



**World Council
of Churches**

ACT UBUMBANO



actalliance

South Africa

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UPR of South Africa

Rights of Women

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1) Rights of Women

i) Introduction

South Africa is a party to several international and regional human rights and women's rights instruments, including the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Beijing Declaration and Platform for Action. Additionally South Africa has ratified the Maputo Protocol and the Southern African Development Community (SADC) Protocol on Gender and Development which are key regional gender justice instruments.

South Africa has wide ranging constitutional provisions for gender justice and women's empowerment. Section nine of the Constitution guarantees the equal protection of the rights of all people, and freedom from discrimination based on gender, sex, pregnancy and marital status. The Constitution also allows for independent organisations that promote and protect human rights to operate. These include the South Africa Human Rights Commission and the Commission for Gender Equality (CGE).

The CGE is an independent chapter nine institution which draws its mandate from the South African Constitution by way of the Commission for Gender Equality Act of 1996. The mission of the CGE is to promote, protect, monitor and evaluate gender equality in line with international instruments.

Assessing women's economic participation, educational attainment, health and survival, and political empowerment, the Global Gender Gap Index ranks South Africa 19th out of 149 countries (World Economic Forum, 2018).¹ Likewise, considerable achievements have been made in women's political participation, with women constituting 44.5% in both the National Assembly and the National Council of Provinces. Women also make up half of the government's cabinet under current president Cyril Ramaphosa's term.

Despite the far ranging gender justice provisions and instruments and an increase in women's participation in public life, women in South Africa still face a myriad of human rights violations and lack access to basic services.

ii) Gender-based Violence in South Africa

During the 2017 UPR of South Africa, 27 recommendations were made directly addressing gender-based violence (GBV), and others were of relevance to the concern.

GBV remains a profound and widespread problem in South Africa, affecting almost every aspect of life, from the individual, family, community and societal level. It disproportionately affects women and girls, and is systemic and deeply entrenched in institutions, cultures and traditions in South Africa dating back to the apartheid era. Women and girls face gender based violence and discrimination in both the private and public domains, and this poses a considerable threat to the nation's health and well-being and has a negative impact on the country's development. Since 2017, violence against women, including rape and domestic violence, has remained widespread and under-reported.

According to the South African Police Service (SAPS) (2018)¹, a woman is murdered every three hours in South Africa. The SAPS statistics for reported rape cases for 2019/2020 is 42 289 and for sexual assault 7 749 (Department of Police, 2020), amid huge under-reporting of rape.

There is a lack of comprehensive data on the extent of GBV. Most reports come from the SAPS and the National Prosecuting Authority, but these are not always up to date.

According to the SAPS, South Africa recorded an increase of 1,320 homicides between 2016 and 2018. An additional 291 women and 29 more girls were murdered in this period. The SAPS statistics for reported rape cases for 2019/2020 are 42 289, with 7 749 reported cases of sexual assault (Department of Police, 2020)². As rape is often a hugely under-reported crime, it is likely that the true figure is much higher. Of reported rape cases, only about 14% goes to trial and there are convictions in only about 7% of these cases.³

¹ <https://www.saps.gov.za/services/crimestats.php>

² <https://www.iol.co.za/capetimes/opinion/south-africa-is-notorious-for-its-high-levels-of-gender-based-violence-81ebad46-e4ec-4a86-b678-5e9bc8b22b02>

³ https://www.westerncape.gov.za/assets/day_2_session_2_gbv_lillian_artz.pdf

Furthermore, an analysis of the GBV and femicide phenomenon conducted by Stats SA⁴ revealed that in 2018/ 2019, almost 50% of assaults on women were committed by someone close, such as a friend or acquaintance (22%), a spouse or intimate partner (15%), a relative or other household member (13%). In addition, one in five (21%) women partners experienced physical violence by a partner in 2016. Divorced or separated women were more likely than other women to have experienced physical violence or sexual violence. The research also showed that the prevalence of physical violence was higher among less-educated women than among those with secondary or higher education.

