

# CRIMINAL INJUSTICE: VIOLENCE AGAINST WOMEN IN SOUTH AFRICA



SHADOW REPORT ON BEIJING + 15

MARCH 2010

# ACKNOWLEDGEMENTS

Prepared by People Opposing Women Abuse (POWA) with the AIDS Legal Network (ALN) on behalf of the One in Nine Campaign and the Coalition for African Lesbians (CAL).

We acknowledge the Ford Foundation (Southern Africa), Foundation for Human Rights, Oxfam Great Britain through the Raising Her Voice Program for their generous support in preparation, publication and printing of the report.



DEPARTMENT OF JUSTICE & CONSTITUTIONAL  
DEVELOPMENT



FUNDED BY THE EUROPEAN UNION/ SECTOR BUDGET  
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## LIST OF ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
ANC	African National Congress
BPfA	Beijing Declaration and Platform for Action
CAL	Coalition of African Lesbians
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
ECA	Economic Commission of Africa
FCS	Family Violence, Child Protection and Sexual Offences Units
GBV	Gender Based Violence
HIV	Human Immunodeficiency Virus
IDMT	Inter Departmental Management Team
MRC	Medical Research Council
NGO	Non Governmental Organisation
NSP	The HIV & AIDS and STI Strategic Plan for South Africa
PEP	Post-Exposure Prophylaxis
POWA	People Opposing Women Abuse
PMTCT	Prevention of Mother to Child Transmission
RAPCAN	Resources Aimed at the Prevention of Child Abuse and Neglect
SAPS	South African Police Services
SGBV	Sexual and Gender Based Violence
STI	Sexually Transmitted Infection
SWEAT	Sex Worker Education and Advocacy Taskforce
VAW	Violence against women

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# INTRODUCTION

Eradicating violence against women must be central to any discussion on social transformation and building a society based on values of human dignity, equality and freedom. Violence against women (VAW) intersects with other forms of oppression and discrimination that manifest in the political, economic, social, cultural, and gender inequities, associated with patriarchal power relations that subordinate women. The Convention on the Elimination of All Forms of Discrimination against Women<sup>1</sup> (CEDAW) recognises that VAW “inhibits women’s ability to enjoy rights and freedoms on the basis of equality with men”. This shadow report centres violence against women as a violation of human rights, including the right to women’s autonomy. The political and social transformation emerging in South Africa requires that we take urgent and robust action to eliminate women’s human violations: the very principles underpinning South Africa’s democracy demand nothing short of the full protection of human rights for all.

In South Africa, violence against women contravenes numerous constitutionally guaranteed rights, most significantly, the right to equality, which provides for equality before the law and the right to equal benefit and protection of the law.<sup>2</sup> The reality and threat of infringements impinge on women’s rights to inherent dignity, the right to have that dignity respected and protected<sup>3</sup>, the right to life<sup>4</sup>, the right to freedom and security of the person<sup>5</sup> and the right to bodily and psychological integrity.<sup>6</sup> While South Africa has one of the most progressive and inclusive Constitutions in the world, with a Bill of Rights proclaimed to be the cornerstone of democracy, the incidence of violence against women continues to escalate to alarming proportions. Protection against such abuse is limited at best, as perpetrators enjoy widespread impunity.

In recognising that violence against women is an obstacle to the achievement of equality, development and peace, that various forms of violence are perpetrated and/or condoned by the state and that there is routine failure by states to protect and promote the fundamental human rights and freedoms of women, governments at the Fourth World Conference on Women in Beijing committed to three significant strategic objectives:

1. To take integrated measures to prevent and eliminate violence against women;
2. To study the causes and consequences of violence against women and the effectiveness of preventative measures; and
3. To eliminate trafficking in women and assist victims of violence due to prostitution and trafficking.

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<sup>1</sup> Convention on the Elimination of All Forms of Discrimination against Women adopted 18 December 1979 available at <<http://www2.ohchr.org/english/law/cedaw.htm>>

<sup>2</sup> Section 9(1) of the Constitution

<sup>3</sup> Section 10 of the Constitution

<sup>4</sup> Section 11 of the Constitution

<sup>5</sup> Section 12(1) of the Constitution

<sup>6</sup> Section 12(2) of the Constitution

These strategic objectives are accompanied by a set of actions to be taken by governments in order to comply with the undertakings and commitments made in terms of the Beijing Declaration and Platform for Action (BPfA) (1995).

In October 2009 the South African government produced a report in anticipation of the 2010 15+ Year Review of the BPfA, and the Outcomes of the twenty-third special session of the General Assembly (2000).<sup>7</sup> While we note the report prepared by the Department of Women, Children and People with Disabilities<sup>8</sup>, a number of conspicuous gaps and problems exist with the drafting and adoption of the report. Firstly, Government failed to submit the report timely to ensure South Africa's inclusion in the Economic Commission of Africa (ECA) report. Secondly, the Department's failure to consult with civil society organisations on the content and scope of the report has led to it not reflecting the promising initiatives and programs undertaken by civil society organisations that are in line with BPfA. The content of Government's report is also characterised by exclusions, among which are the following:

- The silence on experiences of vulnerable and marginalised groups, in particular, indigenous women, refugees and undocumented migrant women, and commercial sex workers, the overwhelming majority of whom are women;
- The failure to reflect the routine violence and discrimination experienced by lesbian and transgender women;
- The failure to address the critical intersection of VAW and HIV and AIDS;
- The failure to provide a critique or assess the impact of the various legal and institutional reform initiatives. The current gap between policy and practice, between law and implementation, is significant and must be illuminated.

This shadow report is crafted in response to Government's report, which it by no means intends to duplicate. The purpose is to:

1. Highlight the current reality of VAW in South Africa in order to demand greater accountability of the state in fulfilling its international human rights and constitutional commitments and obligations;
2. Address the silence in the state's report regarding routine discrimination and violence experienced by women who are part of marginalised groups;
3. Assess the state's compliance with the strategic objectives of Critical Area 4 of the BPfA: Violence against Women;
4. Identify institutional and other challenges and constraints in the implementation of this Critical Area; and
5. Make recommendations which will contribute to the protection and promotion of women's rights generally, and the elimination of violence against women, in particular.

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<sup>7</sup> United Nations Commission on the Status of Women, Fifty-third session available at <<http://www.un.org/womenwatch/daw/csw/53session.htm>> Fourth World Conference on Women Beijing Declaration and Platform for Action available at <<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>>

<sup>8</sup> Established less than a year ago in May 2009 following the April, 2009 plebiscite

## THE SOUTH AFRICAN REALITY

In South Africa violence against women has reached epidemic proportions, one of the highest rates in the world of countries collecting such data.<sup>9</sup> It exists in millions of households<sup>10</sup>, in every community, in every institution, in both public and private spaces. VAW cuts across race, class, ethnicity, religion and geographic location. It is enmeshed with particularly violent histories of slavery, imperialism, colonialism and apartheid, and as well entangled in their corollary, the struggles for self determination. All these have left in their wake social and gender relations of a militarised society that has nurtured extremely violent masculinities to the detriment of women.

