

THEMATIC REPORT ON VIOLENCE AGAINST WOMEN AND LGBTI PERSONS IN SOUTH AFRICA

**A Submission to the UN Human Rights Committee in response to the
Initial Report by South Africa under the International Covenant on Civil
and Political Rights at the 116th session of the Human Rights Committee**

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Introduction

1. The South African government submitted a report (CCPR/C/ZAF/12) in haste after the Committee announced that South Africa was to be reviewed in the absence of a country report. The present report is based on the information provided by the South African government in its report to the Committee, and its response to the List of Issues (CCPR/C/ZAF/Q/1/Add.1).

2. This submission will not deal with the position of children in relation to sexual, gender-based and other violence in South Africa. In this regard, we refer you to the Alternative Report to the United Nations Committee on the Rights of the Child in Response to South Africa's combined 2nd, 3rd, and 4th Periodic Country Report on the UN convention on the Rights of the Child,¹ submitted in October 2015.

3. We likewise do not intend to repeat the submissions contained in the civil society report on the implementation of the ICCPR (For the adoption of the List of Issues),² but expressly align ourselves with those submissions, particularly as they relate to articles 2, 7 and 24.

4. This submission focusses on the theme of *violence against women, lesbian, gay, bisexual, transgender and intersex persons, including domestic violence*. This submission aims to provide insight as to the lived experiences and reality of women and members of the Lesbian Gay Bisexual Transgender and Intersex (LGBTI) community. Insofar as the use of terminology is concerned, we proceed from the position that the term “women” is not limited to female-bodied persons, but also includes lesbians, bisexual women, and persons who identify as women. We further proceed from the position that while sexual and other violence against the LGBTI community often derives from the same patriarchal structures and society wherein violence occurs against cis-gendered female bodied persons, the law often fails LGBTI persons over and above what is experienced by the former group as a result of non-conforming sexual orientation and/or gender identity.

5. The South Africa Country Report lists many legislative instruments that have been enacted to combat violence against women and LGBTI persons. There is no shortage of documents aimed at improving the outcomes for victims of sexual and domestic violence, including

¹ Available at <http://dullahomarinstitute.org.za/our-focus/women-and-democracy-initiative/reporting-on-childrens-rights/civil-society-sa-alternate-report-coalition-on.pdf/view>

² Available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/ZAF/INT_CCPR_ICO_ZAF_21691_E.pdf

better police investigation, better prosecution, access to health services, and a victim-friendly justice system.

6. However, the practical implementation of the legal framework is not successful at present. The position on paper is very different to the lived reality of women and LGBTI persons who are victims of sexual and other violence.

7. This submission is structured into six focus areas: Access to general information about rights the justice system, including the criminal justice system; Access to specific information about the performance of the South African state, particularly the justice system; The state of psycho-social support to victims of gender-based violence; Inter-sectoral collaboration; Better compliance and complaints mechanisms; The particularly vulnerable position of sex workers.

1. Access to general information about rights and the justice system, including the criminal justice system

8. While the legal framework in respect of sexual and other violence in South Africa is relatively comprehensive and progressive, its mere existence is not enough to curb sexual and other violence. Women and LGBTI persons have to be empowered to know and use the law in order to protect themselves and their rights. A recent research report noted that victims in South Africa often thought they had received sufficient service from health, police and justice officials, until what they were in fact entitled to in terms of the law was explained to them.³ Only then did participants realise that they had in fact received very poor service.

9. The legal literacy of South Africans is a major barrier to knowledge of one's legal rights and how to enforce them, and requires urgent attention in order to help victims of violence understand their rights, what they are entitled to in terms of service delivery, and who to hold accountable if they do not receive adequate assistance. A greater government effort must be made to make information about the substantive content of the law available in an accessible and inclusive manner, that takes into account the social realities of South African life where people often have low levels of education, inadequate means to access legal assistance, as

³ Bornman S, Dey K, Meltz R, Rangasami J, Williams J (2013) Protecting Survivors of Sexual Offences - The Legal Obligations of the State With Regard to Sexual Offences in South Africa

well as language barriers. The needs of differently-abled persons and minority, vulnerable groups must be especially addressed in this regard.