Low levels of prosecution and conviction in domestic violence cases-and the frequent failures by the police to serve and enforce protection orders-exposes survivors to repeated abuses.

iii) Measures taken to address GBV

Since the last UPR of South Africa, the Government has put in place some legislative measures to address GBV. In 2019, the South African Parliament approved an emergency response action plan to address GBV and femicide. Approximately 1.6 billion Rands have been made available to address this issue in order to carry out urgent interventions including responding to victims and survivors of GBV, broadening access to justice for survivors, changing social norms and behavior through high-level awareness-raising and prevention campaigns. The National Strategic Plan (NSP) is a government and civil society multi-sectoral strategic framework working towards the elimination of GBV and femicide in South Africa, and affirms that accessing services is a human right⁵.

In response to public outcry over the high levels of gender based violence and femicide, President Ramaphosa launched a private sector-led multi-sectoral gender-based violence and femicide (GBVF) Response Fund in February 2021 to support the implementation of the NSP and the broader GBVF response in the country.

However, although President Ramaphosa pledged US\$75 million to strengthen the criminal justice system and provide better care for victims of GBV, many women and children continue to suffer daily. The additional funding has failed to halt the expansive increase in cases of abuse and rape. According to a study by Amnesty International⁶, there is public outrage over institutional failures in providing justice for victims of GBV, given that South Africa's 1998 Domestic Violence Act explicitly states that victims can bring criminal charges against offenders. Furthermore, funding earmarked for refuge centres for victims of GBV has not been sufficient or has not reached the centres that should receive it. By April 2020, many domestic violence shelters had reached capacity, although the scale of the GBV crisis had not yet peaked.

The South African parliament approved three bills in 2020 aimed at addressing three key issues related to gender-based violence: the process of applying for a protection order; state police not taking allegations of harassment seriously; and the lack of accountability and adequate punitive measures for perpetrators. The first is the Bill amending the Criminal Law (Sexual

⁴ GBV Stats SA

https://www.parliament.gov.za/storage/app/media/1_Stock/Events_Institutional/2020/womens_chart_er_2020/docs/30-07-2020/A_Statistical_Overview_R_Maluleke.pdf

⁵ <https://www.justice.gov.za/vg/gbv/NSP-GBVF-FINAL-DOC-04-05.pdf>

⁶ <https://globalriskinsights.com/2021/03/south-africas-secondary-pandemic-a-crisis-of-gender-based-violence/>

Offences and Related Matters) Amendment Act 32 of 2007. The amendment "creates a new offence of sexual intimidation, extends the scope of the offence of incest, and extends the duty to report persons who suspect the commission of a sexual offence against a child". It also extends the scope of the National Sex Offenders Register to include the details of all sex offenders.

The second Bill is the Criminal and Related Matters Amendment Bill B17 of 2020, which will strengthen the granting of bail to perpetrators of gender-based violence and femicide and extend the offences for which the courts must impose minimum sentences. Due to the high levels of intimate partner violence, the government has decided to implement the third Bill, strengthening the provisions of the Domestic Violence Act 116 of 1998. Domestic violence will be defined to cover those in engagements, encounters, habitual relationships, and actual or perceived romantic, intimate or sexual relationships of any duration to include protection of older persons from abuse by family members. Complainants will be able to apply for an online protection order.⁷

The Gender-based Violence and Femicide National Strategic Plan (GBVF-NSP) was developed by the Interim Steering Committee established in April 2019 to respond to the gender-based violence and femicide crisis following the historic 2018 Presidential Summit on this subject. The NSP aims to provide a multi-sectoral, coherent strategic policy and programming framework to strengthen a coordinated national response to the crisis of gender-based violence and femicide by the government of South Africa and the country as a whole. The strategy seeks to address the needs and challenges faced by all, especially women across age, sexual orientation, sexual and gender identities; and specific groups such as elderly women, women who live with disability, migrant women and trans women, affected and impacted by the gender-based violence scourge in South Africa.⁸ In March 2020, the Department of Public Works and Infrastructure released six state-owned properties to provide shelter and empowerment services for domestic abuse victims.