The spatial planning which is part of the legacy of apartheid continues to reinforce gender discrimination and increased vulnerability to violence of poor black women in particular. Many live in housing and communal environments that place them at risk of violence<sup>11</sup> as they are reliant on walking or public transport in environments characterised by the absence of lighting in the night. In one study, 29% of women reported having been gang raped when they were walking to or from particular destinations<sup>12</sup>.

Institutionalised racism remains deeply embedded in South African society, correlating to gross economic inequalities: black people, in particular black women are overrepresented amongst the poor. They remain the most vulnerable to various forms of violence and too often do not have access to legal redress at the instance of rights violations.

In February 2008 a racist video made by four white male students of the University of the Free State express[ed] their opinion on integration. The video showed three black women and one black man being made to eat dog food mixed with garlic and the urine of one of the white students. Despite the widespread shock, horror and disgust expressed university authorities refer to the video as something which might be perceived as racist but may have actually been about something else.

The exact prevalence of VAW in South Africa is unknown. Official police statistics, fraught with problems of under-reporting, corruption, codification of crimes and lack of disaggregated data only paint part of the picture. Even with these limitations, South African Police Services (SAPS) statistics for reported rape were 69117 in 2004/5, 68076 in 2005/6, 65201 in 2006/7, 63818 in 2007/8 and 71500 in 2008/9.

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<sup>9</sup> Some statistics: For rape statistics as reported by the South African Police Services see:

<[http://www.saps.gov.za/statistics/reports/crimestats/2008/march\\_april\\_2001\\_2008/category/rape.pdf](http://www.saps.gov.za/statistics/reports/crimestats/2008/march_april_2001_2008/category/rape.pdf)> (accessed 20 Sept 09); Ursula Lau *Intimate Partner Violence Fact Sheet*, research undertaken by the Medical Sciences Research Council reveals that 1 in 4 women in the general South African population has experienced physical violence at some point in her life and a national study of female homicide reveals that every 6 hours a woman is killed by her intimate partner. <<http://www.mrc.ac.za/crime/intimatepartner.pdf>> (accessed 10 Sept 09). According to People Opposing Women Abuse, 1 in 2 women have a chance of being raped during her lifetime <<http://www.powa.co.za>> (accessed 10 Sept 09)

<sup>10</sup> Vetten, L, Kim, J., Ntlemo, E., Mokwena, L. (2009) From Paper to Practice: Lessons in the Implementation of Health and Victim Empowerment, Policy Applicable to Rape Survivors. Tshwaranang Legal Advocacy Centre, Policy Brief 2.

<sup>11</sup> Foundation for Human Rights (2009) Violence Against Women: A Study of Women's Experiences and Views of Men Post 1994.

<sup>12</sup> Vetten, L. & Haffeejee, S (2005) 'Urban predators: an analysis of gang rapes reported at six inner-city Johannesburg police stations'. CSV Gender Programme Policy Brief 1.

The Medical Research Council (MRC) estimated in 2002 that 88% of rape cases go unreported<sup>13</sup> due to embarrassment, self blame, fear of not being believed, trauma, and fear of secondary victimization. Findings from research conducted on prevalence support the MRC suggestion that actual levels of violence are much higher than the national SAPS statistics:

- More than 40% of women interviewed in a Cape Town study had experienced one sexual assault<sup>14</sup>
- 45% of women aged 14 – 24 described their first sexual experience to have been one where they had been coerced - 'persuaded, tricked, forced [or raped]'<sup>15</sup>
- 27.6% of men interviewed in a MRC study<sup>16</sup> admitted having raped a woman, while 14.3% had raped a current or ex-girlfriend or wife. Nearly half of the men who said they had raped, had raped more than one woman or girl

The levels of domestic violence reported in various research studies are also cause for concern:

- 31% of pregnant women surveyed in KwaZulu Natal reported domestic violence<sup>17</sup>
- One study conducted in three South African provinces found that 27% of women in the Eastern Cape, 28% of women in Mpumalanga and 19% of women in the Northern Province had been physically abused in their lifetimes by a current or ex-partner and 51% of women in the Eastern Cape, 50% in Mpumalanga and 40% in Northern Province had experienced emotional and financial abuse in the year prior to the study<sup>18</sup>
- Interviews conducted with 1 394 men working for three Cape Town municipalities found that approximately 44% of the men were willing to admit that they abused their female partners<sup>19</sup>
- Intimate femicide research found that every six hours a woman is killed by her male partner, revealing one of the highest rates ever reported in research anywhere in the world<sup>20</sup>

While the research on domestic violence prevalence does provide a sense of the extent of the problem and some of the associated consequences, many of the studies are quite outdated. POWA's work in service provision to survivors of domestic violence indicates that the levels of violence have not decreased. The absence of regularly conducted national prevalence studies on domestic and sexual violence is problematic as it makes planning, implementing, monitoring and evaluation of prevention and response difficult.

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<sup>13</sup> Jewkes, R & Abrahams, N. (October 2002). 'The Epidemiology of Rape and Sexual Coercion in South Africa: An Overview'. In *Social Science & Medicine*, vol.55, no 7, pp 1231- 1244.

<sup>14</sup> Kalichman, S., Simbayi, L., Kaufman, M., Cain, D., Cherry, C., Jooste, S& Mathiti, V. (2005). 'Gender Attitudes, Sexual Violence, and HIV/AIDS Risks among Men and Women in Cape Town, South Africa'. *The Journal of Sex Research*, 42 (4), pp299 – 305.

<sup>15</sup> Hallman, K (2005). 'Sexual Violence and Girls Education in South Africa. Available online at: <https://paa2005.princeton.edu/download.aspx?submissionId=51448>

<sup>16</sup> Jewkes, R., Sikweyiya, Y., Morrell, R., Dunkle, K. (June 2009). 'Understanding Men's Health and Use of Violence: Interface of Rape and HIV in South Africa. Medical Research Council Policy Brief: Pretoria

<sup>17</sup> Hoque, ME., Hoque, M., Kader, SB. (2009). 'Prevalence and experience of domestic violence among rural pregnant women in KwaZulu-Natal, South Africa. Available online at: <http://www.sajei.co.za/index.php/SAJEI/article/view/106/209>

<sup>18</sup> Jewkes, Rachel, Penn-Kekana, Loveday, Levin, Jonathan, Ratsaka, Matsie and Schrieber, Margaret (1999). *He must give me money, he mustn't beat me.: Violence against women in three South African Provinces*. Pretoria: CERSA (Women's Health) Medical Research Council.

<sup>19</sup> Abrahams, N., Jewkes, R. and Laubscher, R. (1999). *"I do not believe in democracy in the home" Men's relationships with and abuse of women*. Tygerberg: CERSA (Women's Health) Medical Research Council.

<sup>20</sup> Mathews, Shanaaz, Abrahams, Naemah, Martin, Lorna J., Vetten, Lisa, van der Merwe, Lize and Jewkes, Rachel. (2004). *Every six hours a woman is killed by her intimate partner.: A National Study of Female Homicide in South Africa*. MRC Policy brief no. 5, June 2004.



