

RESEARCH BRIEF

Unpacking the gaps and challenges in addressing gender-based violence in South Africa



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in South Africa

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LIST OF ACRONYMS

ACHPR	African Commission on Human and People's Rights
ANC	African National Congress
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CGE	Commission for Gender Equality
CSOs	Civil society organisations
CSVR	Centre for the Study of Violence and Reconciliation
DBE	Department of Basic Education
DOJ&CD	Department of Justice and Constitutional Development
DPME	Department of Planning, Monitoring and Evaluation
DSD	Department of Social Development
DVA	Domestic Violence Act
GBH	Grievous Bodily Harm
GBV	Gender-based Violence
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBT / GNC	Lesbian, Gay, Bisexual, Transsexual / Gender non-conforming
NDP	National Development Plan
NHRI	National Human Rights Institution
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
SACE	South African Council of Educators
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SAPS	South African Police Service
SDGs	Sustainable Development Goals
SOA	Criminal Law (Sexual Offences and Related Matters) Amendment Act (Sexual Offences Act)
StatsSA	Statistics South Africa
TTCs	Thuthuzela Care Centres
UDHR	Universal Declaration of Human Rights
UN	United Nations

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INTRODUCTION

CONTEXTUAL BACKGROUND

In May 2017, the issue of gender-based violence (GBV), and in particular the extreme cases of femicide, hit the headlines in South Africa after a number of young women were murdered.² Debates around the hashtag #MenareTrash subsequently trended on social media. In August 2017, then Deputy Minister of Higher Education, Mduduzi Manana, apologised for assaulting a woman at a Johannesburg nightclub.³ More recently, in February 2018, a woman protestor was kicked by a political leader of the ruling African National Congress (ANC) outside of the ANC headquarters at Luthuli House and in full view of the media.⁴ Despite the numerous campaigns and interventions by government and civil society organisations (CSOs) around GBV, high levels of sexual assault, rape and femicide still occur in South Africa.

As previously reported by the South African Human Rights Commission (SAHRC), Statistics South Africa (StatsSA) has estimated that 21 per cent of women over the age of 18 years have experienced physical violence by a partner, while 6 per cent of women have experienced sexual violence by a partner.⁵ However, it is widely believed that these numbers are inaccurate due to the fact that many cases of GBV go unreported.⁶ The high rates of violence against women, along with the systemic failures of the South African criminal justice system to hold perpetrators accountable, suggest that in South Africa unequal power relationships and patriarchy continue to operate and maintain gender hierarchies through essentialised notions of gender and physical and/or sexual violence.⁷

We are at a crossroads and the route we choose must be the one that rejects intimate partner violence, a route that rejects harassment of the LGBTIQI community, we must reject gender based violence in all its forms.

Hon. Minister Fikile Mbalula¹

¹ Ministry of Police *Minister Fikile Mbalula: Speech at the gender based violence and protection of vulnerable groups indaba, Centurion* (2017).

² S Zulu *Family confirms Karabo Mokoena Found Dead* <<http://ewn.co.za/2017/05/11/family-confirms-missing-karabo-mokoena-28-found-dead>> *Eye Witness News* (10 May 2017).

³ ENCA *Deputy Minister apologises for assaulting woman* (7 August 2017).

⁴ SAHRC *Media statement: SAHRC condemns the attack against a woman outside Luthuli House* (6 February 2018).

⁵ SAHRC *Research brief on gender and equality in South Africa* (2017). See also: StatsSA *South Africa Demographic and Health Survey* (2016).

⁶ Rape Crisis Cape Town Trust *Prevalence* (2017) <<https://rapecrisis.org.za/rape-in-south-africa/>>.

⁷ Ibid.

In 2016, the United Nations (UN) Special Rapporteur on violence against women (Special Rapporteur) highlighted in a report that South Africa is still characterised by divisions on the basis of race, class and gender, inherited from its violent apartheid past. The GBV pandemic in South Africa is rooted in unequal power in gender relations, patriarchy, homophobia, sexism, amongst other harmful discriminatory beliefs and practices. Such violence is reinforced by widespread use of drugs and alcohol, the high unemployment rate⁸ and the continued stereotyping of women in the media, further compounded by the HIV pandemic.⁹ In a written submission to the UN Human Rights Council (HRC), the SAHRC welcomed the report of the Special Rapporteur as “a valuable intervention in South Africa’s continued and relentless efforts to combat the scourge of GBV”.¹⁰

South Africa has progressive laws and policies related to GBV and sexual-related violence, including the Domestic Violence Act, 116 of 1998 (DVA) and the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007 (Sexual Offences Act) (SOA). These laws give expression to the constitutional rights to equality, human dignity, life and freedom and security of the person.¹¹ These human rights find further expression in international and regional human rights frameworks, including the International Covenant on Civil and Political Rights, 1966 (ICCPR), the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), the Convention on the Elimination of all Forms of Discrimination against Women, 1979 (CEDAW), and the African Charter on Human and People’s Rights, 1981 (African Charter).

However, the scope and prevalence of GBV that currently plagues the South African landscape suggests that there is a lack of political will to deal with this challenge, as the state response and implementation of GBV-related policies and legislation has been lacking. This perception is exacerbated, noting that South Africa’s report to the UN CEDAW Committee¹² due in February 2015, has to date not been submitted.

The Commission for Gender Equality (CGE) is mandated in terms of the Constitution of the Republic of South Africa, 1996 (Constitution) “to promote respect for gender equality and the protection, development and attainment of gender equality”. While acknowledging the crucial role that the CGE plays in promoting gender equality in South Africa, the SAHRC is of the view that joint efforts have an important role to play in this area in supporting the work of the CGE, particularly as issues surrounding GBV relate to gender discrimination, socio-economic inequality, violence and the lack of accountability in the criminal justice system for victims of GBV. This research brief therefore aims to provide a high level overview highlighting the gaps in addressing GBV in South Africa, and to support the work of human

⁸ As at the third quarter of 2017, South Africa’s unemployment rate was 27.7 percent (see: StatsSA <<http://www.statssa.gov.za/>>).

⁹ UN HRC *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa A/HRC/32/42/Add.2* (2016); see also SAHRC *International and Regional Human Rights Report* (2017).

¹⁰ UN HRC *Written submission by South Africa: Human Rights Commission* (2016).

¹¹ The Constitution of the Republic of South Africa, 1996, sections 9, 10, 11.

¹² The CEDAW Committee is tasked with monitoring State party compliance with the CEDAW.

rights activists, CSOs, the CGE and government departments seeking to eliminate GBV and ensure that everyone is able to enjoy the rights guaranteed in the Constitution.

The Department of Women, which is now situated in the Presidency, has been mandated to champion the advancement of women's socio-economic empowerment and the promotion of gender equality. Initially, it was hoped that the creation of a dedicated Department of Women situated within the Presidency would improve its effectiveness.¹³ However, the Department of Women has been criticised as failing to assist in the empowerment of women in South Africa.¹⁴ Furthermore, the Department has consistently failed to meet its targets and therefore continues to be ineffective in addressing structural inequalities through implementation of legislation, gender-responsive budgeting and monitoring of relevant state departments in order to ensure the holistic elimination of gender discrimination.¹⁵

It is on this basis that this research brief seeks to deepen understanding of GBV and to recommend the adoption of reforms for the strengthening of measures to prevent GBV. The research brief moreover recommends that both the state and non-state actors adopt a gender mainstreaming approach to budgeting, policy making and standard setting. The research brief sets out overarching gaps in legislation, policy and related implementation, after which it provides concrete examples of the manifestation of structural gender discrimination through GBV, in various contexts.

DEFINING THE TERM “GENDER-BASED VIOLENCE”

GBV is the general term “used to capture violence that occurs as a result of the normative role expectations associated with each gender, as well as the unequal power relationships between the genders within the context of a specific society”, and can refer to women and girls, as well as men and boys, as victims.¹⁶ However, the primary targets of GBV as victims in South Africa are women and adolescent girls, exacerbated largely due to gender discrimination coupled with their lower socio-economic status. Women therefore have less resources to avoid or escape abusive situations, or seek justice.¹⁷ As noted by the UN Special Rapporteur on her visit to South Africa, women and girls who experience violence in under-resourced communities and informal settlements are often left unprotected and are unable to hold perpetrators accountable through the criminal justice system.¹⁸ The UN further defines GBV as a “form of violence that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men”.¹⁹

¹³ The erstwhile Department of Women, Children and Disabilities was reformed to establish the Department of Women within the Presidency.

¹⁴ R Davis 'Analysis: What's going on at the Department of Women' (13-11-2014) *Daily Maverick* <<https://www.dailymaverick.co.za/article/2014-11-13-analysis-whats-going-on-at-the-ministry-of-women/#.WquAoDYVhn1>>.

¹⁵ Women in Presidency *Department of Women in the Presidency Quarter 2 Performance* (13-02-2018) *Parliamentary Monitoring Group* <<https://pmg.org.za/committee-meeting/25787/>>.

¹⁶ Centre for the Study of Violence and Reconciliation (CSVR) *Gender-Based Violence (GBV) in South Africa: A Brief Review* (2016) 4.