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iv) GBV and COVID – 19

The Government of South Africa has responded to the emergence of COVID-19 with various degrees of lock-down measures and states of emergency. These restrictive measures precipitated shocking increases in gender-based violence. As in many other countries, support services for women and girls subjected to violence and abuse were seriously impacted by measures taken to control the spread of COVID-19.⁹

⁷ <https://www.derebus.org.za/three-new-bills-to-curb-gender-based-violence/>

⁸ National strategic plan on gender-based violence and femicide, <https://www.justice.gov.za/vg/gbv/NSP-GBVF-FINAL-DOC-04-05.pdf>

⁹ <https://www.amnesty.org/en/documents/afr03/3418/2021/en/>

The closure caused an increase in gender-based violence because it helped perpetrators torment victims who had no space for support services. The government GBV and femicide command Centre alone recorded over 120,000 victims in the first three weeks of the closure, and by mid-April in Tswane alone, the command centre was receiving between 500 and 1,000 calls per day¹⁰. In addition, Vodacom's support call centres recorded a 65% increase in calls from women and children confined to their homes seeking urgent help after the closure began.¹¹

In response, in March 2020, the Department of Public Works and Infrastructure released six State-owned properties to provide shelter and empowerment services for domestic abuse victims, but many more continue to be needed.

Recommendations

- i) There is an urgent need for the adoption and full resourcing of a national strategy to combat the high rate of violence against women, and measures must be taken to combat the under-reporting of rape and crimes of SGBV. The strategy should be systematically monitored and its effectiveness evaluated.
- ii) In particular, there is an urgent need for the creation of a monitoring team made up of senior police officers within the South African Police Service and civilians, as well as an increase in the number of skilled investigating officers.
- iii) The capacity of law enforcement agents to understand and apply rights based approaches in their work should be developed, in order to enable them to protect human rights and deal with issues of SGBV and domestic violence against women and girls.
- iv) Survivor-centred approaches to SGBV should be adopted, including provision of psychosocial support and shelters for survivors.
- v) Periodic and comprehensive studies on the extent of SGBV should be conducted.
- vi) Women and girls' education and awareness on SGBV, especially in rural areas so be increased, so that they are able to defend themselves from perpetrators. Particular attention should be focused on such education for women and children with disabilities.
- vii) Programmes and reform initiatives that empower women to become economically independent to reduce SGBV should be established.

v) Sexual and Reproductive Health and Rights

¹⁰ <https://globalriskinsights.com/2021/03/south-africas-secondary-pandemic-a-crisis-of-gender-based-violence/>

¹¹ <https://www.timeslive.co.za/news/south-africa/2020-09-01-shocking-stats-on-gender-based-violence-during-lockdown-revealed/>

The COVID-19 pandemic has affected women and girls access to sexual and reproductive health services (SRHR). The government-induced COVID-19 restrictions have limited movement as well as availability of services. As the different waves of the pandemic hit South Africa, focus shifted to treatment and care for COVID patients relegating sexual and reproductive health to the 'non-essential' category. As such, access to contraception, awareness and education on SRHR has been limited.

Sustainable Development Goal five calls for countries to ensure full and equal access to women and men aged 15 years and older to sexual and reproductive health care, information and education. Likewise the SADC Protocol on Gender and Development highlights the need to ensure that the girl and the boy child have equal access to information, education, services and facilities on sexual and reproductive health and rights.

In South Africa, child marriages and teenage pregnancy remain a huge concern with an increasing number of adolescent girls facing this challenge. The Gauteng health department recorded more than 23 000 teenage pregnancies between April 2020 and March 2021, with 934 girls between the ages of 10 and 14 giving birth.¹² These statistics expose the sad realities of the adverse effects COVID-19 pandemic on the well being of girls.