# WOMEN'S VULNERABILITY AND MARGINALISATION

While a body of knowledge is being developed about certain forms of violence, for instance rape and domestic violence, even within this there are noticeable gaps and silences. Violence experienced by lesbians, migrant women and sex workers, for instance, is often excluded from studies on domestic and sexual violence. Women are not a homogenous group and to conflate their experiences ignores the very stratifying effects of race, class, sexual orientation, HIV status, (dis)ability, and other markers of difference that create hierarchies of power and privilege. In the South African context in particular, the violence that many women experience is shaped by these multiple identities, which not only increase vulnerability but also limit access to legal redress, as well as access to health and psychosocial services.

Discrimination coupled with a hostile legal, political and socio-cultural environment seriously circumscribes efforts to address the rights and health needs of vulnerable and marginalised communities of women.

## **The Intersection of Violence against Women and HIV and AIDS**

The intrinsic links between violence against women and HIV risks have been well established and recognised. In the South African context, the prevalence and incidence of both HIV and violence have reached pandemic proportions. Violence, particularly sexual violence, clearly places women at greater risk of HIV infection, while women living with HIV are more likely to be subjected to violence, further exacerbated by prevailing high levels of HIV-related stigma, discrimination and other violations of rights. Violence against women is as much a cause as it is a consequence of HIV infection<sup>21</sup> and thus effective responses to violence against women and to women's HIV risks have to address these intersections.

Sexual violence directly impacts on women's risks of HIV infection. Moreover, low levels of reporting further exacerbates risk to both pandemics, and also resulting in women not accessing necessary health and other services, including preventative post-exposure prophylaxis (PEP) treatment<sup>22</sup>. In addition, services for women who have been raped are often inadequate and inaccessible.<sup>23</sup>

Programmes and services related to HIV prevention and treatment are often not designed with human rights and/or gender equality approaches in mind. HIV prevention initiatives, for example, fail to recognise that many women are not in a position to negotiate conditions of a sexual encounter, thus increasing women's risks to HIV and related violence. HIV testing services can expose women to the risk of violence, due to lack of confidentiality and or following disclosure of a positive HIV status. Prevention of mother to child transmission (PMTCT) programmes have also been criticised for focusing primarily on women in their role as child bearers, paying little

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<sup>21</sup> Rights are too often overlooked: HIV and AIDS & GBV: Intersecting Health and Human Rights crises; ALQ March 2007

<sup>22</sup> Rights are too often overlooked: HIV and AIDS & GBV: Intersecting Health and Human Rights crises; ALQ March 2007

<sup>23</sup> NSP Creating a Social Environment Part 2: Human Rights and Access to Justice; pg36

attention to women's rights and needs. These programmes potentially heighten the risks of violence by partners and family members, as well.

In her 2005 report on HIV/AIDS, the UN Special Rapporteur on violence against women wrote:

*In spite of the number of women contracting HIV/AIDS through violent means, States have yet to fully acknowledge and act upon the interconnection between these two mutually reinforcing pandemics. By and large, Governments fail to take into consideration gender discrimination in formulating HIV/AIDS policies. This is evidenced by the lack of data on HIV disaggregated by sex in most countries. ... National policies and action plans would be vastly more effective if they acknowledged and acted on the interconnectedness between the two pandemics of HIV and violence against women.<sup>24</sup>*

The HIV & AIDS and STI Strategic Plan for South Africa, 2007 – 2011, (NSP) does indeed acknowledge the links between violence and HIV risks through its various objectives.<sup>25</sup> Most notably, Objective 1.3 aims to address the 'unacceptability of coercive sex, gender power stereotypes and the stigmatisation of rape survivors'. However, there has been little progress thus far in the translation of these commitments of the NSP into practice. The consequences of sexual and gender based violence and its interrelation with HIV and AIDS are varied and many:

- A study conducted at an antenatal clinic in Soweto found that women with violent or controlling male partners are at increased risk of HIV infection<sup>26</sup>. Infertility, pregnancy and sexually transmitted infections are other recorded consequences<sup>27</sup>
- Women infected with HIV are routinely subject to violence due to stigma and discrimination both due to their gender, *as well as* their HIV status
- Prevailing HIV-related stigma, discrimination and violations of rights often deter women from accessing available health and other services
- Women living with HIV and AIDS are at increased risk of violence from partners and family members
- Girls sexually assaulted as children are at increased risk as adults of being subjected to physical and / or sexual violence by their intimate partner<sup>28</sup>
- Teenage girls whose first sexual encounter was forced were 14 times more likely to fall pregnant than girls whose first encounter had been consensual<sup>29</sup>
- Women's participation in development projects, including those aimed at income generation and poverty alleviation, is also impacted upon by threatened or actual violence<sup>30</sup>

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<sup>24</sup> As cited in CWGL p12

<sup>25</sup> Objective 1.3 (Develop and implement strategies to address gender-based violence), Objective 19.1. (Increase accessibility and availability of comprehensive sexual assault care, including PEP and psychosocial support), Objective 19.2. (Ensure implementation of existing laws and policies that protect women and children from gender-based violence), Objective 19.3. (Address the needs of women in abusive relationships), and Objective 19.4. (Ensure that laws, policies and customs do not discriminate against women and children).

<sup>26</sup> Dunkle, K., Jewkes, R. Brown, H., McIntyre, J., Gray, G., Harlow, S (2003) 'Gender-based Violence and HIV infection Among Pregnant Women in Soweto. Pretoria: Gender and Health Group, Medical Research Council.

<sup>27</sup> Bollen, S., Artz, L., Vetten, L, Louw, A. (1999) 'Violence Against Women in Metropolitan South Africa: A Study on Impact and Service Delivery. Monograph No 41, The Institute for Security Studies.

<sup>28</sup> Dunkle, K., Jewkes, R. Brown, H., McIntyre, J., Gray, G., Harlow, S (2003) 'Gender-based Violence and HIV infection Among Pregnant Women in Soweto. Pretoria: Gender and Health Group, Medical Research Council.

<sup>29</sup> Jewkes, R., Vundule, C., Maforah, F., Jordan, E (2001) 'Relationship dynamics and teenage pregnancy in South Africa'. *Social Science & Medicine* 52:733

The consequences of violence also extend beyond the individuals directly affected. Violence against women impacts negatively on the parenting role of women. This, in turn, impacts on the emotional and physical wellbeing of children.

Furthermore, treating women who have been injured by their partners costs the Department of Health a considerable amount of money. In one study, it was found that treating women who were injured by their partners in the Eastern Cape, Mpumalanga and Limpopo provinces cost the Department of Health approximately R29 million<sup>31</sup>.

## Commercial Sex Work

On the 22 January 2010, the media received information that the City of Cape Town had contracted the Guardian Angels, an organisation originating from the USA, to develop training materials for neighbourhood watch members. Included in the manual was a chapter titled “Stopping Sex Workers”. In this chapter, the following strategies and tactics are recommended:

1. Communicate community disapproval of street prostitution.
2. Limit access to marketing space.
3. Remove the sense of impunity of prostitutes and patrons.

