



LEGAL FRAMEWORKS AND POLICIES TO COMBAT GENDER-BASED VIOLENCE AND HARASSMENT

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UN DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN, ARTICLE 1, GA RES 48/104, 1993

Violence against women is defined as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether in public or private life, and perpetrated by the State or private person

Forms and manifestations include: intimate partner violence, femicide, sexual violence in conflict and non-conflict settings, trafficking for sexual exploitation, honour crimes, FGM, FECM, sexual harassment. Women and girls (and gender nonconforming people) who face multiple forms of discrimination are exposed to increased risk of violence.

Adverse consequences on health, well-being, rights, sexual and reproductive health and rights, mental and psychological well-being.

Social, economic and productivity costs for individuals, families, communities and societies, including impact on development outcomes.

BEIJING PLATFORM FOR ACTION (1995)

[HTTP://WWW.UN.ORG/WOMENWATCH/DAW/BEIJING/PLATFORM/](http://www.un.org/womenwatch/daw/beijing/platform/)

Significance of international conventions (BPA and CEDAW): Part of body of international law – legally binding; persuasive nature in legal proceedings; value in policy advocacy interventions

Signatory states are committed to the following strategic objectives and actions to eliminated VAW:

Strategic objective D1: Take integrated measures to **prevent and eliminate** violence against women

Strategic objective D2: Study the **causes and consequences** of violence against women and the effectiveness of preventive measures

Strategic objective D3: Eliminate trafficking in women and **assist victims of violence** due to **prostitution and trafficking**

ACTION FOR GOVERNMENT: BPA 124 — LEGAL RESPONSE — HOW HAVE COUNTRIES MEASURED UP?

Condemn violence against women and refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination as set out in the Declaration on the Elimination of Violence against Women;

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

Enact and/or reinforce penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence, whether in the home, the workplace, the community or society

Adopt and/or implement and periodically **review and analyse legislation to ensure its effectiveness in eliminating violence against women**, emphasizing the **prevention** of violence and the **prosecution** of offenders;

GOVERNMENT ACTION (BPA 124)

Take measures to ensure the **protection of women subjected to violence, access to just and effective remedies**, including compensation and indemnification and healing of victims, and rehabilitation of perpetrators

Promote an active and visible policy of **mainstreaming a gender perspective** in all policies and programmes related to violence against women;

Actively encourage, support and implement measures and programmes aimed at **increasing the knowledge and understanding of the causes, consequences and mechanisms of violence** against women among those responsible for implementing these policies, such as law enforcement officers, police personnel and judicial, medical and social workers, as well as those who deal with minority, migration and refugee issues, and

Develop strategies to ensure that the **revictimization of women victims** of violence does not occur because of gender-insensitive laws or judicial or enforcement practices

BPA 124 (CONT.)

Adopt all appropriate measures, especially in the field of education, to **modify the social and cultural patterns of conduct of men and women, and to eliminate prejudices, customary practices** and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

Create or strengthen institutional **mechanisms so that women and girls can report acts of violence** against them in a safe and confidential environment, free from the fear of penalties or retaliation, and file charges

Create, improve or develop as appropriate, and fund the **training programmes for judicial, legal, medical, social, educational and police and immigrant personnel**, in order to avoid the abuse of power leading to violence against women and sensitize such personnel to the nature of gender-based acts and threats of violence so that fair treatment of female victims can be assured

CEDAW GENERAL RECOMMENDATION NO.19 (1992): GBV AS A FORM OF GENDER DISCRIMINATION

Article 1 definition of discrimination: "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, of human rights and fundamental freedoms

GBV is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men. GBV is violence directed against a woman because she is a woman or that affects women disproportionately.

Includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.

GBV which impairs or nullifies enjoyment by women of human rights and freedoms is discrimination.... **States obliged to eliminate discrimination in all its forms. (SA introduction of PEPUDA; Employment Equity Act..)**

NATIONAL ACTION PLANS ON GBV: GUIDING PRINCIPLES (UN WOMEN)

[HTTP://WWW.UN.ORG/WOMENWATCH/DAW/VAW/HANDBOOK-FOR-NAP-ON-VAW.PDF](http://www.un.org/womenwatch/daw/vaw/handbook-for-nap-on-vaw.pdf)

1. Acknowledge that GBV is a **violation of human rights**
2. **Define violence against women** in accordance with international norms
3. Acknowledge that violence against women is a **form of discrimination** and manifestation of historically **unequal power relations** between men and women
4. **Recognise and address the multiple and intersecting forms of violence against women – and that these are shaped by race, colour, religion... origin, sexual orientation, HIV status, migrant or refugee status, age, disability.... And tailor strategies and actions viz specific issues faced by different groups of women, aiming for equality of outcomes for all women**
5. Respond to **state obligations** under various relevant human rights treaties
6. Draw on and include **international research on root causes, nature and impact** of violence against women
7. Collate and communicate **data and research on nature, prevalence and impact** of different forms of violence against women and identify gaps for future work

ILO CONVENTION 190 AND ITS RECOMMENDATION ON VIOLENCE & HARASSMENT IN THE WORLD OF WORK, 2019

The term “violence and harassment” in the world of work refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment (Art. 1)