10. Difficulty in understanding and navigating the justice system often leads victims to seek legal assistance and/or representation. Yet very few South Africans can afford private legal assistance, and this is especially true for women who are often financially dependent on the very partners and spouses perpetrating abuse against them. A lack of legal support through a process such as a rape trial or a domestic violence protection order application can result in case attrition and loss of confidence and faith in the justice system. Through the government system of legal aid, as managed by the Legal Aid Board,⁴ access to free legal advice and representation is theoretically possible for all. But in reality, access to a legal aid representative is only automatically and unconditionally available to those who find themselves in conflict with the law (perpetrators and accused persons) and not to those who are victims and complainants in sexual and other violence cases. The majority of the resources of Legal Aid South Africa is therefore allocated to representation in criminal courts.⁵ The majority of persons who are perpetrators and accused persons are men, and this means that, inadvertently, mostly men benefit from the legal aid system in South Africa at the expense of women, who are more often victims of sexual and domestic violence. Attempts have been made by civil society to advocate for the amendment of the relevant legislation to require the Legal Aid Board to make legal representation available to victims in certain instances.⁶ However, there has been resistance to including such a provision in the primary legislation, thereby making it a justiciable right.

11. A lack of knowledge of the legal framework is also evident in those government officials and agencies responsible for implementing the law. This often results in secondary victimisation and even structural violence.⁷ Often the role of providing basic information about rights and processes falls on the shoulders of “first responders”, who are, for example, clerks in Magistrates Courts or police officers in community service centres. These officials bear a great responsibility to provide accurate information in a language and manner that the victim in question understands, and they are also a victim’s first impression of the justice system.

⁴ As established by the Legal Aid South Africa Act 39 of 2014

⁵ Legal Aid South Africa Annual Report 2013/14

⁶ <https://pmg.org.za/committee-meeting/17424/>

⁷ Parenzee, P (2014). A guiding document to the Shukumisa Dossier: A resource on available documents pertaining to the formulation and implementation of legislation and related policies pertaining to Sexual Offences in South Africa: 2003 – 2014. The Shukumisa Campaign; Vetten, L (2014) Domestic violence in South Africa, Policy Brief 71. The Institute for Security Studies: Pretoria.

Yet it is most often the interaction with the first responder that gives rise to secondary victimisation or a lack of compassion and support. This is especially the case for LGBTI victims, who face the personal ignorance and prejudice of officials in trying to access government services to which the legislative framework entitle them. By March 2015 the police had established victim friendly rooms at 897 of their 1 138 police stations. Another 92 such rooms had been established at other sites, with 32 of these being based at the offices of the Family Violence, Child Protection and Sexual Offences Units (FCS).⁸ Since 2009 members of the Shukumisa Campaign,⁹ a civil society coalition of organisations advocating state accountability in the context of gender-based violence, has been monitoring police stations in the different provinces. In doing so they have found some of these rooms locked and the officer with the key to be off-duty, or they have found some of these rooms being treated as storage spaces.¹⁰ This uneven functioning of the rooms is still evident. In 2015 monitoring by the Civilian Secretariat for Police found not all of these rooms to be functional or resourced,¹¹ and yet the South African Police Service (SAPS) reported to parliament that 100% of its police stations provide “victim friendly services”.¹²

12. Training for the purpose of improving SAPS, Department of Justice and Correctional Services (DoJ) and other relevant government officials’ knowledge of the justice system, including the criminal justice system, and their response to victims, bears closer scrutiny. There appears to be great emphasis on the number of officials trained, and the number of training sessions conducted. However, very little information is available on the content, quality and impact of such training on officials themselves, and on the experience of victims as they move through the criminal justice system.¹³

13. South Africa has recently reintroduced specialised sexual offences courts, on the recommendation of the Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters.¹⁴ The courts are intended to function in a specialised manner, according to