One of the practical suggestions made is to “use organized citizens' groups to shadow the movements of prostitutes and their patrons, writing down their license plate numbers and photographing their activities”.

Clearly the suggestion above constitutes a violation of human rights including the right to privacy.

Part of the implementation plan during 2010 Soccer World Cup is for members of the Guardian Angels from other countries to join Cape Town city patrols.

Human rights organisations, including SWEAT and POWA, responded strongly through the media criticising the City of Cape Town for facilitating conditions that exacerbate violence and human rights violations against sex workers.

The vulnerability of female sex-workers to sexual and gender based violence is due to a number of factors including the criminalisation of adult sex work, which results in sex workers’ reluctance to report rape, due to fear of secondary victimisation and unsympathetic treatment by the police. Yet studies have shown that the policing of out-door sex work does not serve as a deterrent, but rather merely transfers sex workers from their places of work to hidden places, which then exposes them further to the risks of violence.

Pervasive stigma and discrimination against female sex workers at clinics, where they are viewed as ‘vectors of disease’, significantly inhibits health seeking behaviours and access to available prevention and treatment services.

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<sup>30</sup> Sen, Purna. (1998). “Development practice and violence against women” in *Violence Against women Gender and Development* Volume 6 Number 3 November 1998.

<sup>31</sup> Jewkes, R, Penn-Kekana, L, Levin, J, Ratsaka, M and Schriber, M. (1999). *“He must give me money, he mustn’t beat me” Violence against women in three South African Provinces*. Pretoria: CERSA (Women’s Health) Medical Research Council.

## **(Undocumented) Migrants and Refugee Women**

Real or perceived Black African migrants were subjected to brutal attacks in some areas of South Africa in May 2008. These attacks, popularly dubbed xenophobic, resulted in 62 reported deaths, repatriation of some undocumented migrants, and the displacement of over 200 000 women, men, girls and boys. Little or no information was collected on the extent to which women and girls were targeted in the attacks. Nevertheless, it is well known that during emergencies as a result of disasters and/or social strife, women and other vulnerable groups are subjected to sexual, gender based and other forms of violence. According to a report, migrant women were the most vulnerable victims of xenophobic attacks because they were seen as easy targets since they had less recourse to the criminal justice system and protection than South African women.<sup>32</sup>

Taken completely by surprise, Government set up shelters for the internally displaced which were marked by overcrowding and failed to meet international standards to ensure safety for women, resulting in cases of sexual violence.

The crisis that has haunted Zimbabwe for over a decade has resulted in a string of refugees, legal and undocumented migrants to the neighbouring countries, including South Africa. Among these are many women and girls who survived the economic and political violence and sexual and gender based violence (SGBV) that escalated in the lead up to and immediately following the March 2008 elections<sup>33</sup>. SGBV remains a major risk for many Zimbabwean migrant women on their journey to South Africa as well as once they are in South Africa. Many migrants, especially women and unaccompanied minors, face brutalities and SGBV at the hands of their smugglers who act with impunity and with little or no fear of prosecution.

While Government's refugee policy is that of local integration, many migrants and refugees, among them women and girls, end up homeless in South African cities bordering their country, or in the country's big cities. Many take up 'shelter' at the controversial Central Methodist Church in Johannesburg where the inhumane crowding and other factors leave women and girls vulnerable to all forms of VAW. Some have been driven to sex work and others trafficked.

UNICEF research in Musina, a South African town 11 kilometers from the Zimbabwe border drew attention to migrant women and girls' vulnerability to sexual abuse and exploitation at border crossings at the hands of immigration officials, soldiers, police and other criminal gangs which roam the border areas of Zimbabwe and South Africa.

While a number of state and civil society service providers from the health, psychosocial, legal/justice and security sectors have stepped up response to this reality, women are still experiencing problems to access protection, justice and services following sexual violence. Some of these problems include lack of co-ordination, no formal or consistent approach to referral, survivors being charged for (or being denied access) to free medical services – including PEP – and lack of shelter that complies with minimum standards.

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<sup>32</sup> Center for the Study of Violence and Reconciliation : 'The Gendered Nature of Xenophobia in South Africa' available at [www.csvr.org.za](http://www.csvr.org.za) accessed 5<sup>th</sup> June 2009. See also Peter Luhanga Cape Argus 8, 13 June 2008

<sup>33</sup> Matlanyane Sexwale, B. M., (2008): 'We Cannot Afford to be Victims'. Commissioned by Crisis in Zimbabwe Coalition available online at [www.powa.co.za](http://www.powa.co.za)

To respond to these challenges, POWA and Sonke Gender Justice Network, with the support of UNICEF, have been (since 2009) running a collaborative project aimed at improving Sexual and Gender Based Violence programs in Musina and surrounding areas. The POWA component of this project involves working with government and civil society to standardise and strengthen service delivery to women survivors of SGBV. Another aspect of the POWA work involves working with migrant and South African women. POWA and Curriculum Development Project Trust trained 16 women in SGBV content, advocacy, and outreach skills. The women who have received the training are now engaging in community outreach activities with other migrant and local women on SGBV, rights and recourse.



Figure 1. Fabric mural produced by women participating in Musina SGBV Project

The women in the Musina SGBV project were also trained in fabric painting. A number of fabric murals were produced by the women participants which came out of a process of creating and sharing personal visual narratives that affirmed the collective experience of abuse and trauma of the group. These banners were used as entry points to engage women in the community about SGBV and women's rights. The journey and the telling, often for the first time, and the acknowledgement and empathy, was a gateway to understanding the nature, causes and consequences of gender based violence against women: physical, sexual, emotional, cultural and social.

The poem “Would I be turned away?” was written by Agnes Mahachi and Tafadzwa Chikandiwa, two of the women participants from the group and was the culmination of a process of creating and sharing personal visual narratives that affirmed the collective experience of abuse and trauma of the group.

### **Will I Be Turned Away?**

If I walked through the bush,  
And in chest-high water through the river,  
And through more thick bush,  
And I crawled under the wire  
And climbed over the electric fence  
To reach South Africa  
If I came through the river because  
I had no money for the documents, nor  
To bribe the officials at the boarder post,  
But I was so desperate  
WILL I BE TURNED AWAY?

If I was attacked and  
Gang raped by the guma-gumas  
As I made my way through the river,  
And I arrived in South Africa  
With no documents  
WILL I BE TURNED AWAY?

If I seek medical help and counselling  
If I cannot identify the rapists and the evidence  
Of the rape was washed away in the river  
WILL I BE TURNED AWAY?

If I report the rape to the police and ask that  
The rapists are caught and they should be  
Made to pay for  
Their terrible deeds,  
And if I cannot identify them, and  
I am regarded as illegal, and  
I fear the police,  
And I fear deportation, and  
I fear going to the hospital,  
I fear being raped again  
In South Africa,  
And I feel so totally alone and  
Unprotected

WHERE DO I GO FOR HELP?