¹⁷ *Ibid.*

¹⁸ UN HRC *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa* (A/HRC/32/42/Add.2) (2016) paras 28-29.

¹⁹ CEDAW Committee *General Recommendation No. 19* (1992).

[G]ender bias is undermining our social fabric and devalues all of us. It is not just a human rights issue; it is a tremendous waste of the world's human potential. By denying women equal rights, we deny half the population a chance to live life at its fullest. Political, economic and social equality for women will benefit all the world's citizens. Together we can eradicate prejudice and work for equal rights and respect for all.²¹

This research brief will therefore limit its focus to GBV against women and girls in South Africa, in light of the high levels and extreme forms of violence experienced by members of this demographic of the population.

PURPOSE AND OBJECTIVES

The Sustainable Development Goals (SDGs), particularly SDG 5, speak to the achievement of gender equality. SDG 5 states:

A target of achieving SDG 5 includes ending all forms of violence against all women and girls in the public and private spheres.²¹ South Africa's National Development Plan (NDP) further envisions that, by 2030, people in South Africa should have no fear of crime, and especially women,

children and those who are vulnerable should feel protected.²²

As a National Human Rights Institution (NHRI), the SAHRC is cognisant of the crucial role it plays in monitoring the state's progress toward combating GBV in all of its forms, including state compliance with international and regional instruments; domestic legislation and national programmes; and achieving the objectives articulated in the SDGs and NDP. Moreover, the SAHRC notes South Africa's progressive Constitution, laws and policies that aim to address GBV. However, the scourge of violence against women and girls persists as a result of the failure of effective implementation of these laws.²³ This research aims to highlight the challenges and gaps in addressing GBV in South Africa across various themes, including gaps in the criminal justice system, access to information, and the relationship between the (non) realisation of socio-economic rights and the reinforcement of GBV.

²⁰ UN *The Global Goals for Sustainable Development, 5: Gender Equality*.

²¹ Ibid, Target 5.2.

²² The Presidency of the Republic of South Africa: National Planning Commission *National Development Plan 2030: Our future - make it work* (2012) 43.

²³ UN HRC *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa A/HRC/32/42/Add.2* (2016) par 19.

METHODOLOGY

The research brief is qualitative in nature. The documentary information gathered for this brief took the form of interviews with activists, researchers and lawyers advocating for the elimination of GBV and the promotion of gender justice in the areas of: criminal justice reform, water and sanitation, basic education, transport, and sexual and reproductive health care. The purpose of the interviews was to provide further contextual insight to the root causes that lead to GBV and inform the main points illustrated in the brief. No direct quotes from interviews are referenced.

STRUCTURE

The research brief begins by articulating the mandate of the SAHRC. It then provides a legal framework of the key civil and political rights, human rights standards and obligations emanating from the domestic, regional and international human rights framework that aim to address and eliminate GBV in all of its forms. Thereafter, it notes contemporary challenges reinforcing GBV in South Africa, by highlighting overarching policy gaps in governance due to the absence of gender mainstreaming, accountability mechanisms, and the criminal justice system. Thereafter, particular examples are provided to demonstrate the manner in which the scourge of GBV in South Africa impacts on the realisation of the socio-economic rights to water and sanitation, basic education, transport and sexual and reproductive health care for women and girls.

Each sub-section concludes with a set of advisory recommendations to state actors emanating from the SAHRC, and regional and international human rights bodies.

THE CORE OBJECTIVES OF THE RESEARCH BRIEF ARE TO:

- **Provide a snapshot of the contemporary challenges in addressing GBV in South Africa;**
- **Highlight overarching gaps in access to justice, statistics-gathering and programmatic implementation that aim to combat GBV in South Africa;**
- **Highlight the manner in which the realisation of socio-economic rights, or the lack thereof, impacts on the enjoyment of civil and political rights;**
- **Promote the domestic implementation and harmonisation with regional and international human rights norms and standards as they relate to tackling GBV; and**
- **Reiterate existing recommendations made to the South African government by the SAHRC, regional and international bodies, and civil society organisations, calling for the protection of women and girls against all forms of GBV in South Africa.**

2

MANDATE OF THE SAHRC

In terms of Section 184 of the Constitution, the SAHRC is mandated to, amongst others, promote the protection, development and attainment of human rights, and to monitor and assess the observance of human rights in the country. The powers of the SAHRC are supplemented by the South African Human Rights Commission Act, 40 of 2013.

3

APPLICABLE LEGAL FRAMEWORKS

SOUTH AFRICAN LEGAL AND POLICY FRAMEWORK

The Constitution guarantees a number of protections against GBV in South Africa. These include: the right to equality (section 9), which includes equality before the law, and equal protection and benefit before the law for everyone, and the prohibition of unfair discrimination by the state and individuals on a number of grounds, including gender. Section 10 of the Constitution guarantees the right to human dignity, while the right to life is guaranteed in section 11. Importantly, section 12 of the Constitution guarantees the right to freedom and security of the person, which includes the right of everyone to be free from all forms of violence.

In terms of the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000 (PEPUDA), which gives expression to the right to equality, section 8 stipulates that no person may be unfairly discriminated against on the grounds of gender, expressly including GBV. Section 8 of PEPUDA goes onto prohibit any limitation of women's access to social services, such as health or education, and the denial or systemic inequality of access to opportunities.²⁴

South Africa has a number of laws and policies that aim to address GBV. The DVA and the SOA are the two most prominent national laws relating to violence against women. The DVA provides women the highest form of protection from domestic violence, placing responsibility squarely on state organs and in particular the South African Police Service

Outlined below is a brief overview of the key human rights standards and obligations stemming from the domestic, regional and international human rights framework that prohibit GBV, and which inform the content of this research brief.

²⁴ In terms of section 8 of PEPUDA:

- no person may unfairly discriminate against any other person on the ground of gender, including –
- a) Gender-based violence;
 - b) ...
 - g) limiting women's access to social services or benefits, such as health, education and social security;
 - h) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons;
 - i) systemic inequality of access to opportunities by women as a result of the sexual division of labour.

(SAPS) to ensure that survivors of domestic violence are able to apply for protection orders in order to prevent abusers from entering a mutual home or the survivor's home or place of work.²⁵ The DVA has an expansive definition of domestic violence that includes physical, sexual, emotional, verbal, psychological and economic abuse as well as intimidation, harassment, stalking and controlling behaviours.²⁶ The SOA provides the framework for the provision of adequate and effective protection to all victims of sexual offences, and makes express mention of vulnerable groups such as women, children and mentally handicapped persons.

INTERNATIONAL AND REGIONAL HUMAN RIGHTS FRAMEWORK

South Africa is a signatory to a number of international and regional frameworks aimed at promoting and protecting the rights of women and girls. This compels the South African government to introduce and effectively implement domestic laws and policies to ensure compliance with these international obligations.

The foundational international human rights instrument to which South Africa is bound, is the Universal Declaration of Human Rights (UDHR), which upholds the principle of non-discrimination on the basis of gender. South Africa is also party to the CEDAW, which aims to advance the rights of women, and acknowledges the multiple forms of discrimination experienced by women specifically. The CEDAW calls on States to undertake the measures necessary to end discrimination against women in all forms, which include incorporating the principle of equality of men and women in their legal system and to ensure the effective protection of women against discrimination through the establishment of public institutions.²⁷ General Recommendation No. 12 further calls on States to include in their periodic reports to the CEDAW Committee, the legislation in force to protect women against incidents of all kinds of violence in everyday life; other measures adopted to eradicate this violence; the existence of support services for women who are the victims of aggression or abuses; and statistical data on the incidence of violence of all kinds against women.²⁸

It must be noted that although South Africa ratified the CEDAW in 1995 and submitted its initial report to the CEDAW Committee in 1998, the country subsequently failed to adhere to its reporting obligations timeously with respect to its second, third and fourth periodic report. These overdue reports were only submitted in 2009. In 2011, the CEDAW Committee requested the South African government to provide feedback on specific concluding observations by February 2013. However, the government did not adhere to this deadline. In August 2013 and April 2014, the CEDAW Committee addressed reminder letters to South Africa requesting a response to the call for additional information, which

²⁵ See section 2 of the *Domestic Violence Act, 116 of 1998*.

²⁶ *Ibid*, section 1

²⁷ UN Women *Convention on the Elimination of All Forms of Discrimination against Women* <<http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>>.

²⁸ CEDAW Committee, *General Recommendation No. 12* (1989).

the South African government only responded to in September 2015.²⁹ South Africa's fifth periodic report was due in February 2015 and to date, has not been submitted.³⁰

Regionally, South Africa is party to the African Charter on Human and Peoples' Rights (African Charter), which guarantees the rights to freedom from discrimination (Article 2); equality before the law and equal protection of the law (Article 3); and personal liberty, including security of the person (Article 6). The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)³¹ is hailed as one of the most progressive regional instruments relating to the promotion of the rights of women in Africa. The Maputo Protocol encompasses the provisions of CEDAW and further expands on women's human rights in relation to GBV, calling on all Member States to give greater attention to the realisation of women's human rights in order to eliminate all forms of discrimination and GBV against women.

