results thereof be disclosed to her. The Domestic Violence Act imposes a duty on the SAPS to render such assistance as may be required by victims of domestic violence. Such assistance may include finding suitable shelter and obtaining medical treatment for victims. The Independent Police Investigative Directorate (IPID) is mandated to monitor whether members of the SAPS discharge this duty as required by law.

In order to implement the provisions of the various pieces of legislation on victim protection, South Africa adopted in 2009, the National Policy Guidelines for Victim Empowerment. The priority target groups for victim empowerment under the Policy Guidelines include women, victims of domestic violence, victims of sexual assault and rape, victims of human trafficking, and abused children. In this regard, it seeks to ensure sound inter-departmental and inter-sectoral collaboration and the integration of effective institutional arrangements for a multi-pronged approach in managing victim empowerment. The Policy Guidelines are based on the concept of restorative justice which revolves around the promotion of a victim-centred approach to criminal justice.

The Nation Policy Guidelines for Victim Empowerment complement the National Policy Guidelines for the Handling of Victims of Sexual Offences adopted in 1998 and the Service Charter for Victims of Crime in South Africa adopted in 2004. Pursuant to the Victims Charter, victims of crime are entitled to the following rights at a minimum: the right to be treated with fairness and with respect for dignity and privacy; the right to offer information; the right to receive information; the right to protection; the right to assistance; the right to compensation; and the right to restitution. Training on the Victims Charter has been ongoing since its adoption.

South Africa, under the auspices of the National Prosecuting Authority's Sexual Offences and Community Affairs Unit established Thuthuzela Care Centres (TTCs) for rape victims and victims of sexual and domestic violence. These centres which are 24-hour one-stop centres assist victims of rape by offering a victim-friendly environment that helps eliminate secondary victimization. At these centres rape victims have access to all services such as the police, counselling, doctors, court preparation and prosecution.

The number of TTCs in the country has increased from 10 in 2007-2008, 17 in 2008-2009, 28 in 2009-2010, and about 35 fully operational sites during 2011- 2012 year. Table 21 below indicates the activities of the TTCs over the period of four financial years.

Table: Activities of TTCs 2008/2009- 2011/2012 year

| Year | 2008/2009 | 2009/2010 | 2010/2011 | 2011/2012 |
|------------------------------|-----------|-----------|-----------|-----------|
| Matters reported at TCC site | 10 213 | 13 756 | 20 496 | 28 557 |
| Cases received at court | 2 912 | 6410 | 9 716 | 10 949 |
| Cases finalized | 596 | 1 088 | 1 761 | 2 180 |
| % of conviction rate | 61.2 | 64.45 | 63 | 60.7 |

Since these Centres were established, the process of reporting and prosecuting sexual offences has improved remarkably. Secondary trauma to victims of sexual offences has also reduced significantly. In 2011, the UN Secretary-General, Mr. Ban Ki Moon, recognized the 'Thuthuzela model' as a 'world best practice model' in the field of gender violence management and response.

In a bid to sensitize the society on the rights of victims, South Africa launched the Victims' Rights Week in September 2010. During this week, which is still held annually in September, government departments within the criminal justice system; coordinated by the Department of Social Development, seek to raise public awareness about victim rights. The public is provided with information about what interventions and services are provided by government departments to victims of crime. In addition to providing information, the week provides government departments with an opportunity to respond to issues faced by the public and crime victims, in a coordinated manner.

Adult Prostitution / Sex Work

Adult prostitution (women 18 years and older) is a highly contested issue in which societal opinions are often highly polarized. In this regard, the perspective ranges from the constitutional protection of human rights and human dignity to that of enforcing particular moral or religious values. The existing legal position in South Africa regarding prostitution is that it is totally criminalized or prohibited, particularly through the Sexual Offences Act 23 of 1957 and the Sexual Offences Amendment Act 32 of 2007. The Sexual Offences Act of 1957 regulates various aspects of prostitution such as the keeping of brothels, the procurement of women as prostitutes, soliciting by prostitutes, and living off the earnings of prostitution inter alia, and which is criminalized. The Criminal Procedure Act 51 of 1977 also contains provisions that are peripherally relevant to adult prostitution, and municipal by-laws play a role in the legal control of prostitution. Municipal by-laws apply both to prostitution in brothels and prostitution conducted from the street.