⁸ http://www.saps.gov.za/about/stratframework/annual_report/2014_2015/SAPS_AR_2014-15_for_viewing.pdf

⁹ <http://www.shukumisa.org.za/>

¹⁰ <http://www.shukumisa.org.za/wp-content/uploads/2012/02/SHUKUMISA-PUBLICATION-FINAL-WEB.pdf>

¹¹ In a briefing of the parliamentary Portfolio Committee on Police, on 27 May 2015, available at <https://pmg.org.za/committee-meeting/20966/>

¹² In a briefing of the parliamentary Portfolio Committee on Police, on 18 August 2015, available at <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/150818saps.pdf>

¹³ Department of Justice Annual Report 2014/15, available at <http://www.justice.gov.za/reportfiles/anr2014-15.pdf> ; South African Police Service Annual Report 2014/15, available at http://www.saps.gov.za/about/stratframework/annual_report/2014_2015/SAPS_AR_2014-15_for_viewing.pdf

¹⁴ Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters (Aug 2013) Report on the Reestablishment of Sexual Offence Courts

a particular Sexual Offences Courts Model, and must maintain certain minimum norms and standards in place in relation to physical infrastructure, human resources, tools and training. An encouraging set of regulations in respect of the courts have been published for public comment on two occasions,¹⁵ containing provisions relating to physical infrastructure, human resourcing, training requirements and other provisions relating to the necessary tools and facilities each Sexual Offences Court must have. The regulations have not yet been finalised.

14. However, without dedicated resources and clear budgeting for these courts, they will not live up to their full potential. At present, it is not possible to discern how these Sexual Offences Courts are being, and will be funded, making it challenging to analyse the sufficiency of resources dedicated and likelihood of successful rollout. This is a critical time to ensure proper implementation of these courts from the outset, and to undertake an information drive to especially educate and empower women, LGBTI persons and other vulnerable groups on what these are how they work, and what services must be, by law, available at these courts.

2. Access to specific information about the performance of the South African state, in particular the justice system

15. In recent years significant efforts have been made by civil society to call for a reform in the manner in which information about sexual and other violence is collected and reported to the public.

16. The SAPS announced that from April 2014 to March 2015 a national total of 53 617 sexual offences were reported.¹⁶ This figure remains largely unhelpful and uninformative in the absence of disaggregation in the following respects:

- a. Gender – it is not possible to tell from the lump sum figure of reported sexual offences what proportion of victims were male (or male identified) or female (or female identified), and children, or whether the incident was motivated by hate or prejudice towards to the LGBTI community.

¹⁵ In November 2014, and again in October 2015.

¹⁶ South African national crime statistics, available at

http://www.saps.gov.za/resource_centre/publications/statistics/crimestats/2015/crime_stats.php

- b. Offence – the Sexual Offences Act¹⁷ (SOA) contains at least 34 different sexual offences, and consequently a lump sum of reported sexual offences does not assist us in understanding the nature and prevalence of sexual violence in South Africa, the majority of which occurs against women and girls.
- c. Domestic violence – information on domestic violence incidents are currently not separately reported, and are subsumed in the general crime statistics under offences such as assault, assault with intent to do grievous bodily harm, damage to property, rape and even murder. Under the circumstances, one is reliant on information from the courts in relation to the number of domestic violence protection order applications received and approved,¹⁸ resulting in a skewed sense of the scale of domestic violence that disregards those who cannot or choose not to seek a protection order from the civil courts.