Article 4 of the Maputo Protocol requires States Parties to take appropriate and effective measures to, *inter alia*, enact and enforce laws to prohibit and punish all forms of violence against women; establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence; and provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women. In August 2015, South Africa submitted its combined second periodic report under the African Charter and initial report under the Maputo Protocol to the African Commission on Human and Peoples' Rights (ACHPR).³²

On a sub-regional level, the Southern African Development Community Protocol on Gender and Development (the SADC Protocol) seeks to promote gender equality in the SADC region. Dealing specifically with GBV, Part 6 of the SADC Protocol requires States Parties by 2015, to:

- enact and enforce legislation prohibiting all forms of GBV; and
- ensure that perpetrators of GBV, including domestic violence, rape, femicide, sexual harassment, female genital mutilation and all other forms of gender-based violence are tried by a court of competent jurisdiction.³³

²⁹ SAHRC *International and Regional Human Rights Report* (2016).

³⁰ See UN Office of the High Commissioner of Human Rights (OHCHR) <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=ZAF&Lang=EN>.

³¹ The Maputo Protocol is available at <http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf>.

³² South African Government *Combined Second Periodic Report under the African Charter on Human and Peoples' Rights and Initial Report under the Protocol to the African Charter on the Rights of Women in Africa* (August 2015), African Commission on Human and Peoples' Rights (South African ACHPR State Report, 2015).

³³ The SADC Protocol on Gender and Development Article 20(1).

4

CONTEMPORARY CHALLENGES REINFORCING GBV IN SOUTH AFRICA

GAPS IN POLICY IMPLEMENTATION, ACCOUNTABILITY AND THE CRIMINAL JUSTICE SYSTEM

The credibility of any government's response to GBV can be sourced back to the strength of its laws, policies, and interventions; and the manner in which they are both implemented and prioritised.³⁴ Not only does South Africa have a comprehensive legal framework to address GBV, the country's courts have also played an instrumental role in the fight against GBV. Important judgments include *Carmichele v Minister of Safety and Security*,³⁵ where the Constitutional Court held that the state is obliged in terms of the Constitution and international law to prevent violence against women and to protect the dignity, freedom and security of women. In *Masiya v Director of Public Prosecutions*,³⁶ the Constitutional Court extended the definition of rape to include non-consensual anal penetration of females, which was previously not included in the definition.

Yet, despite these progressive developments, incidences of GBV in South Africa remain unacceptably high due to the failures in the criminal justice system to protect women and girls from GBV in all of its forms, and a failure of various government departments to adequately prioritise and effectively implement various policies and programmes that seek to minimise, and ultimately prevent, such incidences from occurring.

Legislative enforcement

In the South African ACHPR State Report, 2015, South Africa reports that it has established a comprehensive legislative framework that aims to address violence against women and girls in all of its manifestations. Priority has been accorded to sexual offences and domestic violence, including victim empowerment and integrated responses to GBV. In 2005, a multi-disciplinary team of experts was established to form an Inter-Departmental Management Team, tasked with designing programmes aimed at addressing GBV. State-sponsored

³⁴ P Mpani & N Nsibande *Understanding Gender Policy and Gender-based Violence in South Africa: a Literature Review* Tshwaranang Legal Advocacy Centre (2015) 30.

³⁵ 2001 (4) SA 938 (C).

³⁶ 2007 (5) SA 20 (C).

training programmes for magistrates, clerks, the SAPS and traditional leaders pertaining to GBV have been conducted, and advocacy materials have been developed to educate South African society on the issue. Victim Support Rooms have been created at police stations for interviews and consultations with victims of sexual offences, child abuse and domestic violence. A service Charter for Victims of Crime in South Africa was developed in 2007 to ensure that victims remain central to the justice process in South Africa, and to eliminate instances of secondary victimisation and ensure that victims are treated with dignity. In 2009, the National Policy Guidelines for Victim Empowerment were adopted, which seek to ensure coherent inter-departmental and inter-sectoral collaboration for a multi-pronged approach in managing victim empowerment.³⁷

South Africa has also been celebrated for the establishment of the Thuthuzela Care Centres (TCCs) for rape victims and victims of sexual violence. The TCCs are 24-hour centres that assist victims of sexual offences by providing access to all required services, including the police, counselling, doctors, assistance with court preparation and prosecution of the perpetrator.³⁸ According to the Department of Justice and Correctional Services, there are approximately 54 TCCs operating across South Africa.³⁹

However, despite the enactment of the SOA and DVA in South Africa, and policies and programmes that aim to give them effect, a number of gaps exist in the implementation of these pieces of legislation, resulting in a lack of accountability for perpetrators of GBV.

Research on the subject highlights that notwithstanding the clarity provided in the legislation to provide protection for victims of GBV, victims frequently experience difficulty in accessing the criminal justice system. For example, the DVA introduced a comprehensive set of systems and duties, both internal and external to the SAPS, aimed at providing victims of domestic violence the maximum protection from domestic abuse.⁴⁰ These entitle domestic violence complainants to a range of services from the police. Complainants must be provided with written information about their rights and the criminal and civil remedies available to them, and have this notice explained in a language of their choice. The police are also required to assist complainants to find suitable shelter, and/ or to obtain medical treatment; serve notice on the abuser to appear in court; serve protection orders; arrest an abuser who has breached a protection order or committed a crime (even without a warrant); remove weapons from the abuser or from the home; and accompany the complainant to collect personal items from her/his residence.⁴¹

However, members of the SAPS have been found to be slow to intervene as these incidents of violence are seen to be of a private nature. Due to the passive and negative attitudes expressed by SAPS officials, victims either feel discouraged to report cases to SAPS or tend to withdraw their cases because of the secondary victimisation they encounter. There have also been instances where women who had previously been granted protection orders

³⁷ *South African ACHPR State Report* (2015) 166-176.

³⁸ *Ibid*, 177.

³⁹ Details of operating TCCs are available at <<http://www.justice.gov.za/vg/TCCs-list.pdf>>.

⁴⁰ L Vetton 'Police accountability and the Domestic Violence Act' (2017) 59 *SA Crime Quarterly* 8.

⁴¹ Cf. Domestic Violence Act Domestic Violence Act, sections 3, 7, 8, 9 and 13.

had subsequently been killed as a result of intimate partner violence. Victims of GBV have also experienced difficulty in navigating the court systems, and under-resourced courts have resulted in a shortage of staff to process their applications for protection orders. Moreover, in many parts of South Africa, victims of GBV have to travel long distances, without sufficient funds, to access the courts or seek legal assistance.⁴²

As far back as 1993, the first Sexual Offences Court was introduced in South Africa specifically to improve the adjudication of sexual offences. These courts were established to respond to, and prevent, the rising figures of rape cases that were reported in areas which had a high prevalence of sexual violence at the time, while at the same time constituting an intervention against the secondary victimization experienced by victims when they engaged with the criminal justice system.⁴³ Consequently, a victim-centred approach was adopted, and victims of GBV were assisted by a multi-disciplinary team of service providers, which included counselling and health care service providers. By March 2003, 20 Sexual Offences Courts had been established, which rose to 47 a year later. By the end of 2005 there were 74 courts, resulting in greater finalisation of cases, an improved handling of victims, improved cycle times and improved conviction rates.⁴⁴

Notwithstanding the establishment of the Sexual Offences Courts, significant challenges were encountered, including: the lack of a legal framework to establish and support the establishment of these courts; inadequate resources to sustain the optimal performance of these courts and fund the diverse range of services required by victims of GBV, resulting in a shortage of prosecutors, intermediaries and court preparation officers; low visibility of the courts in remote and rural areas; restricted space capacity required for private consultation; inadequate and inconsistent provision of skills training and debriefing programmes for the court personnel; and a lack of sufficient monitoring and evaluation of the efficacy of the courts.⁴⁵

Irrespective of the historical achievements of the Sexual Offences Courts, the challenges around the quality of facilities and services thus needs to be addressed to give effect to their functioning. The introduction of the Draft Regulations⁴⁶ must therefore be heralded as a positive development to regulate the standard of facility and service at dedicated sexual offences courts. The Regulations make express mention of the need to provide training to persons involved in sexual offence trials, whilst also providing an exhaustive list of requirements for facilities, devices and equipment; as well as a host of services relating to court preparation, designated social workers, socio-psychological support services, judicial trauma debriefing, psychologists and psychiatrists, interpreters and court intermediaries; all designed to look after the mental and emotional wellbeing of complainants and witnesses.

⁴² CSVR *Gender-Based Violence in South Africa: A Brief Review* (2016).

⁴³ Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters (MATTSO) (Department of Justice and Constitutional Development) *Report on the Re-Establishment of Sexual Offences Courts* (2013) 17.

⁴⁴ *Ibid.*

⁴⁵ *Ibid* 25.

⁴⁶ Draft Regulations Relating to Sexual Offences Courts: Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007.