The current challenge is in establishing whether the current legal position on adult prostitution violates the rights of sex workers and prostitutes in light of the context of a Constitution committed to advancing human rights, social justice and human dignity.

Another challenge is that the current legal framework on prostitution and sex work is total criminalization against the seller (most often women) and impunity for buyers (most often men). However, there are some local level governance structures which, based on their local understanding and mobilization by NGOs, have abandoned the arrest of people who are prostituting themselves.

Of particular interest is section 20 (1) (a) of the Sexual Offences Act, 1957 which provides that any person who has unlawful intercourse or commits an act of indecency with any other person for reward is guilty of an offence. The section was declared inconsistent with the Bill of Rights in the Constitution (s9 and s12) and therefore invalid in the Transvaal Division of the High Court in *Jordan and others v The State* 2002 (1) SACR 19 (TPD). However the Constitutional Court decision in *Jordaan v State*, 2002 (6) SA 642 (CC); 2002 (11) BCLR 1117 (CC) did not advance the course of prostitution.

South Africa is in the process of looking at whether sex work should be decriminalized in the country. In this regard the South African Law Reform Commission (SALRC) produced a comprehensive discussion paper in 2009 entitled “Project 107: Sexual Offences – Adult Prostitution”. The paper outlines that the socio-economic determinants of prostitution or sex work suggest that it is driven by the complex intersection of social and economic factors in which poverty and inequality are key drivers¹². It furthermore explored what motivates the supply and the demand for prostitution; the links between prostitution and crime, drugs and HIV towards an appropriate legal response on this matter. It also looks at the use of different terminologies such as ‘prostitution’ versus ‘sex work’, etc.

Possible law reform approaches to prostitution as provided for in the SALRC Discussion Paper on Sexual Offences: Adult Prostitution is as follows:

- General proposal of repealing the Sexual Offences Act and sections of the Sexual Offences Amendment Act
- Proposal of a new Adult Prostitution Reform Act
- Proposes four law reform options namely total criminalization model; partial criminalization of some forms of adult prostitution and related acts; non-criminalization; or a regulatory model.

However whatever the ideal approach would be going forward, it is imperative and critical that it embraces the dignity of women, increases job opportunities and decent work for all women; and affords sex workers their human rights, human dignity and access to health care and social justice.

“The human rights abuse of sex workers in South Africa is alarming and demands immediate attention. The patterns of abuse that [they] experience are a direct result of their criminal status, which increases their vulnerability to violence..... Criminalizing sex work in South Africa has not eradicated it. Instead, the illegal status ...creates conditions in which exploitation and abuse can thrive. Sex workers suffer systematic and regular violence and rape, and are murdered at rates higher than the general population”¹³.

“Stop Harassing Us! Tackle Real Crime” –

A Report on Human Rights Violations by Police against Sex Workers in South Africa

Women’s Legal Centre:

August 2012

12 South African Law reform Commission: Discussion Paper; Project 107: Sexual Offences – Adult Prostitution”; 2009

13 Women’s Legal Centre: “Stop Harassing Us! Tackle Real Crime” – A Report on Human Rights Violations by Police against Sex Workers in South Africa: August 2012

Sexual harassment

Sexual harassment is prohibited and punishable in South Africa. The Protection from Harassment Act is supported by the Equality Act which prohibits harassment and defined as 'unwanted conduct which is persistent or serious and demeans, or humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to (a) sex, gender or sexual orientation, or (b) a person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with that group. The Equality Courts are thus empowered to deal with cases of sexual harassment.

Sexual harassment in the workplace is prohibited under the Employment Equity Act and the Labour Relations Act 66 of 1995. In this regard, the Code of Good Practice on the Handling of Sexual Harassment has been issued in terms of the Labour Relations Act. In schools, sexual harassment is addressed under the Employment of Educators Act 76 of 1998 (as amended in 2000) and the South African Schools Act 84 of 1996, both of which make sexual harassment a serious misconduct.