17. In the absence of disaggregated statistics, and statistics related to domestic violence, one cannot gain a proper understanding of the nature and scope of violence against women and LGBTI persons in South Africa. Programmes cannot be planned in a way that targets the real experiences of women and LGBTI persons, and gender responsive budgeting cannot be and is currently not done.¹⁹

18. There also continues to be a governmental focus on a reduction in reported cases of sexual violence, especially with in the SAPS. This is a counter-productive approach to violence of this nature, as these incidents take place mostly in areas of human life where police officers cannot police – inside people’s homes and personal relationships. Research further indicates clearly that both sexual and domestic violence have high levels of case attrition. Some estimate that only 1 in every 9 rape cases are in fact reported to the police, while others estimate that it is only 1 in every 25²⁰ rape. This means that the reported incidents of sexual offences do not reflect the real position, and that we should have a far higher number of reported incidents. Rather than an indication of effective policing and an effective criminal justice system, a decrease in reported sexual offences most likely indicates

¹⁷ Act 32 of 2007

¹⁸ Available at <https://www.issafrica.org/uploads/PolBrief71.pdf>

¹⁹ Thorpe, J (2014), Financial Year Estimates for Spending on Gender-Based Violence By The South African Government at 4.

²⁰ <http://www.mrc.ac.za/gender/gbvthewar.pdf>

an increase in reporting. And yet, in 2015 a slight decrease was celebrated by government as a success.²¹

19. In 2015 the reported numbers of sexual offences also differed according to source. First, as already indicated, a total number of 56 680 sexual offences were reported by the SAPS in respect of 2014/15. By contrast, on page 203 of the SAPS Annual Report for 2014/15,²² table 42 lists 58 390 sexual offences in 2014/15. Secondly, the figures provided in 2014/15 do not correspond with those contained in the previous year's analysis of the crime statistics. The figures provided in 2014/15 suggest that approximately 10 000 fewer sexual offences were reported in 2013/14 than in 2009/10, while the SAPS' 2013/14 report suggests 6 000 fewer sexual offences were reported during this period. Thirdly, the Analysis of Crime Statistics report for 2013/14 gives a figure of 62 648 sexual offences for that year. However, the Annual Report for 2014/15 indicated this total to have increased to 105 368.

20. As a result of the discrepancy, the Shukumisa Campaign addressed correspondence to the Minister of Police First, requesting clarification. To date no response has been received.

21. Civil society has called for a shift in focus, away from the number of reported incidents, and towards the removal of barriers to reporting gender-based violence. To this end the Civilian Secretariat for Police on Friday 7 August 2015 launched a *Policy to Reduce Barriers to the Reporting of Gender Based and Domestic Violence*, and a *Policy on the Detection of Serial Rape*. The policies are the result of consultation with civil society. The former policy in particular addresses service delivery barriers faced by vulnerable groups, including LGBTI persons, and persons with disabilities. It has three strategic objectives: to establish uniform norms, standards and mechanisms for the co-ordination and implementation of the SOA of 2007; to develop and strengthen co-ordinated services; to provide resources for the effective implementation of SOA of 2007 and its National Policy Framework.

22. However, the Minister of Police has not released the policy publically, nor disseminated it, and written queries to the Ministry and the parliamentary Portfolio Committee for Police as to the reasons for the delay have gone unanswered.

23. Another feature of the manner in which gender-based violence statistics are reported is the large gap between reported incidents of sexual offences, and the number of these cases wherein court convictions are achieved. In 2014/15 the National Prosecuting Authority

²¹ <http://www.sanews.gov.za/south-africa/sexual-offences-rape-figures-decrease>

²² Available at <http://www.saps.gov.za/about/stratframework/annualreports.php>

(NPA) reported a 69% conviction rate in respect of sexual offences.²³ However, this figure becomes less impressive when properly considered a proportion of the matters that were approved for prosecution and trials that ran to their conclusion, i.e. “finalised” sexual offence cases. In 2014/15 only 7 372 sexual offences were in fact finalised, bearing in mind that 53 617 sexual offences were reported to SAPS. Effectively, thousands of cases therefore do not reach trial due to case attrition. This information, and the reasons for the high levels of case attrition, is not shared with the public.