## Homophobic Violence against Women

In or around February 2006, Zoliswa Nkonyana, a 19 year-old black lesbian was clubbed, beaten and stabbed to death in a township outside Cape Town. The accused were arrested shortly after the incident. There have been at least 20 postponements since their first court appearance in the Khyelitsha Magistrates Court. At the last hearing, the case was once again postponed to 2 October 2009, the trial has not commenced and the accused are out on bail.

On 7 July 2007 two black lesbians, Sizakele Sigasa and Salome Masooa from Soweto, a township in Johannesburg, were tortured, raped and brutally murdered. Sizakele was found with her hands tied together with her underwear and ankles tied with her shoelaces. She also had three bullet holes in her head and collarbone. No perpetrators were found and the docket is now closed.

In or around August 2007, Thokozane Qwabe, a 23 year-old black lesbian was found dead in a field in Ladysmith, a town in Kwa-Zulu Natal. Her clothes were lying about 70m from her body; she had multiple wounds on her head suggesting that she had been stoned to death. No suspects were found.

On 27 April 2008 the body of Eudy Simelane, a former national football player was found in a field in Kwa-Thema outside Johannesburg. She had been gang-raped and repeatedly stabbed to death by her assailants.

All the deceased in the above-stated reports identified either as lesbian or transgender people. All were Black and all lived in a township, which suggests a specific class background – poor, working class, black. These cases illustrate the reality of homophobic violence targeting specific groups and the institutionalised and/or state sponsored homophobia within the police services. Apart from the conviction secured in the Eudy Simelane case, all the other cases listed above remain unpunished, pointing to the flagrant impunity enjoyed by perpetrators of such crimes. South African society remains deeply homophobic and sexist, with constitutionally protected rights of sexual minorities vehemently contested and resisted.

Many black lesbians and transgender women continue to be caught in the spiral of poverty, powerlessness, routine victimisation and institutionalized violence, regardless of their constitutional rights to equality, human dignity and the right to be free from all forms of violence. Black lesbians and transgender women have been raped, tortured and murdered simply because they refuse to conform to dominant heteronormative and patriarchal norms and values. In many parts of the country and despite constitutional provisions for protection, homosexuality is still considered a sin, “unAfrican” and a betrayal of an essentialist African culture and tradition.

Conservative patriarchal forces have not only given themselves the prerogative to be the sole definers of African identity and culture, the only ones who can decide and confer legitimacy (they assume), they also police sexual behaviour and orientation in the service of heteropatriarchy.



# SOUTH AFRICAN STATE COMPLIANCE

## No Justice for Survivors of Sexual Violence

For the period under review, we note that policies and legislation have been adopted to respond to violence against women, but that these developments have not had the most positive impact on women survivors. As this section of the report will demonstrate, we remain concerned about the inadequate measures taken to ensure the protection of women subjected to violence; the lack of women’s access to just and effective remedies, the lack of access to the mechanisms and processes of justice, including compensation. Most significantly, we are concerned about the lack of adequate access, for most survivors of sexual violence, to health and other essential services, including PEP.



Figure 2: One in Nine Campaign members protesting outside the Johannesburg High Court



## **TIMELINE IN BUYISIWE CASE: JUDGE FOR YOURSELF**

*2 October 2005:* Buyisiwe is gang raped by 8 young men

*3 October 2005:* Buyisiwe reports the rape to the police, undergoes the medico-legal examination by the district surgeon and 7 of the 8 suspects are arrested

*7 December 2005:* At Tembisa Magistrates' Court, bail is denied to all accused and they are remanded in custody for trial.

*31 March 2006:* Court is adjourned to the 12 June 2006 due to missing documents from the docket – including the complainant and 3<sup>rd</sup> witness' statements

*12 June 2006:* Matter is struck from the court roll, accused are released from custody as a result of the missing documents from the docket. The complainant takes refuge in a shelter for abused women due to threats and fear for her safety.

*End July 2006:* Following lobbying initiatives by the One in Nine campaign, an application for reinstatement is made at the Johannesburg High Court by the Directorate of Public Prosecutions.

*29 November 2006:* The matter is finally reinstated in Tembisa Court and transferred to the Wynberg Magistrates' Court [A specialised Sexual Offences Court]. The accused are not rearrested, they await trial out of custody.

*14 December 2006:* The matter is before the Wynberg Court, and is postponed for further investigation and for the missing statements to be retaken.

*28 February 2007:* The case is postponed for further investigation as the missing statements have still not been taken.

*10 May 2007:* The matter is finally set down for trial for 18 and 19 July 2007. This is despite the fact that the docket is still not closed, i.e. the investigation is not complete.

*18 July 2007:* The complainant gives evidence in chief and begins the cross-examination. Two of the accused are unable to be in court on 19 July due to them having to appear in another court on other charges. The matter is postponed to 16 August 2007.

*16 August 2007:* Buyisiwe completes cross examination. Court is adjourned until 8 November 2007 for reasons not given other than non-availability of the prosecutor.

*8 November 2007:* 'First report' and the second witness testify and are cross examined. Warrant of arrest is issued for the eye witness. Trial remanded to 31 January 2008.

*31 January 2008:* Medical doctor – not the doctor who conducted the medical examination – testifies and is cross-examined. The officer who arrested some of the accused testifies and is cross-examined. The eye-witness testifies. Remanded to 3 April 2008.

*3 April 2008:* Trial does not resume, defence attorney ill. Remanded to 18 June 2008.

*18 June 2008:* Trial does not resume, defence attorney not present in court. No explanation given. Remanded to 24 July 2008.

*24 July 2008:* Trial did not resume, defence attorney not present in court. No explanation given. Remanded to 13 August 2008.

*13 August 2008:* The matter is set aside after it comes to the attention of the court that the defence attorney had not been registered with the law society as a practicing lawyer since 2004. The magistrate rules that the matter must be heard afresh. This means that the complainant and the witnesses who have already testified must give evidence again. The matter is set down for 8 September 2008 for legal representation to be appointed for the accused.

*8 September 2008:* Following extensive lobbying by the One in Nine Campaign, the Wynberg Sexual Offences Court transfers the matter to the Johannesburg High Court. The matter is set down for trial between 2 – 13 March 2009.

*2 March 2009:* No judge available to hear matter. Case postponed to 27 July 2009.

*6 March 2009:* One in Nine Campaign demands earlier date from the court and stages a sit-in at the court until the demand is met. Protesters violently removed from the court and four others arrested then released.

13 March 2009: Deputy Judge President of the High Court sets a new date for court: 14 April 2009

6 April 2009: Johannesburg High Court [now the South Gauteng High Court] refuses permission for the One in Nine Campaign to hold a public demonstration in support of Buyisiwe on 14 April 2009.

14 April 2009: Legal Aid Board requests postponement of case due to counsel being unprepared to represent accused

14 April 2009: Judge orders new counsel for accused and trial to commence on 21 April 2009.

21 April – 4 June 2009: Judge Mailula presides over the matter. A further delay during the trial results due to missing transcripts from the Wynberg Sexual Offences Court. Counsel for the accused applied for a reconstructed version to be admitted as evidence. Their application was denied by the Judge.