A report commissioned by the Department of Planning, Monitoring and Evaluation (DPME) and the Department of Social Development (DSD), which analyses the state response to violence against women and children, further attributes the gaps in policy implementation to potential lack of clarity around the mandates of relevant government departments regarding specific functions and activities to achieve the objectives of the legislation. There also appears to be a lack of coordination and planning between relevant government departments, and a lack of leadership and political will required to address GBV. The DPME and DSD oversight role has not been successful in improving the efficacy of the Department of Women.⁴⁷ The Department of Women has repeatedly failed to achieve its targets aimed at eradicating GBV and promoting structural gender equality more broadly.⁴⁸ Importantly, the costs of implementing legislation, policies and associated plans are insufficiently accounted for, resulting in inadequate funding required to combat the scourge of GBV in the country. The lack of allocating the necessary funds has also resulted in a constrained resource environment, with a shortage of skilled staff; and inadequate data collection, monitoring and evaluation of state programmes to address GBV.⁴⁹

The aforementioned concerns have also been reported by the CGE, which highlight inadequate costing and budget allocation for the implementation of legislation that aim to combat GBV; a duplication of services and programmes; and a lack of evidence and evaluation of the impact of programmes and policies in reducing or eliminating incidences of GBV.⁵⁰

In 2011, the CEDAW Committee recommended to the South African government that, *inter alia*, it put in place mechanisms to ensure the effective implementation of the DVA and SOA, and ensure the necessary budgetary implementation of the various projects and programmes, including social support services for women. The CEDAW Committee further requested that in its next periodic report, the South African government provide information on the impact of measures taken to prevent GBV, investigate occurrences, prosecute and punish perpetrators, and provide protection, relief and remedies, including appropriate compensation to victims and their families.⁵¹

Women's rights groups have thus called for the establishment of a body specifically tasked to provide oversight and coordination within the GBV sector, ensure accountability and monitor the progress of the government in achieving its objective to combat GBV in South Africa.

⁴⁷ R Davis 'Analysis: What's going on at the Department of Women' (13-11-2014) *Daily Maverick* <<https://www.dailymaverick.co.za/article/2014-11-13-analysis-whats-going-on-at-the-ministry-of-women/#.WquAoDYVhn1>>.

⁴⁸ See Note 1f above.

⁴⁹ DPME & DSD *Report on Diagnostic Review of the State Response to Violence against Women and Children* (2016).

⁵⁰ CGE *National Gender Summit Report: Reviewing the gains and challenges facing gender equality after 20 years of democracy* (2014) 26-27.

⁵¹ CEDAW Committee *Concluding observations of the Committee on the Elimination of Discrimination against Women* CEDAW/C/ZAF/CO/4 (2011) paras 25-26.

RECOMMENDATIONS:

The SAHRC recommends the following:

- The Department of Justice and Constitutional Development (DOJ&CD) should provide an update on the Draft Regulations Relating to Sexual Offences Courts: Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007.
- As previously recommended by the UN Special Rapporteur, the government should consider the establishment a national strategic plan to combat GBV, with a set of clear strategic priorities and core measurable goals, adequately funded and led by an independent, multi-sectoral oversight body to monitor progress in implementation.
- The government should conduct a thorough disaggregated budget analysis of state allocation and expenditure on legislation, policies and programmes that aim to combat GBV on an annual basis, indicating relevant increases and decreases in the budget, and in a manner that is widely accessible by members of the public.
- The budget analysis process and planning process must set priority budgets for dedicated funding of initiatives, systems and processes to eradicate GBV by departments externally and internally.
- Any trade agreements with business specifically should include commitments toward the prevention of GBV for employees and / or communities in which such private actors seek to operate businesses.
- The DPME should closely monitor the performance of the Department of Women, in order to ensure that the Department meets its targets and effectively promotes gender equality.

Access to information: Emerging trends concerning GBV

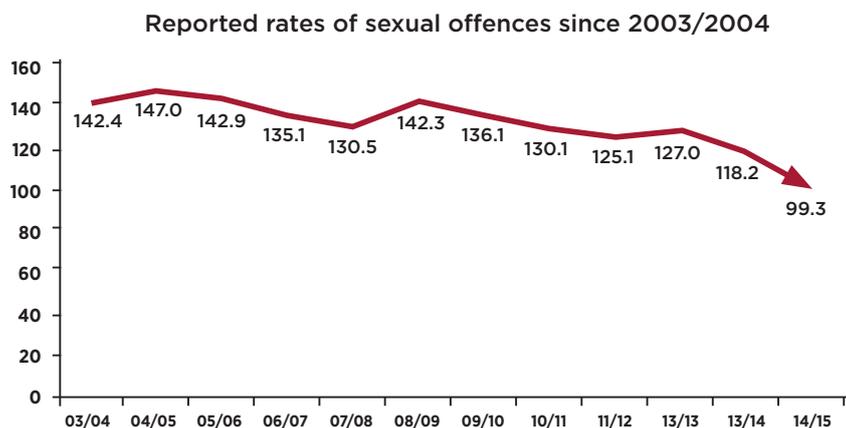
In terms of section 32 of the Constitution, everyone has the right of access to information held by the state, or by any other person, and that is required for the exercise or protection of any rights. However, the right to access information does not only entail the state ensuring that information is made publicly available, but also that the information provided is relevant to exercise, monitoring, and protection of human rights. General Recommendation 28 issued by the CEDAW Committee therefore calls on States to create and continuously

improve statistical databases required to monitor and analyse all forms of discrimination experienced by women and girls as it relates to specific provisions of the CEDAW.⁵²

The lack of disaggregated police data on GBV in South Africa directly implicates the right of access to information, as it is impossible to devise targeted interventions to combat GBV without having access to the necessary statistical data. It further creates a challenge in monitoring the extent to which the state is complying with its obligations to protect women and girls from all forms of GBV.

Studies have found that South Africa has one of the highest rates of sexual violence against women, the true extent of the phenomenon is unknown as there is a trend of official government statistics to be dated or conflated, and thus unreliable.⁵³ With respect to sexual crimes, the exact extent of underreporting is unclear, but it is generally thought to be largely due to cultural, psychological, societal, institutional and practical barriers. Despite widespread under-reporting, between 2008 and 2017, 613 759 incidents of sexual offences were recorded by the police, demonstrating a staggering contrast to incidents of murder (172 695) and attempted murder (171 067) recorded over the same period.⁵⁴ Police statistics therefore need to be scrutinized as they do not paint a full and accurate picture of the extent of the phenomenon in South Africa.

There have been major changes in the reporting of sexual offences, thereby making it difficult to meaningfully compare statistics from 1994 to 2016/17.⁵⁵ The change in definition of “rape” in the SOA has significantly impacted on reporting statistics. Prior to 2007 the definition of rape was “the (a) intentional (b) unlawful (c) sexual intercourse with a woman (d) without her consent”. Subsequent to 2007, the definition of rape was expanded to vaginal, oral and anal penetration with any object.



Source: *A Citizen's Guide to SAPS crime Statistics: 1994-2015*⁵⁶

⁵² CEDAW Committee *General recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women* CEDAW/C/2010/47/GC.2 (2010); See also: SAHRC *Research brief on gender and equality in South Africa* (2017).

⁵³ CSVR *Gender-Based Violence in South Africa: A Brief Review* (2016).

⁵⁴ Available at <<http://www.crimestatssa.com/national.php>>.

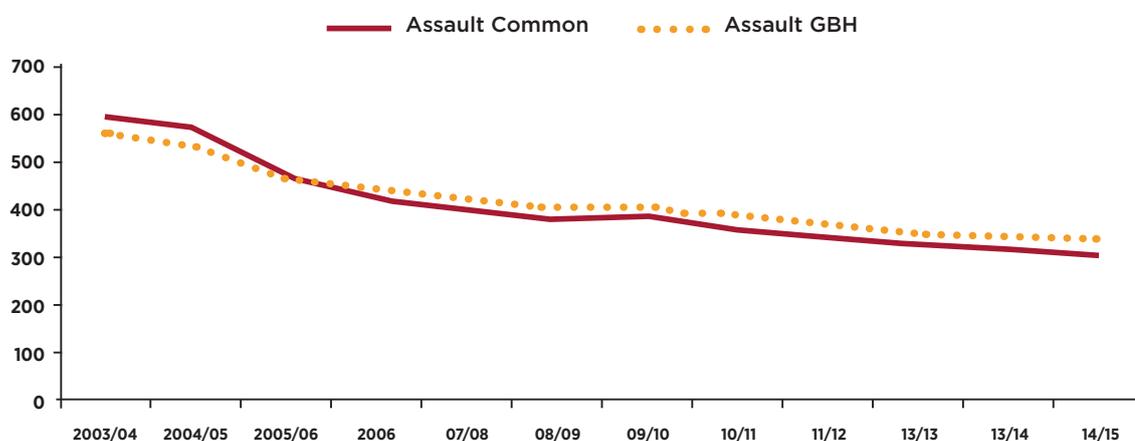
⁵⁵ C De Kock, A Kriegler, M Shaw *A Citizen's Guide to SAPS crime Statistics: 1994-2015* (2015) <http://www.criminology.uct.ac.za/sites/default/files/image_tool/images/225/CRI_pdf_Optimised-Citizen%27s%20guide%20to%20the%20SAPS%20stats.pdf>.

⁵⁶ *Ibid* 24.

An analysis of the graph above reveals a sharp increase in the incidents of rape recorded in 2008/09. This increase may be attributable to the legal and procedural changes effected by the SOA. Moreover, the SAPS has changed how it reports sexual crimes by separating sexual crimes detected as a result of police action, and providing these figures only as of 2011/12.⁵⁷ Cumulatively, these challenges make it difficult to meaningfully interpret any long-term trends in incidents of sexual violence. The statistics in any form however, point to an unacceptably high rate of GBV in South Africa.