In 2003, the Labour Court in Cape Town handed down a landmark judgment in *Ntsabo v Real Security CC* (2004) 1 BLLR 58 (LC), a case dealing with sexual harassment and the issue of employer liability for acts of sexual harassment perpetrated by an employee against a fellow employee. The Court held that an employer is liable in damages for the sexual harassment of an employee if he fails to investigate allegations of such harassment. Similarly, in *Grobler v Nasper BPK en 'n Ander* 2004 (4) SA 220 (C), it was held that where sexual harassment resulted in a tangible employment action such as employment, dismissal, failure to promote, change in working conditions or a material change in benefits for the person harassed, the employer was liable unless the employer could prove that reasonable care had been taken to prevent or stop sexual harassment and to deal with its impact. Thus, employers are under a duty to take reasonable measures to ensure that women under their employ are protected from sexual harassment.

Elimination of Harmful Practices

Harmful practices, which negatively affect the fundamental rights of women and girls, are expressly prohibited in South Africa. In this regard, the Equality Act, Section 8 (d) it stipulates that unfair discrimination on the ground of gender includes "any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child".

Among the harmful practices that are reportedly practiced in South Africa is "Ukuthwala", which involves the abduction of a bride by the bridegroom supposedly according to plan and agreement. Ukuthwala was traditionally intended for people of the same age group who, in the normal course of events, would have been expected to marry each other and never intended to apply to minor children, however, forced marriage of girls as young as 12 to adult men, is still practiced in some remote villages in Eastern, KwaZulu-Natal and Western Cape provinces.

The Commission for Gender Equality commissioned a study on "Ukuthwala in KwaZulu-Natal: an investigation into state prevention and responses" in 2012. The CGE in its concluding remarks commended the Office of the Premier for initiating research into the extent of harmful traditional practices in the province, as well as the Department of Social Development's outreach and awareness interventions including their response to individual cases and support for victims of Ukuthwala. The CGE also acknowledged the positive measures put in place by the Department of Education and commend Provincial Cabinet Leadership for its endeavours in calling for collaboration between departments and civil society organizations to support children at risk.

In 2009/2010, of the 493 reported cases of ukuthwala, 180 were finalised. In 2010/2011, 174 cases were reported. Only 67 were finalised. Out of the 1273 total reported cases as from 2008 to 2011, there are 617 cases still pending.

In February 2012 a man was brought before the Wynberg Regional Court in Cape Town, Western Cape Province, and charged with rape, human trafficking and assault because of an ukuthwala kidnapping. This case was finalized early 2014 where it recognizes this practice as harmful to women and young girls, including trafficking and rape of the minor girl. The 22 year sentence handed down shows that we will no longer tolerate such adverse practices that violate women's rights and dignity.

Other cultural practices include virginity testing, the killing of “witches” and the practice of female genital mutilation amongst certain populations. The approach that is adopted is an overarching advocacy strategy, awareness raising, rights education and awareness of legal measures that can be taken. The strategy also incorporates an investigative element to determine the extent of the problem. The South African Law Reform Commission has been requested to investigate and recommend advice on the legislation that will prohibit these practices.

Female genital mutilation and virginity testing is expressly prohibited and regarded as a form of gender discrimination in South Africa. The relevant legislation in this regard is the Equality Act and the Children’s Act. The Children’s Act prohibits virginity testing of children under the age of 16. A child older than 16 may undergo virginity testing on three conditions: (a) she has given consent to the testing in the prescribed manner; (b) after she has been properly counselled; and the testing is conducted in the manner prescribed. The results of virginity testing may not be disclosed without the consent of the child. In addition, the body of the child who has undergone virginity testing may not be marked.

However, South Africa’s efforts to curb female genital mutilation and virginity testing are impaired by the lack of empirical information on their prevalence. Moreover, these practices are culturally ingrained and as such, they are difficult to root out. In most circumstances, victims maintain silent acceptance and tolerance of the practices.