8 - 9 June 2009: After trial, all 7 accused found guilty as charged. Case postponed for sentencing to the 28 July 2009

28 July 2009: Sentencing postponed to 26 August due to presentencing reports not being ready. Reason that was given was that the Department of Social Development has a 3 month backlog

26 August 2009: Sentencing postponed to 31 August as the judge indicated that the 26 August was a provisional date set in order to ensure that all relevant documentation for the sentencing to proceed were ready

31 August – 3 September 2009: Sentencing of the 7 accused ran. Defense attorneys argued in mitigation and State argued aggravating circumstances regarding the sentencing of the accused. Final sentencing to be handed down on the 4 September

4 September 2009: Judge Mailula sentenced all accused to direct imprisonment. Sentencing as follows:

Accused 1: 17 years for rape

Accused 2: 17 years for rape + 3 years for indecent assault (to be served concurrently)

Accused 3: 17 years for rape

Accused 4: 17 years for rape + 3 years for indecent assault (to be served concurrently)

Accused 5: 17 years for rape + 3 years for indecent assault (to be served concurrently)

Accused 6: 17 years for rape + 7 years for accomplice to rape (3 years to be served concurrently; 3 years in addition; minus 1 year for time already spent imprisoned)

Accused 7: 20 years for rape (minus 1 year for time already spent imprisoned)

November 2009 - February 2010: POWA, on behalf of the One in Nine Campaign has repeatedly requested the judgement to enable our offices to seek expert legal opinion and advise the complainant accordingly in respect of any potential civil claims that she may decide to pursue.



Figure 3: Protesters outside Wynberg Sexual Offences Court protesting against delays in Buyisiwe's case.

Through the work of its members, and particularly in supporting Buyisiwe and other rape survivors in the course of their criminal trials, the One in Nine Campaign<sup>34</sup> has noted inadequacies in the criminal justice system, many of which are demonstrated by this timeline.

- Women survivors of sexual violence are frequently confronted with unsympathetic and hostile treatment from the health services, police, prosecutors and often, judicial officers;
- Investigations and medical examinations are not thoroughly and effectively conducted to ensure successful prosecution;
- Unreasonable delays and withdrawal of cases are a common occurrence which have a negative impact on a complainant witness;
- Judicial officers routinely fail to effectively implement legislative provisions relating to bail applications, rules of evidence and sentencing;
- The extent of the harm suffered as a result of the gendered dimension of sexual violence is underestimated resulting in the absence of a gender sensitive approach to criminal prosecution of rape cases; and
- Reconciliation and other alternative methods of dispute resolution are encouraged as opposed to legal intervention resulting in successful prosecution.<sup>35</sup>



**Figure 4: Protester outside court**

The manner in which the criminal justice system processes sexual offence cases presents a multi-dimensional problem.

From the initial reporting of the sexual offence to sentencing (or the dismissal/withdrawal of the case) the One in Nine Campaign has found that role-players within the criminal justice system are routinely insensitive and often dismissive of the constitutionally protected rights of survivors to equality and human dignity.

On all levels, from the highest office in the country through to the service points such as police and health, there is a lack of a sense of urgency and a failure to take these cases seriously and to give them the kind of priority attention they deserve.

<sup>34</sup> (2008) One in Nine Campaign submission to the Department of Justice and Constitutional Development

<sup>35</sup> <http://www.hrw.org/reports/2001/safrica/ZA-FINAL-07.htm>

## Due Diligence and Government Obligations

Strategic Objective D1 Paragraph (b) of the BPfA tables actions to be taken by Government thus: “Refrain from engaging in violence against women and exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.”

It is an established principle in international law that states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.<sup>36</sup> In analysing which acts of violations of women’s rights are imputable to a state party, Rebecca Cook explains that:

*‘...acts of private persons that are violent to women or discriminatory against women do not necessarily implicate the responsibility of the state. If a state facilitates conditions, accommodates, tolerates, justifies or excuses private denials of women’s rights, however, the state will bear responsibility. The state will bear responsibility not for the private acts, but for its own lack of diligence to prevent, control, correct, or discipline such private acts through its executive, legislative or judicial organs.’<sup>37</sup>*

The shadow report notes that responses of relevant state agents to sexual and domestic violence in particular, have been less than adequate in effectively responding to widespread violations of women’s rights. As such, the state has fallen short on carrying out its legal duty to exercise due diligence to protect women from violence, by preventing, investigating, and, in accordance with national legislation, punishing acts of violence against women, whether those acts are perpetrated by the state or private persons, as the BPfA directs. Such neglect amounts to the State’s failure, if in part, to comply with its commitment to fulfil constitutional and international human rights obligations.

## Static Interpretations of Culture and Tradition

In our assessment of the two relevant sections of Government report, namely, para 2.4: *Violence Against Women* and Part 4: *Remaining Challenges and Actions*, we note that while legislation, policies and institutions aimed at preventing and responding to violence against women have been put in place, there remain major challenges to effective implementation of the BPfA in South Africa.

Most notably, state agents and in particular, the current office of the presidency, has not only routinely failed to condemn violence against women, but in some instances has invoked African custom and tradition to justify and facilitate conditions exacerbating the violations of women’s rights. Increasingly, cultural practices that not only discriminate against women but are often extremely brutal, the practice of *ukuthwala* (forced marriages of women and under-age girls to older men through abduction), common mainly in the rural Eastern Cape Province, and the recently revived practice of virginity testing of girls and young women in KwaZulu-Natal Province, exist

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<sup>36</sup> GR 19 (n7) See also article 4(c) of the United Nations Declaration on the Elimination of Violence Against Women G.A. Res 48/104 20 Dec 1993

<sup>37</sup> R Cook ‘State Accountability Under the Convention on the Elimination of All Forms of Violence Against Women’ in R J Cook (ed) *Human Rights of Women, National and International Perspectives* (Univ. of Pennsylvania 1994) 228

alongside the Constitution and legislation that prohibits such practices or that protects women and girl-children in law but not in practice in these situations.

Another contradiction lies in the Recognition of Customary Marriages Act (2000) which entrenches the practice of polygyny/polygamy, allowing only a man to marry more than one wife.

Since the election of Jacob Zuma as president of South Africa, the practice of polygamy has been a hotly debated topic. The manner in which he practices polygamy along with the growing number of children he has had both in and outside of polygamous relationships has attracted criticism from various quarters. Certainly when read together with his previous actions and statements surrounding HIV and AIDS, violence against women and women's rights generally, there is much cause for concern. Significantly the ANC Women's League and the state gender machinery has not been part of the debate other than to restate their support for the President and his right to 'privacy'.

In August 2007 in Section T in Umlazi, a township outside Durban, a young black woman was physically and verbally assaulted by a group of men for wearing trousers. A ban on women wearing trousers had been instituted by members of the community and supported (acquiescence) by the local municipality. This young woman was forced to walk through the streets naked and physically assaulted by members of the community. After assaulting her, a group of men proceeded to burn her house down. The Commission on Gender Equality instituted proceedings in the Equality Court on behalf of the complainant. At the conclusion of the case, one of the orders handed down by the court was an 'unequivocal apology' to the complainant.