24. In terms of section 65 of the SOA of 2007, the Minister of Justice must, after consultation with the cabinet members responsible for safety and security, correctional services, social development and health and the National Director of Public Prosecutions, submit annual reports to Parliament, by each relevant department on the implementation of the Act. However, in recent submissions civil society organisations have expressed their concern that these reports are not made consistently, are not easily accessible, nor do they contain uniform and detailed information year-on-year.²⁴

3. The state of psycho-social support to victims of gender-based violence

25. A 2011 research report notes that “(p)sycho-social care is one of the most important identified unmet needs of victims of crime in South Africa.”²⁵ Without psycho-social support, victims are more likely to experience secondary trauma at the hands of the justice system, and are more likely to withdraw cases, provide poor testimony in court, or decide not to report cases at all. It is critical to successful police investigations, prosecutions, and convictions. It is also critical for the short and long-term wellbeing of victims, their families and communities.

26. Care work in South Africa is deeply feminised. According to Statistics South Africa 43.6% of women, versus 9.2% of men, were employed within the community, social and personal services sectors. Of these care workers those providing post-rape care services, most

²³ National Prosecuting Authority 2014/15 Annual Report, at pg. 46, available at <https://www.npa.gov.za/sites/default/files/annual-reports/Annual%20Report%202014%20-%202015.pdf>

²⁴ Joint submission on the Judicial Matters Amendment Bill [B2–2015] Relating to amendments to the sexual offences and child justice legislation, submitted on 10 July 2015, available at <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/150805CLC.pdf>

²⁵ Dey K, Thorpe J, Tilley A, Williams J (Aug 2011) The Road to Justice Victim Empowerment Legislation in South Africa Road Map Report, at pg. 26

of whom are from civil society and non-governmental organisations, are the most undervalued and under-paid.²⁶

27. A recent study in respect of the Thuthuzela Care Centres, hailed as a success model across the world and expressly listed by South Africa in its country report,²⁷ provides unsettling insight into government funding practices in relation to non-governmental providers of psycho-social care.²⁸ The national Department of Social Development (DSD) appears to have inconsistent funding practices, which not only differ from province to another, but also within provinces between organisations. In four of the provinces, the DSD has chosen not to fund non-governmental organisations that provide psycho-social care in Thuthuzela Care Centres, despite these centres being state facilities. In provinces where DSD does provide a subsidy to organisations, almost all of the subsidies were below the monthly minimum wage paid to farm workers in 2015. It appears further that where funding is provided, the DSD often pays organisations late, and counselling staff must continue to counsel victims without remuneration for extended periods of time, sometimes up to three months.

28. The NPA, which is responsible for the over-all management of TCCs, also does not appear to be spending any of its own financial resources on the TCCs and non-governmental organisations that provide counselling at these sites. This is a worrisome and unsustainable approach.

4. Intersectoral collaboration

29. It is widely understood that inter-departmental and inter-sectoral collaboration is a critical component of an effective approach to violence against women and LGBTI persons. In recent years, there has been a proliferation of “cooperative governance” structures, sometimes comprising only government role-players, and sometimes comprising both government and civil society representatives. These structures have been established and have developed a

²⁶ <http://shukumisa.org.za/wp-content/uploads/2015/11/Care-work-scorecard.pdf>

²⁷ At para 99

²⁸ Available at http://shukumisa.org.za/wp-content/uploads/2015/11/Shukumisa_TCC-Report.pdf ; and http://shukumisa.org.za/wp-content/uploads/2015/11/RSA_expanded_public_works_programme_impact_women.pdf

myriad documents to aid in their objectives, at great financial cost to the state, but have too often been ineffectual.

30. In 2007 the Inter-Departmental Management Team revealed what it terms a “365 Day National Action Plan to end Gender Violence”. This plan was intended to ensure coordination in the programmes and plans of all government departments and civil society organisations, thereby avoiding duplication and ensuring maximum efficacy. In 2013 the National Action Plan was reviewed by the Commission for Gender Equality²⁹ and independent consultants³⁰ who found that the National Action Plan, despite its seven year implantation period, had not achieved its aims and objectives.