With respect to domestic or intimate partner violence in South Africa, police statistics are equally challenging, as these instances of violence are recorded by the SAPS as general “assault” or “assault with intent to cause grievous bodily harm (GBH)”. There is a tendency of under-reporting of these crimes, as most assault victims know their perpetrators as either from the same community, a spouse or lover, or a relative.⁵⁸

Figure 1: Common assault and assault GBH, 2003/04 - 2014/15



Source: *Institute for Security Studies*⁵⁹

Moreover, as highlighted in the graph above, there has been a decline of victims reporting assault incidents to the police. The Institute for Security Studies attributes this decline in reporting by victims as a loss of trust in the police, or possibly that the police are under-reporting in an attempt to demonstrate a decline in violent crime.⁶⁰

However, despite the decline, “assault” and “assault GBH” as depicted in the graph below make up the vast majority of violent crimes reported to the SAPS.

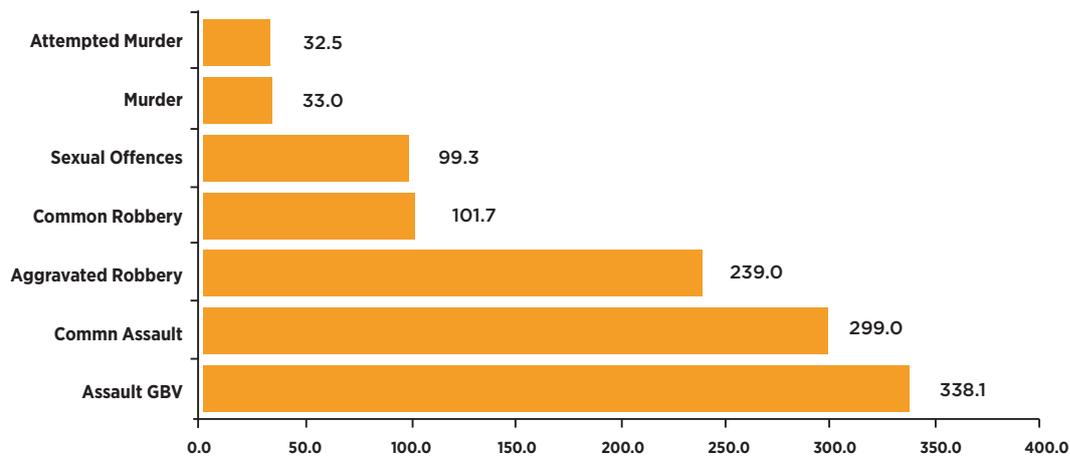
⁵⁷ De Kock et al, note 50 above.

⁵⁸ Institute for Security Studies Factsheet: *South Africa’s 2014/15 assault and sexual crime statistics* (2015) <<https://africacheck.org/factsheets/factsheet-south-africas-201415-assault-and-sexual-crime-statistics/>>.

⁵⁹ Ibid.

⁶⁰ Ibid.

Figure 1: Violent crime rates, 201/15



Source: *Institute for Security Studies*⁶¹

Research produced by the CGE and CSOs paint a very different picture to SAPS reports. The CGE has noted with concern an increase in levels of GBV between 1994 and the early 2000s, with an increase of intimate femicides from 50 to 57 per cent.⁶² According to research conducted by Gender Links in 2015, approximately 77 per cent of women in the province of Limpopo, 51 per cent of women in Gauteng, and 36 per cent of women in KwaZulu-Natal experience some form of violence (emotional, economic, physical or sexual) at least once in their lifetime. In Gauteng, 78 per cent of men admitted to perpetrating violence against women in their lifetime, the highest compared to other provinces surveyed, while in Limpopo the figure was 48 per cent and 35 per cent in the Western Cape.⁶³

In 2011, the CEDAW Committee requested in its concluding observations to South Africa's combined second, third and fourth periodic report, that the government provides in its next periodic report detailed information on the causes, scope and extent of all forms of violence against women, disaggregated by age, and urban and rural areas.⁶⁴ In 2017, the Minister of Police unveiled a "6 Point Plan" to address GBV and promote the protections of vulnerable groups. The Plan provides a holistic victim-centred approach in handling GBV-related complaints, which includes treating complainants with dignity when taking statements; ensuring that victims receive the necessary medical attention and psychological support for victims and their families; and ensuring that victims are provided with the regular feedback from the SAPS on the progress of their cases. The Minister committed to ensuring that all police stations receive the necessary awareness training in this regard.⁶⁵

⁶¹ Ibid.

⁶² CGE *National Gender Summit Report: Reviewing the gains and challenges facing gender equality after 20 years of democracy* (2014) 26.

⁶³ Gender Links *the War @ Home: Findings of the GBV Prevalence Study in South Africa* (2015) <<http://genderlinks.org.za/programme-web-menu/publications/the-warhome-findings-of-the-gbv-prevalence-study-in-south-africa-2012-11-25/>>.

⁶⁴ CEDAW Committee *Concluding observations of the Committee on the Elimination of Discrimination against Women CEDAW/C/ZAF/CO/4* (2011) para 26.

⁶⁵ Ministry of Police *Minister Fikile Mbalula: Speech at the gender based violence and protection of vulnerable groups indaba, Centurion* (2017).

Violence against women based on their sexual orientation, gender identity and gender expression remains rife in South Africa, despite the country being the first in the world to recognise sexual orientation and gender identity as grounds of discrimination. Exposure to violence is particularly high for homosexual and transgendered women residing in rural areas.⁶⁶ Lesbians are frequently subjected to threats and incidents of “corrective rape”, a term coined to describe the brutal hate crime with the purpose of “curing” lesbians from homosexuality.⁶⁷ In March 2011, the Minister of Justice and Constitutional Development mandated the establishment of a National Task Team to develop a National Intervention Strategy to address gender and sexual orientation-based violence against LGBT / GNC persons, especially in the criminal justice system. The task team comprises government departments and CSOs working to address LGBT issues.⁶⁸ However, as noted by civil society organisations, initiatives undertaken by government and civil society to tackle homophobia across all sectors has had little impact on South African society at large.⁶⁹ This in turn impacts on the manner in which violence against members of the LGBT community is addressed by the criminal justice system.

Proponents of the impending Prevention and Combating of Hate Crimes and Hate Speech Bill (Hate Crimes Bill) have urged for its swift enactment, which would require the development of disaggregated data in order to achieve the Bill’s objectives to combat hate crimes specifically. In its comments on the Bill submitted to Parliament in January 2017, the SAHRC notes calls made by the National Intervention Strategy (NIS) for the creation and maintenance of an effective database on crimes experienced by women and LGBT individuals. The lack of disaggregated data reduces policy effectiveness, and does not allow for progress towards the protection of the rights of women and LGBTI individuals to be monitored. The creation and maintenance of an effective database, which also ensures that the details of crimes committed against LGBT persons are comprehensively captured, must therefore be prioritised. The SAHRC thus welcomes this crucial and urgent intervention aimed to curtail the prevalence of hate crimes in the country, which will provide the necessary impetus for the creation of such a database, and the sensitisation of officials who constitute the criminal justice system.⁷⁰

⁶⁶ Institute for Race Relations *We’re queer and we’re here!* (2017).

⁶⁷ P Strudwick ‘Crisis in South Africa: The shocking practice of ‘corrective rape’ – aimed at ‘curing’ lesbians’ (4 January 2014) *The Independent*.

⁶⁸ DOJ&CD *National Task Team on Gender and Sexual Orientation-based Violence Perpetrated on LGBTI Persons* (2011).

⁶⁹ OUT LGBT Well-Being *Shocking new stats show that South Africans are becoming MORE homophobic* (2016).

⁷⁰ SAHRC *Comments on the Draft Prevention and Combating of Hate Crimes and Hate Speech Bill* (2017).

RECOMMENDATIONS:

The SAHRC recommends the following:

- The DOJ&CD, in consultation with the Department of Women, should ensure that the Hate Crimes Bill is enacted and sufficient budget for dedicated funding of initiatives, systems and processes be allocated.
- The government, and the SAPS in particular, should demonstrate the manner in which it will strengthen the management and administration of disaggregated data as it relates to GBV in all its forms, in order to enable a clear understanding of the magnitude, geographic spread and nature of GBV in South Africa, and facilitating better case management for victims and potential victims of GBV.
- The Minister of Police must provide a status update on the implementation of the “6 Point Plan” to address GBV and promote the protections of vulnerable groups, unveiled in August 2017.