Despite this order having been communicated to the community of Umlazi, many women still do not wear trousers for fear of violence, pointing to the need for local leadership to ensure that court orders are indeed translated into

## **Gaps in the Legislative & Policy Framework**

This report acknowledges that South Africa has one of the most progressive and inclusive Constitutions in the world and that the equality clause guarantees non-discrimination on numerous grounds, including gender, sex and sexual orientation.<sup>38</sup> We further acknowledge that various items of legislation and policies have been adopted, most notably, the Promotion of Equality and Prevention of Unfair Discrimination Act, aimed at fulfilling the realization of the right to equality. The establishment of specialized equality courts and chapter 9 institutions such as the Commission on Gender Equality and the South African Human Rights Commission are all positive steps that have been taken by the government to ensure access to justice for women and the promotion of the right to equality and non-discrimination for all. The state report lists these structural indicators, and purports that these should be read as satisfactory compliance with the commitment to implement the BPfA. Some key inadequacies include:

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<sup>38</sup> S 9(3) of the Constitution: "the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth

- There is currently no comprehensive law to deal with trafficking and stalking;
- In the application of existing law there is lack of capacity to adequately deal with and prosecute 'hate crimes';
- The Sexual Offences Act allows for compulsory HIV testing of persons accused of rape, which, in some opinion, violates Constitutional provisions of privacy, dignity, autonomy and non-discrimination. The 'discovery' of an HIV-positive diagnosis also places women at further risk of violence;
- The Sexual Offences Act (2007) provides for survivors to give their statements to female police officers but in practice this often results in delays while survivors wait for female officers to be called to take the statements;
- There is inadequate costing and budget allocation for the implementation of legislation. A study conducted in 2005 found that there was no specific budget dedicated to implementation, and that allocations were only for ad-hoc once-off projects for training and publicity around DVA and that these funds were provided by international donors rather than the State<sup>39</sup>. Further, despite the State's reliance on civil society organizations to provide services to survivors of violence, it fails to adequately resource these organizations. Without the NGOs and community-based organisations, women experiencing gender-based violence would have very few options.<sup>15</sup> Gillit (2002) states: *"there would be no rape crisis assistance, no help for women trying to navigate their way through the justice system or health system, which so shamefully often lets them down. There are some wonderful policies and fantastic legislation, but it all falls flat in the practical implementation."*<sup>16</sup> Funding by government is very difficult to access despite it being available. Many organisations need funding as they provide services such as shelters or court programmes which are essentially government functions;
- Failure to implement laws: despite the passing of the minimum sentencing legislation courts continue to disregard the minimum sentencing principles and continue to give out lenient sentences. One such example is the case of Molefe, a convicted rapist who was given a sentence of only four years instead of the prescribed life sentence because he was a "well educated man" and the complainant was a "grown up woman".<sup>17</sup> The court failed to take into consideration that Molefe was also facing charges of sexually assaulting 13 other women. As well in the sentencing of convicted rapists in the Buyisiwe case (see box) activists bayed for life sentence for the perpetrators. However the court argued numerous extenuating circumstances including poverty of the convicts, and, in some cases, the fact that a convict was brought up by a single mother;
- Delays in reviewing and enacting legislation: This is evidenced by the government's delay in passing of critical legislation for example the Criminal law (Sexual Offences Act and related Matters Act) Act 32 of 2007 which took over a decade to be enacted, Domestic Partnerships legislation, as well as law reform relating to Decriminalization of Sex Work.

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<sup>39</sup> Vetten, L. (2005) 'Show Me the Money': A review of budgets allocated towards the implementation of the Domestic Violence Act (no. 116 of 1998); In *Politikon*, Vol. 32, No. 2, pp. 277-295, November 2005

The State's report does not comprehensively deal with the policy framework that has been developed to respond specifically to violence against women and/or to the links between violence against women and HIV, and consequently also does not provide a critique of their implementation or impact.

A number of contradictions, duplications and gaps exist within The National Policy Guidelines for Handling of Victims of Sexual Offences; Minimum Standards for Service Delivery in Victim Empowerment, Integrated Service Delivery Model or the National Policy Guidelines for Victim Empowerment. This lack of coherence and enforceability leads to a lack of accountability and becomes a justification for failure to implement the provisions contained within the various policies. Victim empowerment policies lack a common theory or rationale and in addition to the contradictions between policies, there is also a disjuncture between policy frameworks and laws<sup>40</sup>.

A further analysis of the policy framework also indicates the failure of policies to speak comprehensively to the needs and rights of survivors of gender based violence. The Victims Rights Charter, for instance, only speaks to victims rights as they relate to the criminal justice system and state services offered to victims. The rights are only intended to be conferred on those victims that choose (or are able?) to report crimes and engage with the criminal justice system. The Victims Charter therefore does not protect all victims of crime. Overall, it contains a number of vague promises of improved service delivery without really detailing how to access these or what to do if they are not provided<sup>41</sup>.

The establishment of the Inter Departmental Management Team (IDMT) was premised on the need to develop a co-ordinated, multi-disciplinary response to gender-based violence. Despite most of the State's responses relying on partnerships with civil society organisations for service provision and awareness raising work, the IDMT has not consulted meaningfully with civil society. Consequently Strategies and plans which flow from the IDMT have not benefited from the wealth of experience and technical expertise that lies within the non governmental sector.

In 1995 a specialised police unit called the Family Violence and Child Protection and Sexual Offences Unit was formed. In addition to having completed the basic police training at one of the Police Colleges, and having gained some experience of general policing, the members of this unit also received training on topics relating specifically to their mandate. In 2005, amidst media reports that SAPS intended closing down the FCS Units, a media statement was issued by SAPS denying the closure of the unit. A senior SAPS member was quoted in the press release as saying that the unit "was not going to be closed as long as the offences it dealt with were present in the country".

In 2006 the Minister of Safety and Security announced the restructuring of the FCS Units. The restructuring was accompanied by the redeployment of personnel to cluster and station level. This development had a profound and negative effect on the nature of services delivered to victims as well as on the personnel that provide these services. In a study

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<sup>40</sup> Frank, C. (2007) 'Quality Services Guaranteed? A Review of Victim Policy in South Africa' Institute for Security Studies Monograph No 137

<sup>41</sup> Moran, G 2004. *Key issues in victim empowerment*. Pretoria: Themba Lesizwe.

conducted by RAPCAN, the findings reflected “that the trajectory towards increased specialisation in FCS cases that was apparent before the restructuring has been reversed by the decision to restructure”<sup>42</sup>. Significantly, the underlying problem of survivors in rural and under-resourced provinces not having access specialized services remained largely unaddressed. Under the new plan everyone was equally unable to access specialized services.

In July and September of 2009, Police Minister Nathi Mthethwa announced to Parliament and the public his plans to reinstate the Family Violence, Child Protection and Sexual Offences units.