31. In December 2011 Cabinet approved the establishment of the National Gender Based Violence Council. The Council was an initiative of the erstwhile Department of Women, Children and People with disabilities, with the Deputy President as its chair. However, the council initially had no budget, and upon a review of its first year the Commission for Gender Equality concluded that the council did not have the support of other government departments (that were intended to be represented on the council). The Deputy President also withdrew as chair shortly after the inauguration of the council. The council has now been disbanded by the Minister of Women in the Presidency. Its only meaningful output was a research report entitled “*Know Your Epidemic – Know Your Response*”.³¹

32. An Inter-Ministerial Committee was established by Cabinet in 2012. Its main objective was to establish the root causes of violence against women and children. The IMC likewise conducted research in violence against women and children, and produced a diagnostic review intended to develop a plan for how government responses to violence against women and children could be strengthened.³² The plan for improved responses was in turn to be managed by the Department for Monitoring and Evaluation. However, before the completion of the study, and without further consultation with civil society, the IMC finalized an Integrated Programme of Action for 2013 – 2018, which was subsequently approved by cabinet. This Integrated Programme of Action has to date not been costed, nor has it been

²⁹ Commission for Gender Equality. (2013) Out of Mind or Out of Sight?

³⁰ Nduna, M and Nene, N (2014) Review and Analysis of South Africa’s Implementation of 365 Days National Action Plan. Department of Psychology, University of the Witwatersrand and Ifalezwe Learning Express

³¹ Department of Women, Children and People with Disabilities (2015) Know You Epidemic – Know Your Response.

³² Southern Hemisphere (2015) Final Report for the Evaluation of the Implementation of the Safer South Africa Programme on Violence Against Women. Report submitted to UNICEF.

discussed with civil society, provincial government, local government. It has also not been implemented.

33. An Intersectoral Sexual Offences Committee has been established by the DoJ³³ to oversee implementation of the SOA, while a compliance forum has been established by the Civilian Secretariat of Police and the SAPS to ensure implementation of the Domestic Violence Act³⁴ (DVA). Gender Justice Fora have also been established by the NPA in a few provinces.

34. The above-mentioned structures are by no means the only structures in this regard. They are simply the most prominent ones. Each of these structures has, in various ways, sought to bring the planning, development, managing and monitoring of all programmes and strategies addressing violence towards women under their control, and without success.

35. The National Task Team on LGBTI and Gender-based violence (NTT) was established in 2011, following concerted lobbying efforts from civil society for government to address attacks against LGBTI people³⁵. The NTT was largely dormant until 2013 when it was eventually reconvened to settle disputes about its terms of reference, before being officially launched in April of 2014, approximately three years after being established. It has a mandate to provide coordination of different departments which can deal with violence against LGBTI people and to monitor cases moving through the justice system and it has had some success in terms of public engagement, including a television advert which highlighted violence against LGBTI people. Despite this achievement and despite political will shown by the lead department, the NTT has remained a largely rudderless institution which struggles to meet some of its core deliverables. While the NTT provides a space to centralise cases of violence against LGBTI people, these mechanisms do not exist at the level where LGBTI people interact with service providers and authorities and the processes of the NTT are often opaque and intangible.

36. The tendency to continually establish new cooperative governance structures to deal with violence against women and vulnerable groups comes at a great financial cost to the state and donors, and yet has not been effective. The mere existence of such structures is not evidence of better outcomes for women, LGBTI persons and other vulnerable groups. South Africa

³³ Section 63 of the Sexual Offences Act 32 of 2007

³⁴ Act 116 of 1998

³⁵ Lesbian, Gay, Bisexual, Transgender And Intersex Persons Programme Progress Report (Sept 2013 - Sept 2014)

must begin to place greater emphasis on, and provide more detail on the outcomes and impact of such structures, as opposed to regarding their establishment as proof of progress.

5. Better compliance and complaints mechanisms

37. The lack of a single, centralised and well-publicised complaints mechanism for victims of gender-based violence is of serious concern. The processes relating to existing complaints mechanisms are opaque, with very little feedback to complainants as to the receipt, processing and outcomes of complaints. There is also a lack of information on the manner in which officials found guilty of misconduct and/or non-compliance, with regards to the poor implementation of legislation such as the SOA and the Domestic Violence, are dealt with. This leads to a general sense among members of the public that there is a lack of accountability, and that lodging a complaint is a pointless exercise.