SOCIO-ECONOMIC RIGHTS AND GBV

According to official 2015 statistics, an estimated 30.4 million South Africans, or 55.5 per cent of the country’s population live below the upper-bound poverty line of R1 138 per month. Poverty disproportionately affects women, who in 2015 constituted 52.7 per cent of the population, while men constituted 47.3 per cent. Children (those under the age of 18) accounted for the largest proportion of poor individuals at 66.8 per cent.⁷¹ Poverty has increased across all age groups and those living in poverty are worse off than they were in 2011, when the last comprehensive population census was undertaken. 65.7 per cent of the population is under the age of 35, and black African females constitute 42.5 per cent of the proportion of the population under the age of 35.⁷² South Africa’s unemployment rate currently stands at 27.7 per cent.⁷³ It is well-known that the country is one of the most unequal in the world with a Gini coefficient⁷⁴ of 0.68 in 2017.⁷⁵

As noted in the NDP, and with respect to women’s economic development, social, cultural, religious and educational barriers prevent women from entering the job market. Economic development is also limited for women who do enter the corporate work space, with

⁷¹ Statistics South Africa *Poverty Trends in South Africa: An examination of absolute poverty between 2006 and 2015* (2017).

⁷² Statistics South Africa *Mid-year population estimates – 31 July 2017* (2017).

⁷³ Statistics South Africa *Unemployment figure for the third quarter of 2017* (2017).

⁷⁴ The Gini index measures the extent to which the distribution of income (or consumption expenditure) among individuals or households within an economy deviates from a perfectly equal distribution. A Gini index of zero represents perfect equality and 1, perfect inequality. See: OECD *Glossary of statistical terms* <<https://stats.oecd.org/glossary/detail.asp?ID=4842>>.

⁷⁵ Statistics South Africa *Poverty Trends in South Africa: An examination of absolute poverty between 2006 and 2015* (2017).

documented direct and indirect challenges noted in this environment.⁷⁶ Moreover, “access to safe drinking water, electricity and quality early childhood education, for example, could free women from doing unpaid work and help them seek jobs”.⁷⁷ As further highlighted by the UN Special Rapporteur on violence against women, in South Africa, “the violence inherited from the apartheid era still resonates profoundly in today’s society, dominated by deeply patriarchal norms and attitudes towards the role of women, which make violence against women and children, especially in rural areas and informal settlements, a way of life and an accepted social phenomenon.”⁷⁸

There is therefore an intrinsic link between the lower socio-economic status and economic exclusion of women, their vulnerability to forms of GBV and their ability to seek recourse when GBV has taken place in South Africa. The lack of access for women and girls to the socio-economic rights to water and sanitation, education, transport, and sexual and reproductive health care, amongst others, perpetuates their exposure to various forms of GBV, further discussed below.

Access to water and sanitation and GBV

In terms of section 27(1) (b) of the Constitution, everyone has the right of access to sufficient water. While the Constitution does not explicitly provide for the right to sanitation, access to decent sanitation is inherently linked to the rights to dignity and privacy, as provided for in sections 10 and section 14 respectively.

In the South African ICESCR State Report, 2017, the government notes that in terms of South Africa’s Basic Water Services Strategy, every person is entitled to 25 litres of water a day, or 6000 litres of water per month for a household of eight people. The government recognises that access to safe drinking water is a fundamental right that is also linked to the health, well-being and safety of the country’s population. Moreover, the quality and availability of water are essential to the quality of human life and living standards. With respect to sanitation, the government states that basic sanitation is a human right, and it is the state’s responsibility to create a better environment for its people, including a clean environment free of harmful sanitation systems. As at 2015, the government reported that 72.8 per cent of the population had access to piped water, 63.2 per cent had access to a flush toilet, while only 4.7 per cent of the population was making use of a bucket toilet.⁷⁹

Despite the aforementioned gains, in the South African ACHPR State Report, 2015, the government notes previous discriminatory practices, including the lack of necessary infrastructure in rural areas and the lack of cost-effective water recovery programmes, as

⁷⁶ These factors relate to the difference in paying scales, women are not remunerated for the unpaid child-care, ethnicity, religion and custom. See UN Women ‘*Fact and Figures: Economic Empowerment*’ <<http://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures>>.

⁷⁷ The Presidency of the Republic of South Africa: National Planning Commission *National Development Plan 2030: Our future- make it work* (2012) 43.

⁷⁸ UN HRC *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa* (2016) para 7.

⁷⁹ South African Government *Initial Report under the International Covenant on Economic, Social and Cultural Rights (South African ICESCR State Report)* (2017) 43 paras 108-109.

key challenges preventing the free disposal of water.⁸⁰ The same report estimates that as at 2013, many South Africans (an estimated 4.2 per cent of households) still fetch water from rivers, streams, stagnant water pools, springs and dams; while roughly 22 per cent of households did not have access to a flush toilet connected to a public sewerage system or a septic tank, or a pit toilet with a ventilation pipe.⁸¹

In its 2014 report on the right to access sufficient water and decent sanitation in South Africa,⁸² the SAHRC highlights how a lack of access to water and sanitation for women and girls in under-resourced communities has led to illness and violence. In terms of South Africa's Free Basic Sanitation Policy, indigent households (comprising 8 people per household) are entitled to a basic minimum of 6 kilolitres of water per month within a 200 meter radius of the household, and at least one ventilated pit latrine sanitation facility.⁸³ However, as quoted in that report, a complainant to the SAHRC stated that "people have to go to the bushes to relieve themselves and this exposes women and children to sexual violence, especially rape. Also, people are not reporting rapes because police do not follow up on the cases. Most sanitation facilities provided use lots of chemicals and the community is not made aware of the impact of these chemicals on their bodies."⁸⁴ Complainants also reported that in some instances, women (including children and the elderly) have been raped and murdered due to a lack of access to adequate water and sanitation. Moreover, where access to sanitation has been provided, toilets have been found to be small, without electricity and lacking in privacy. For disabled people, toilets are too narrow and surfaces are uneven. The distance to access water and sanitation facilities, particularly in informal settlements and rural areas, is located far away from homes, thus perpetuating the risk of violence for women and girls. On privately owned land, such as farms, farmworkers are subject to the discretion of farm owners regarding the quality of sanitation services provided to them.⁸⁵

In evaluating the process of mainstreaming gender equality in South Africa's water sector at a local government level, the CGE has reported that many municipalities responsible for the delivery of water and decent sanitation to communities do not have the necessary resources or institutional capacity to implement gender-based policies, programmes and projects to promote the interests of women and girls. As such, it has become common to justify the non-prioritisation of gender issues as a result of insufficient human and financial resources. The CGE has also found that affected community members are generally unaware of any gender-based policies, programmes and projects by their municipalities or Provincial Water Boards that aim to promote gender equality. Communities have thus expressed the desire for more opportunities to participate in decision-making processes

⁸⁰ South African ACHPR *State Report* (2015) 88 para 302.

⁸¹ *Ibid* 87 para 301.

⁸² SAHRC *Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa: 2014* (2014).

⁸³ *Ibid* 28.

⁸⁴ *Ibid* 61.

⁸⁵ *Ibid* 61-63.

in the water services sector, and to influence the outcomes of such processes in order to ensure that they are able to effectively access their rights.⁸⁶

Notwithstanding the research produced by both the SAHRC and the CGE, and the recommendations to the government contained therein, women and girls in South Africa continue to be exposed to various forms of GBV as they attempt to access their rights to water and decent sanitation. Civil society organisations continue to highlight the risk that inadequate sanitation facilities pose to women and girls in informal settlements on a daily basis. Women and girls encounter threats of sexual violence en route to toilets, particularly in the evening and early hours of the morning when most people are indoors and they have to walk on their own to relieve themselves.⁸⁷

Research conducted in South Africa's informal settlements has also demonstrated that the more time a woman spends in search of sanitation facilities, the greater her exposure time and risk of sexual assault. The number of toilets in an informal settlement determines the severity of the risk, with more toilets resulting in decreasing the associated risk. Moreover, the costs on installing better sanitation facilities in informal settlements are significantly less than the costs associated with addressing sexual violence in the country.⁸⁸

RECOMMENDATIONS:

The SAHRC recommends the following:

- As previously recommended by the SAHRC in its 2014 report on water and sanitation, the government, through the Department of Water and Sanitation, should develop a plan that aims to monitor and address the cases of sexual violence against women and girls due to a lack of access to water and sanitation in their homes, local communities and schools.
- As previously recommended by the CGE in its report on mainstreaming gender equality in South Africa's water sector, the government, through the Department of Women, should develop a strategic plan - with clear objectives, realistic time-bound targets, adequate resources, and unambiguous allocation of responsibilities to various government departments - to ensure that water and sanitation policies are implemented in a manner that prioritises the needs of women and girls.

⁸⁶ CGE Policy Brief 1: *Gender off the Agenda? Assessing gender mainstreaming and women's empowerment in the water sector in South Africa* (2012).

⁸⁷ GroundUp *More toilets will save South Africa money* (2015) <https://www.groundup.org.za/article/more-toilets-will-save-south-africa-money_2889/>.

⁸⁸ G Gonsalves, E Kaplan & A Paltiel *Reducing Sexual Violence in South Africa by Increasing the Supply of Toilets in Khayelitsha, South Africa: A Mathematical Model* (2015).