The Government of South Africa has introduced comprehensive sexuality education in schools to raise children's awareness on sexuality issues. However these attempts have been met with massive resistance from some groups. Organisations such as the South Africa-based online group #LeaveOurKidsAlone have rejected comprehensive sexuality education outright and strongly opposed the newly implemented lessons tools of the Department of Basic Education in South Africa in 2019 and 2020.¹³

Recommendations

- i) The critical need to provide school-based sexual health education in both primary and secondary schools is apparent, and the Government's efforts in this respect should be commended. It is however recommended that awareness for the need for this education should be raised through the South African population more generally, as some sectors of society have rejected these efforts and seek to limit their children's awareness of issues of sexuality.
- ii) Adolescents and young people both in and out of school must have access to good quality sexuality education which links to youth-friendly sexual and reproductive health and HIV services.

vi) Child and Early Marriage

¹² <https://www.news24.com/news24/southafrica/news/gauteng-records-more-than-23-000-teen-pregnancies-in-one-year-some-moms-as-young-as-10-20210817>

¹³ https://genderlinks.org.za/wp-content/uploads/2021/08/3.2021VoiceandChoiceBarometer_ASRHR_FINALscclmcdl_072021.pdf

Although the Constitution of South Africa is the main document governing the lives of citizens in South Africa, there is a parallel traditional and cultural system. This system is largely patriarchal and relegates women to a minority status. Whilst there are several good practices that honour the rights of women and girls, stereotypical and discriminatory cultural and societal norms persist.

Many women and girls in South Africa, particularly in rural areas, are victims of harmful practices such as child marriage, abduction for marriage (“ukuthwala”), and polygamy or polygamous unions that often give rise to domestic violence. The practice of ‘ukuthwala’ involves the abduction of a girl, or a young woman by a man and his accomplices with the intention of forcing her family to agree to a marriage.¹⁴ Whilst this practice is accepted culturally, it violates the rights of women and girls, who often do not have a say in the matter. Whilst in its original form, ukuthwala was a collusive strategy by willing lovers to secure marriage negotiations, this practice has changed over the years. It is now often a means to sexually exploit girls and young women, particularly in rural South Africa. Although ukuthwala has been criminalised and has been incorporated into the Trafficking in Persons Act 2013¹⁵, it is still widely viewed as a normal form of tradition and custom.

Statistics indicate that child marriage involving girls between 12 and 17 years of age is a serious concern in South Africa. In Kwazulu Natal province alone, over 25 000 young women have been married, divorced, separated, widowed or are living with a partner or a husband.¹⁶

The Government’s recent move to amend the Recognition of Customary Marriages Act is a significant step towards equality for women in South Africa. The new Customary Marriages Bill has outlawed all customary marriages of children under the age of 18 years. However concerns remain that the Recognition of Customary Marriages Act, read with the Marriage Act, allows persons below the age of 18 to get married provided they have the necessary consent.¹⁷ This position sends conflicting messages in respect of efforts to end child marriages linked to customary practices in South Africa. Similarly the Sexual Offences Act (1997) puts the age of consent for heterosexual and homosexual sex at 16. In essence this sanctions practices like *ukuthwala* for girls between 16 and 18 years of age.

Recommendations

- i) Measures must be taken to address and reform cultural attitudes towards women and girls which perpetuate inequality and early marriage. In particular, measures must be aimed at addressing the attitudes of the judiciary and law enforcement agencies in this respect.
- ii) The laws prohibiting early child and forced marriages must be implemented by law enforcement agencies. The capacities of traditional leadership, church leaders, and local authorities to combat early and child marriages must be developed.

¹⁴ <https://mg.co.za/article/2017-11-29-ukuthwala-the-sex-trafficking-scandal-devastating-rural-south-africa/>

¹⁵ <https://www.gov.za/documents/prevention-and-combating-trafficking-persons-act>

¹⁶ <https://mg.co.za/article/2017-11-29-ukuthwala-the-sex-trafficking-scandal-devastating-rural-south-africa/>

¹⁷

http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1996-20962018000200006&lng=en&nrm=iso&tlng=en