38. This is most clearly illustrated in the context of the DVA, where non-compliance of the police and other justice system officials can have dire consequences. In 2009, 55 of the women who were killed by their intimate partners were in possession of a protection order at the time of their deaths.³⁶ While the exact circumstances of these deaths are not known, it is likely that non-compliance may have played a role.

39. The Civilian Secretariat for Police (CSP) was tasked in 2012 with overseeing over-all police compliance with the DVA. This function, formerly served by the Independent Complaints Directorate (ICD), was transferred to the CSP when the ICD became the Independent Police Investigative Directorate (IPID). At the same time, the investigation of non-compliance with DVA by individual police officers became the responsibility of individual station commanders. This turn of events has eradicated an independent complaints mechanism for victims of domestic violence, and research indicates a significant decline in complaints to the CSP. In the first year of its new role, the CSP received only 22 complaints from three (of nine) provinces, constituting a 77% decline compared with the previous year under the ICD.³⁷ A SAPS presentation to parliament in the same year claimed that 280

³⁶ Vetten, L (2015) Gendering Police Accountability: The Role of the Police Portfolio Committee in Monitoring Compliance with the Domestic Violence Act, the African Policing Civilian Oversight Forum, available at [http://www.apcof.org/files/6094 APCOF Brief11 State%20Accountability.pdf](http://www.apcof.org/files/6094/APCOF_Brief11_State%20Accountability.pdf)

³⁷ Note 35 above.

complaints had come to its attention, but not one of those complaint had been sent on to the CSP, as the law requires. In 18 August 2015, when both the SAPS and CSP appeared before parliament to provide reports on its implementation of the DVA, SAPS claimed that between October 2014 and March 2015, a total of only 91 non-compliance cases had occurred in three (out of nine) provinces.³⁸ Of these cases, 66 were deemed “non-serious”, 24 were still under investigation, and 1 officer had been found not guilty. No serious, guilty verdicts had been recorded.

40. Aside from the fact that these numbers are assuredly not an accurate reflection of the reality on the ground,³⁹ as of 18 August 2015, official reference to the ICD in policy and legislation had still not yet been replaced with reference to the CSP, despite the change having been implemented three years before, and a formal request by the CSP to the national Police Commissioner to authorise the necessary changes. In the absence of these changes, SAPS has failed to report non-compliance cases to the CSP. The CSP, in its presentation to Parliament on 18 August 2015, explained that it had gone so far as to attempt to ensure SAPS reports of non-compliance to the CSP through mutually agreed standard operating procedures. This state of affairs is wholly unsatisfactory, and the CSP is unable to comply with its mandate in the absence of SAPS’ cooperation.

6. The particularly vulnerable position of sex workers

41. The overwhelming majority of sex workers in South Africa are women. South Africa currently follows the model of total criminalisation or prohibition of sex work. Sex work and its related activities are specifically criminalised by the SOA 23 of 1957 (SOA 1957) and the Sexual Offences Amendment Act (SOA 2007). The Criminal Procedure Act 51 of 1977 also contains provisions that are peripherally relevant to sex work and municipal by-laws play a role in the legal control of sex work. Simply put, it is a crime to sell sex in South Africa. In terms of our current legislation the act of having sex for reward and the act of buying sex are criminal offences. Thus, both the sex worker and the client commit an offence.

³⁸ Available at <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/150818saps.pdf>

³⁹ Artz, L Fear or Failure? Why victims of domestic violence retract from the criminal justice process, available at <https://www.issafrika.org/uploads/CQ37Artz.pdf>

42. Sex work is socially stigmatised and sex workers are often severely marginalised by society. Limited social and other support networks contribute to sex worker vulnerability. Widespread discrimination and stigma by health, justice and security service providers towards sex workers constitute barriers to achieving health and accessing justice.