Access to basic education and GBV

The right to basic education is enshrined in section 29 of the Constitution. However, as noted by the UN Special Rapporteur on violence against women, the risk of sexual violence perpetrated by teachers and classmates at schools has impeded the ability of many girls to access their right to education. In addition, girls also encounter forms of sexual violence on the way to and from school. The UN Special Rapporteur further noted that sexual violence in schools is perpetuated because perpetrators escape being held accountable for their conduct, largely due to the lack of coordination between responsible government departments, including the Department of Basic Education (DBE) and the South African Council of Educators (SACE), both tasked with the responsibility of launching disciplinary procedures against perpetrators of sexual violence at schools.⁸⁹

In 2008, the SAHRC released a report on school-based violence in South Africa, which noted that schools are some of the most common sites where sexual assaults occur.⁹⁰ At the time, more than one fifth of sexual assaults reported by children under the age of 18 occurred while they were at school.⁹¹ Research undertaken by the Centre for Justice and Crime Prevention (CJCP) in 2012 further found that while both male and female learners were exposed to forms of violence such as robbery and assault, sexual violence was highest amongst female learners (7.6 per cent) compared to male learners (1.4 per cent).⁹²

The SAHRC noted further that school-based violence in South Africa is multi-dimensional in nature and takes on various forms. Factors that contribute to school-based violence include community poverty, educators' misconceptions of the human rights of learners, and a desensitisation of South Africa's youth to a culture of widespread violence that exists in the country. Beyond the physical harm and lack of safety endured by learners, the impact of school-based violence has had the effect of driving high absentee rates, poor learning performance and achievement, high dropout rates, and in some cases, learners have committed suicide in instances where they felt unprotected in school environments.⁹³

As far back as 2001, the DBE released a manual for educators to address GBV in South African schools.⁹⁴ The manual, which includes material to conduct eight workshops, aims to both assist educators to prevent forms of GBV from occurring in education institutions, and assist in the development of curriculum that informs the knowledge, skills and life orientation of learners to ensure that learners denounce forms of discrimination and violence and instead advocate against it.⁹⁵

However, despite this intervention by the DBE and the hearing held by the SAHRC, forms of GBV in South African schools persist. It remains difficult to determine exact figures as

⁸⁹ UN HRC *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa* (2016) para 19.

⁹⁰ SAHRC *Report of the Public Hearing on school-based violence* (2008).

⁹¹ *Ibid* 8.

⁹² CJCP *Results of the 2012 National School Violence Study* (2012) 19-20.

⁹³ SAHRC *Report of the Public Hearing on school-based violence* (2008) v-vi.

⁹⁴ DBE *Opening our eyes: Addressing gender-based violence in South African schools - A manual for educators* (2001).

⁹⁵ *Ibid* ix.

many cases of educator-learner forms of GBV remain underreported. The inadequacy of the structures and processes that ought to protect learners from violence has resulted in perpetrators, many of whom are educators, escaping with impunity. Educators who sexually abuse learners rarely face meaningful consequences for their actions, and government actors and institutions are not held responsible for their failure to prevent and counter such abuse. Moreover, guidelines and programmes produced by the government to address GBV at schools remain ineffective, as schools are not legally required to adopt these guidelines, and are not adequately trained on their contents to have a meaningful impact.⁹⁶

The scourge of GBV and sexual violence continues to plague South African schools and is widely reported in the media. In 2017, the SAHRC released a statement condemning the actions of school educators and staff violating the rights of learners. In one case, 87 girl learners were allegedly sexually assaulted by a 57 year old school patroller at AB Xuma Primary School in Soweto, while a similar incident was reported of a 17 year old girl who had allegedly been raped by a patroller in Pretoria. At the time of issuing its statement, the SAHRC noted that in the Gauteng Province alone, at least five incidents of sexual assault at schools were under investigation.⁹⁷

RECOMMENDATIONS:

The SAHRC recommends the following:

- The government, through the Department of Women, should consider the establishment a national strategic plan to combat sexual violence in schools, with a set of clear strategic priorities and core measurable goals, adequately funded and led by an independent, multisectoral oversight body to monitor progress in implementation. The plan must be gender sensitive in order to address the needs and risks posed to female learners, in particular; in order to ensure that girl learners remain in school; and to further ensure safe environments that are conducive to the privacy, safety and health of girls.
- The DBE should strengthen its measures to prevent GBV at schools, by ensuring that every child, and especially girls who are most at risk of GBV in schools, are aware of their constitutional rights and that the behaviour of educators is illegal. Such training initiatives should be extended to parents, educators and all members of School Governing Bodies.
- The DBE should widely promote the reporting and investigating processes applicable for learners to lodge complaints on sexual violence at schools.

⁹⁶ Centre for Applied Legal Studies *Sexual violence by educators in South African schools: gaps in accountability* (2014).

⁹⁷ SAHRC *Media statement: School grounds no place for sexual violence* (2017).

- The DBE, together with the SAPS and the National Prosecuting Authority must ensure that all officials are adequately trained on issues of sexual violence in schools, and the nuances of handling complaints of this nature particularly as it applies to the vulnerability of minors, through a gender-sensitive lens. Complaints relating to sexual violence in schools lodged by minors must be taken seriously and comprehensively investigated.
- The DBE, together with the SACE, must ensure that all educators accused of sexual offences committed against minor learners are effectively disciplined, including educators and principals who fail to report such cases, and the list of educators must be made publicly available on the sexual offences register.

Access to transport and GBV

Although the Constitution does not make explicit reference to the right to transport, access to safe public transport is intrinsically linked to the right to freedom and security of the person, and the right to freedom of movement (Constitution, section 21). Access to safe public transport is also essential for women, and particularly those who reside in under-resourced communities, to access economic opportunities without discrimination, as provided for in section 8 of PEPUDA. Article 14 of the CEDAW further provides that women have the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications. Article 4 of the Maputo Protocol provides that every woman is entitled to respect for her life, and the integrity and security of her person. The state is thus obligated to enact and enforce laws to prohibit all forms of violence against women, regardless of whether that violence occurs in private or public.⁹⁸ However, in South Africa, women and girls continue to be excluded from exercising their rights to equality, movement and accessing economic opportunities due to the lack of safety common to the country's public transport system.

In 2017, South Africa was shocked by media reports detailing a spate of gang rapes of women using public transport minibuses. During the same year it was reported that in the City of Johannesburg, more than two-thirds of women who use public taxis and taxi ranks have either witnessed or experienced forms of violence and harassment.⁹⁹ In one incident, seven men who were occupants of a taxi allegedly gang raped a woman. It is alleged that the woman was walking home with friends in the early hours of the morning when the taxi hit one of her friends and an altercation ensued, not far from their final destination. The men subsequently pelted her with bricks before setting her body alight.¹⁰⁰ In another incident, a 10 year old boy was forced to witness his mother being subjected to a four hour rape horror in a taxi, also in Johannesburg. South African police have warned

⁹⁸ Maputo Protocol, Article 4(2) (a).

⁹⁹ Business Day *ActionAid study shows violence against women in taxis is widespread* (24 March 2017).

¹⁰⁰ Masego Panyane 'TaxiRape: Woman gang raped, stoned and set alight' (4 April 2017) *Independent Online*.

the public of a gang of men targeting women and raping them in taxis, and demanding them to hand over their bank cards and associated security codes.¹⁰¹

Women's rights organisations have launched various campaigns condemning the lack of accountability for perpetrators of taxi-related violence against women,¹⁰² and advocating for better security at taxi ranks and education initiatives to inform men on the rights of women commuters.¹⁰³ Although the then Minister for Transport, Dipuo Peters, condemned the spate of taxi-related rapes and sexual violence against women, the current unreliability of GBV statistics and lack of accountability for perpetrators of violence does little to reassure women of their safety when using public transport. While it is the responsibility of the government to ensure that the rights of women to live free of violence are protected, it is also the responsibility of privately owned taxi associations to ensure that their commuters are provided with safe and reliable transport. Moreover, the National Land Transport Act, 2009, specifically provides for the safety of passengers.¹⁰⁴

In 2017, ActionAid, an international NGO, released a report on women's safety in urban spaces in various countries in which the organisation works, including South Africa.¹⁰⁵ Part of the research included an evaluation of the overall rate of physical and sexual violence women will face in their lifetimes, and whether or not there is a gender analysis applied in urban planning, particularly as it relates to the design and planning of public transport. In all of the countries where the research was conducted, it was found that women are constantly under the threat of violence, intimidation and harassment in public spaces. In terms of the "Safe Cities for Women" scorecard used by ActionAid to evaluate women's safety in urban spaces, South Africa scored 20.32 / 100, the lowest ranking of the countries under evaluation. This low score was based on the rate of violence against women, the absence of a plan to deal with violence against women that includes budget allocation, and the lack of urban planning and transport that includes a gender perspective. While the country has the necessary legislative frameworks in place, there is no femicide law and inadequate implementation of the existing legal framework. Specifically with respect to transport, the fear of violence experienced by women in the form of harassment, stalking, sexual assault or rape remains a barrier that limits women's mobility and access to public transport.¹⁰⁶

¹⁰¹ BBC News *South Africa police warn of taxi rape gang in Johannesburg* (23 March 2017).

¹⁰² People Opposing Women Abuse *Police lack of accountability is failing rape victims* (2017).

¹⁰³ Women's Legal Centre *An integrated plan to curb taxi rapes should be driven from the top – by government* (2017).

¹⁰⁴ Ibid.