While this most recent decision is welcome, the constant changing in policy governing the FCS Unit has had a negative impact on survivors of gender based violence. These changes in policy indicate the lack of a coherent strategy and common analysis by policy makers.

## CONCLUSION

This civil society shadow report, drafted in response to the South African government’s report in anticipation of the Beijing +15 Year Review, has demonstrated that despite the institutionalisation of legislative and policy frameworks in accordance with constitutional and international human rights obligations, the incidence of violence against women continues at epidemic proportions and perpetrators enjoy widespread impunity. Of particular concern are the persistent inequality, exclusion and routine violence experienced by women belonging to marginalised groups. While the intrinsic link between violence against women and HIV has been clearly established, this report notes that programmes and services for women affected and infected by HIV and AIDS have been inadequate and inaccessible and that there has been little progress thus far in the translation of the National Strategic Plan on HIV and AIDS and its commitments into practice. Finally, the report draws attention to the growing conservatism and fundamentalisms, including religious, traditional and state - with routine attacks on female sexuality and the infringements of women’s fundamental rights and freedoms in the public domain. This shadow report concludes with specific recommendations to the government of South Africa ranging from the effective implementation of existing protective legislation to the ratification and implementation of regional and international human rights treaties. The report urges the South African government to take all appropriate and available measures to ensure the protection of women from violence.

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<sup>42</sup> Frank, C., Waterhouse, S., Griggs, R., Rontsch, R. (2009). Raising the Bar: A review of the restructuring of the SAPS Family Violence, Child Protection and Sexual Offences Units. Available online: [http://www.rapcan.co.za/File\\_Uploads/direct/FCS\\_report\\_text\\_web1.pdf](http://www.rapcan.co.za/File_Uploads/direct/FCS_report_text_web1.pdf)



## RECOMMENDATIONS TO THE SOUTH AFRICAN GOVERNMENT

- i. Speak out forcefully on the urgent need to end violence against women and ensure state accountability for all instances of violence;
- ii. Increase funding to service providers (including shelters for abused women and their children);
- iii. Take measures to ensure that no state actors commit acts of violence against women, including taking punitive or disciplinary action against any state agent who does so;
- iv. Prevent violence against women by non-state actors, prosecute and punish all perpetrators and through effective institutions and mechanisms, provide remedies and redress to survivors;
- v. Strengthen the implementation and monitoring of all legislation and policies aimed at protecting women from violence, in particular, the Domestic Violence Act 116 of 1998, the Sexual Offences Act of 2007 and the Minimum Sentencing Legislation Framework and related criminal and civil laws;
- vi. In adjudicating cases, due consideration must be given to the safety of women; emphasizing that the perpetrator's rights cannot supersede women's human rights to life and to physical integrity;
- vii. Enact, without delay, comprehensive legislation to deal with the trafficking of women and girl-children and provide the maximum protection that the law can offer.
- viii. Repeal all laws that criminalise adult sex work and enact, without delay, comprehensive legislation that will protect sex workers from violence and exploitation.
- ix. Finalise the amendment to the Promotion of Equality and Prohibition of Unfair Discrimination Act to include 'HIV status' as one of the grounds of unfair discrimination;
- x. Strengthen the necessary infrastructure, including adequate resource allocation, to increase access to, and quality of, services for victims of sexual violence and rape, particularly access to and quality of PEP services and treatment;
- xi. Intensify the implementation of objectives in the National Strategic Plan which specifically address the links between violence against women and HIV risks; and
- xii. Reiterate violence against women as a 'driver' of the HIV and AIDS pandemics, as a consequence to HIV, and as a barrier to access available prevention and treatment services
- xiii. Ratify, without reservation, the International Covenant on Economic Social and Cultural Rights (ICESCR) adopted by General Assembly Resolution 2200A (XXI) of 16 December 1996;
- xiv. Sign and ratify, without reservation, the International Convention on the Protection of the Rights of Migrant Workers and their Families adopted by General Assembly Resolution 45 / 158 of 18 Dec. 1990
- xv. Accelerate the implementation of the Protocol to the African Charter on Human & Peoples' Rights on the Rights of Women in Africa adopted on 11 July 2003 by the 2<sup>nd</sup> Ordinary Session of the African Union Heads of State
- xvi. Ratify the Statute of the African Court of Justice and Human Rights merging the African Court of Justice and the African Court on Human and Peoples' Rights and make the declaration permitting individuals and non-governmental organisations direct access to the Court.

## CONTRIBUTING PARTNERS

**People Opposing Women Abuse (POWA)** is a South African feminist, women's rights organisation that was started in 1979. POWA provides direct services and support to women survivors of violence, and their children. These services include telephonic and face-to-face individual and group counselling, legal advice, court preparation and support and sheltering. POWA also engages training, information, education and communication (IEC) seeking to bring about a shift in attitudes towards women and violence perpetuated against women and an increased awareness and realisation of the rights of women. POWA, through its sector strengthening and capacity building programmes, aims at increasing women's access to services and justice in areas where this has historically been weak or non-existent. In order to continuously remain responsive and provide relevant support and advocacy services to women POWA conducts action research within the sector both for internal use and for sharing and generating knowledge for the GBV sector.

The **Coalition of African Lesbians (CAL)**, founded in 2003 as an independent, non-profit organisation is a network of organisations committed to African lesbian equality and visibility. CAL works to transform Africa into a place where all lesbians enjoy the full range of human rights, secure in the knowledge that we are recognised as full citizens, with rich and diverse cultures, and a significant and respected presence in all spheres of life, through personal and organisational growth. CAL's work is shaped by an African radical feminist understanding, informed by research, and strengthened by the claiming of social and economic power. CAL is the first non governmental organization in Africa to work on the equality of lesbian women at a continental level.

**The One in Nine Campaign** is a national advocacy campaign that engages in feminist activism around sexual rights and sexual violence and HIV and AIDS. The Campaign grew out of the need to demonstrate solidarity with "Khwezi" and claim political space to advocate for Khwezi's rights in the rape case brought by Khwezi against Jacob Zuma in 2005. The Campaign works with one out of nine rape survivors who report rape and the other eight who don't report. The Campaign has both organizational and individual members. The members include organizations working within the HIV and AIDS, women's rights, lesbian, gay, bisexual, transgender and intersex sectors.

**Campaign Members:** Aids Consortium, Aids Law Project, Aids Legal Network, Centre for the Study of Violence & Reconciliation; Centre for Applied Legal Studies, Forum for the Empowerment of Women, Gender, Health & Justice Research Unit, Gender Links, Masimanyane Women's Support Centre, Open Disclosure, Men as Partners / Engender Health, OUT LGBT Well-Being; People Opposing Women Abuse, Positive Women's Network, Rhodes University, South Africa NGO Coalition, Sex Worker Education and Advocacy Task Force, Sinethemba Shelter, Sonke Gender Justice, Thohoyandou Victim Empowerment Programme, Treatment Action Campaign, Women and Men Against Child Abuse and Women's Legal Centre.