43. The SOA 1957 and SOA 2007 as it stands are difficult laws to prosecute under and requires intensive and intrusive police methods such as entrapment to secure a conviction. The reality is that sex workers are seldom prosecuted under the criminal law, and are more likely to be arrested, harassed and then released. Research in South Africa has shown that no client has been prosecuted under the old or the amended laws. In SWEAT⁴⁰ and Sisonke's⁴¹ documenting of human rights abuses, many sex workers reported that they are either arrested or fined for offences that they did not commit, for example, one sex worker reported that she was fined after she left the grocery store. She was not soliciting clients at the time.

44. Police abuse of sex workers in South Africa is systemic and widespread. Of the 308 sex workers interviewed for a study conducted by the Women's Legal Centre,⁴² 70% experienced some form of abuse at the hands of police. Many reported more than one violation. The most common human rights violations by police against sex workers that we documented were:

- Assault and harassment;
- Arbitrary arrest;
- Violations of procedures and standing orders;
- Inhumane conditions of detention;
- Unlawful profiling;
- Exploitation and bribery; and
- Denial of access to justice.

45. Unsurprisingly, most sex workers are reluctant to approach the police to report crimes committed against themselves or others. There is great skepticism about the police as a mechanism for protection or redress, especially in light of the fact that some police officers are themselves perpetrators of these very crimes.

⁴⁰ Sex Worker Education and Advocacy Task Force

⁴¹ Sisonke is a national South African sex worker movement, by sex workers.

⁴² Manoek, S-L (2012) A Report on Human Rights Violations by Police Against Sex Workers in South Africa, SWEAT, Sisonke & Women's Legal Centre

46. Criminalising sex work in South Africa has not eradicated it. Instead, the illegal status of sex work creates conditions in which exploitation and abuse can thrive. Many sex workers are arrested purely because they are known to be sex workers, because they are dressed provocatively, or because they have condoms in their possession. The complete decriminalization of adult sex work in South Africa should urgently be considered in order to eradicate the human rights violations perpetrated against this particularly vulnerable group.

Recommendations and Conclusion

47. South Africa out-performs many other African countries in its passing of laws, and the establishment of cooperative governance structures to combat sexual and other violence against women and LGBTI persons. However, these actions on their own are not proof of an improved situation for women and LGBTI persons in South Africa. A deeper analysis shows that the content of the laws and policies in place are not translating into real change.

48. The domestication of international and regional human rights instruments in this context will not be truly successful until such time as South Africa can improve the implementation of its laws and policies, thereby effecting real change for women and LGBTI persons who are victims of sexual and other violence on a daily basis. South Africa must ensure:

- a. That women and LGBTI people have access to sufficient, practical knowledge of the laws and policies regarding legal protection and other services for victims of gender-based violence, and the justice system. In this regard, victims of sexual violence should also benefit from the legal aid system that South Africa has in place.
- b. That civil society has access to specific information about the performance of the various departments and actors within the South African state, in combatting gender-based violence. This will necessarily entail a reformed and more transparent approach to the manner in which national crime and other statistics are collected, collated, and reported to the public.
- c. That victims of gender-based violence have access to psycho-social support, and that organisations providing such services are valued and supported by the state.
- d. That responses to sexual and other violence against women and LGBTI community are characterised by inter-departmental and inter-sectoral collaboration, and where such collaboration fails, or fails to achieve and impact, to seek solutions as opposed to setting up new, duplicate structures.

- e. To report to the public, and hold state officials accountable for, a lack of statutory compliance. This must be accompanied by a commitment to improve public access to complaints mechanisms.
- f. Urgently consider the total decriminalization of sex work, given the on-going, gross human rights violations against this group, often at the hands of state actors.

49. Improved implementation of laws and policies to protect women and LGBTI persons requires political will to prioritise gender-based violence; sufficient and gender-sensitive resource allocation; and accountability for poor performance. There must be improved management at the local and provincial level, and real, individual consequences for poor service delivery at these levels, where most ordinary people interface with government.

50. The experiences of ordinary people must both guide the response to gender-based violence, and be at the center of the way in which we measure progress and success.

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