¹⁰⁵ Other countries that formed part of the research include Bangladesh, Brazil, Democratic Republic of Congo, Jordan, Liberia, Nepal, Nigeria, Senegal and Zimbabwe.

¹⁰⁶ ActionAid *Whose City? An evaluation of urban safety for women in 10 cities* (2017) 28-29.

RECOMMENDATIONS:

The SAHRC recommends the following:

- The government, through the Department of Women in the Presidency, the Department of Transport and the SAPS, and together with relevant taxi associations, must develop an integrated plan to protect women using public transport. The government must ensure that it educates the relevant role-players on the contents of the plan, and monitor its effectiveness in reducing and curbing incidences of GBV experienced by women when using public transport.

Access to reproductive health care and GBV

Section 27 of South Africa's Constitution guarantees to everyone the right to access health care services, including reproductive health care, while section 12 of the Constitution states that everyone has the right to bodily and psychological integrity, including the right to make decisions concerning reproduction, and security in and control over their body. These protections afforded to women in the Constitution are in line with the CEDAW, which provides for the elimination of discrimination against women in the field of health care and provides for access to health care services, including those related to family planning (Article 12 and 14). Article 18 of the African Charter goes further to provide for the elimination of every form of discrimination against women and ensure the protection of the rights of women as stipulated in international declarations and conventions; while Article 14 of the Maputo Protocol guarantees the right to health of women, including obliging the State to ensure that the sexual and reproductive health rights of women is respected and protected. As per the Maputo Protocol, reproductive health rights include: the rights to control fertility; to decide whether to have children; to choose any method of contraception; to be informed of one's health status and that of one's partner; and to have family planning education.¹⁰⁷

However, despite the aforementioned protections afforded to women in the Constitution, and reinforced by the country's regional and international human rights obligations, many women in South Africa continue to be denied the right to control their bodies and access to sexual and reproductive health care, and consequently experience various forms of physical and structural violence as a result. Sex work remains criminalised in South Africa, despite calls by civil society organisations and the CGE advocating for its decriminalisation. Due to the criminalisation of sex work in the country, sex workers are exposed to a higher risk of violence, reinforced by the failure of the SAPS to actively investigate incidences of violence when complaints are made. Sex workers also often confront discrimination from health care workers, making it difficult for them to access treatment for sexually

¹⁰⁷ Maputo Protocol, Article 14(1) (a-g).

transmitted diseases, and are subjected to unfair labour practices if they are working for establishments such as brothels.¹⁰⁸

In 2013, the CGE released its official position on the decriminalisation of sex work in South Africa.¹⁰⁹ The CGE highlights the importance of distinguishing between prostitution, which is viewed as coerced sex work where women are victims as they do not have a choice in the matter, and sex work; which is a form of income for women who have exercised their agency and choice to engage in this form of work. The CGE notes further that in a developing country such as South Africa, “where poverty and economic desperation often fuels sex work (for the sake of survival), and where non-voluntary sex work due to trafficking is on the increase and the risk of contracting the HI virus is high”,¹¹⁰ legal interventions that seek to address sex work related discrimination must be feasible in the context, and ultimately reduce violations. The CGE’s official position is that the current legal regime that criminalises sex work in South Africa perpetuates the continued violation of the constitutional rights of sex workers to dignity, freedom and security of the person, and freedom of trade, occupation and profession.¹¹¹ The CGE thus recommended the decriminalisation of sex work to ensure that the constitutional rights of sex workers are protected.

In respect of the CGE’s definition of prostitution as coerced sex work, it should be noted that the exploitation of women and girls in sex trade is pervasive within and across South Africa’s borders. South Africa is regarded as a haven for human trafficking. Women and girls are brought into the country for purposes of prostitution, forced labour and informal trade.¹¹² The lack of stringent border control and migration policies exacerbates human trafficking, thereby perpetuating the continuous abuse of women and girls. Within the borders of South Africa, girls are recruited from rural and poverty stricken communities with promises of domestic or other work, but are instead sold in the sex trade.¹¹³ The Cape is used as a transit point to transport women from Asia to North America.¹¹⁴ The subject of human trafficking in South Africa is currently under-explored, and merits in depth research by the Commission in the future.

The prevalence of teenage pregnancies in South Africa has also been of concern as further indication of the inability of women to access contraceptives of their choice, thus infringing their right to sexual and reproductive health care. The inability of women and girls to access safe sexual and reproductive health care has resulted in many experiencing violence and discrimination in the health care system. In 2017, StatsSA reported that the age fertility rate for teenagers was 71 per 1 000 women aged 15 – 19, indicating minimal change from

¹⁰⁸ Asijiki Coalition to decriminalise sex work in South Africa *Sex work and human rights* (2015).

¹⁰⁹ CGE *Decriminalising sex work in South Africa: Official position of the CGE* (2013).

¹¹⁰ *Ibid* 3.

¹¹¹ CGE *Decriminalising sex work in South Africa: Official position of the CGE* (2013).

¹¹² UNESCO *Human Trafficking in South Africa: Root Causes and Recommendations Policy Paper No 14.5* (2007) <<http://unesdoc.unesco.org/images/0015/001528/152823E.pdf>> 20-22. See also P du Preez & S Simmons ‘Trafficking as a Human Rights Violation: Is South Africa’s Curriculum stuck in a traffic jam?’ (2013) 2 *Journal of Curriculum and Teaching* 102.

¹¹³ *Ibid* 23.

¹¹⁴ *Ibid* 24.

1998. While 58.3 per cent of women use some form of contraceptive, 18 per cent of women continue to have an unmet family planning need.¹¹⁵ It has also been reported that despite the Termination of Pregnancy Act, 1997, which legalises abortions in South Africa, illegal abortions are still widespread because of the social stigma associated therewith, resulting in health care workers refusing to perform abortions on the basis of their conscience. Consequently, an estimated 26 per cent of maternal deaths in the country are the result of botched abortions.¹¹⁶

South Africa's National Adolescent Sexual and Reproductive Health and Rights Framework Strategy, 2014 - 2019,¹¹⁷ released by the DSD in 2015, notes that while sexual and reproductive health care is a basic human right fundamental to the conditions of development of any population, a number of gaps exist in the promotion of sexual and reproductive health rights, particularly amongst young people. In light of South Africa's youthful population, the multi-sectoral Strategy aims to strengthen the policy and planning environment as it relates to adolescents' sexual and reproductive health rights, taking into account those with diverse sexual orientation or living with a disability. Through conducting a situation analysis of adolescent sexual and reproductive health rights in South Africa, the Strategy highlights current challenges that hamper the progress of these rights amongst adolescents, including: gaps in knowledge of legal rights regarding sexual health and associated risks, especially around termination of pregnancy and access to emergency contraception; a reluctance by health care workers and community leaders to accept and cater to the needs of adolescents wishing to access these rights; and worrying trends of sexual and GBV amongst adolescents. The Strategy thus recommends a multi-stakeholder, multi-sectoral approach to promote sexual and reproductive health care rights amongst adolescents, and the need to educate, inform and empower health care workers and communities on adolescent sexual rights.

RECOMMENDATIONS:

The SAHRC recommends the following:

- The Department of Women should be the oversight body to ensure that government considers the decriminalisation of sex work, as per the official position of the CGE.
- The DSD should provide a status update as the effectiveness and challenges experienced in implementing the National Adolescent Sexual and Reproductive Health and Rights Framework Strategy.

¹¹⁵ StatsSA *Media Release: South Africa Demographic and Health Survey* (15 May 2017).

¹¹⁶ Daily Maverick *Health-e: Health workers are undermining women's right to abortion* (13 August 2017).

¹¹⁷ DSD *National Adolescent Sexual and Reproductive Health and Rights Framework Strategy* (2015).

5

CONCLUSION

This research brief has sought to highlight the multiple ways in which GBV manifests in South Africa and is reinforced in society. Overarching policy gaps regarding the lack of central oversight and implementation of policies aimed at the eradication of GBV by the Department of Women, as well as the similar absence of gender mainstreaming in all policy spheres and budgeting, were identified. Overarching policy deficiencies ultimately inhibit women, including girls, from accessing basic socio-economic rights to water and sanitation, education, transport, and sexual and reproductive health care. Access to these socio-economic rights is particularly important for women and girls to live a life with dignity, and to fully participate politically, economically and socially in South African society. The research brief has further sought to reiterate existing recommendations made by human rights activists, CSOs, the CGE and government departments seeking to eliminate GBV and promote gender justice for victims of GBV.

The SAHRC is concerned that despite the recognition and protection of rights afforded in the Constitution, the high numbers of GBV incidences perpetrated against women and girls demonstrate the lack of a clear commitment by the government to prioritise and implement the numerous recommendations that have been made by domestic, regional and international bodies to reduce and eliminate GBV in all of its forms in South Africa.

The SAHRC is particularly concerned about the lack of disaggregated data gathered by the SAPS as it relates to various forms of GBV, which impacts on the ability of members of the public to effectively monitor whether perpetrators have been held accountable for their actions through the criminal justice system. It is envisioned that the recommendations contained herein will form the basis of the development of a mechanism for the SAHRC to monitor and evaluate the measures undertaken by the state to promote and protect the rights of women and girls, toward the advancement of a society infused with the values of justice, dignity and equality.



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