The term “gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment. (Art. 1)

Each Member shall adopt, in accordance with national law and circumstances and in consultation with representative employers’ and workers’ organizations, an **inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work. (Art. 4)**

Member states to take appropriate measures to **prevent violence and harassment** in the world of work (Art. 8)

Member states to take appropriate measures to **monitor and enforce national laws and regulations** regarding violence and harassment in the world of work; ensure **easy access to appropriate and effective remedies; safe, fair and effective reporting and dispute resolution mechanisms; provide for appropriate sanctions; support for victims** (Art.10)... Prevention and awareness measures (Art. 9)

ACHPR: PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA (MAPUTO PROTOCOL)

"Violence against women" means all acts perpetrated against women which cause or could cause them **physical, sexual, psychological, and economic harm, including the threat to take such acts**; or to undertake the imposition of arbitrary restrictions on or deprivation of fundamental freedoms in private or public life in peace time and during situations of armed conflicts or of war (Art 1)

Elimination of Discrimination Against Women - Art 2(1): States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures. In this regard they shall: a) include in their national constitutions and other legislative instruments ... the **principle of equality between women and men and ensure its effective application**

Art 2 (2). States Parties shall commit themselves to **modify the social and cultural patterns of conduct of women and men** through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are **based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.**

GBV IN SOUTH AFRICA

Low reporting rate (1 in 9), conviction and sentencing rates – resulting impunity of offenders and inadequate access to justice for complainants and survivors

Significant **lack of funding for interventions (shelter, prevention, counselling, awareness), duplication and inadequate coordination** among stakeholders; inadequate M&E of interventions

Cultural and religious practices that undermine equality, violate constitutional rights and cause harm

Issues relating to forced and early child marriage, associated practices of *ukuthwala*, virginity inspection (*ukuhlolwa*), allegations of witchcraft and practices associated with widowhood prevalent, and the focus of law reform.

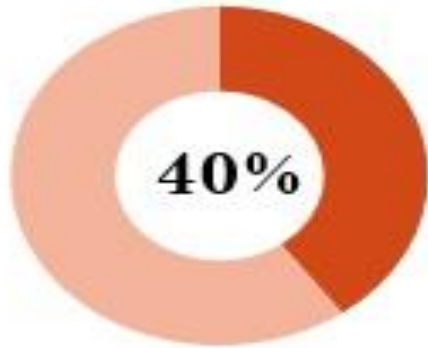
Vulnerability of **LGBTI people to GBV and hate crimes** – so called “corrective rape”.

Vulnerability of other groups – **women/girls with disabilities; sex workers; migrant and refugee women**

High levels of GBV and sexual offences at institutions of higher learning, and inadequate response and awareness mechanisms

VAW exacerbated by the **culture of silence, and by women’s economic dependency** on their abusers.

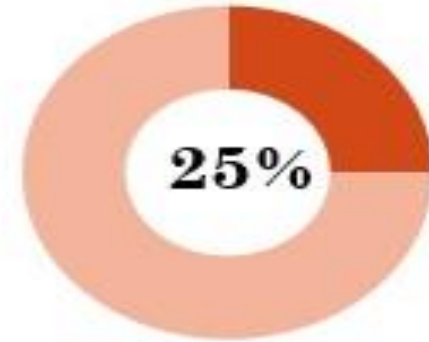
SA STATISTICS



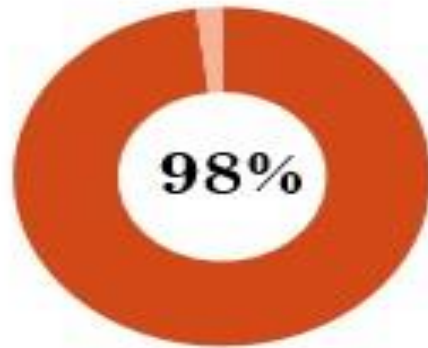
Men have hit their partners



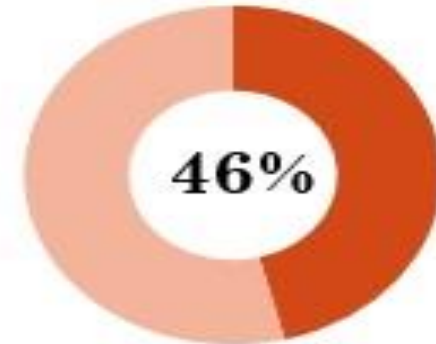
1/6 women regularly assaulted



Men have raped



Cases go unreported



Also abuse children

<http://wp.wpi.edu/capetown/projects/p2014/sizakuyenza/background-research/domestic-violence-a-larger-context/>

STATS ON GBV

Sexual offences and rape reported to SAPS, 2015 – 2020, show an increase from 51 895 to 53,293, an increase of 1,7% (https://www.saps.gov.za/services/april_to_march_2019_20_presentation.pdf)

Between **one in three women reported experiencing emotional and/or economic abuse** in the past year; **one in two women reported that they have experienced such violence** while **over two-thirds of men reported to have perpetrated emotional or economic IPV** (Gauteng study, 2017)

An additional feature of sexual abuse in South Africa is the age of victims reporting to police, with a study reporting that **almost half (46%) of sexual offence complainants are children.**

(IPID) report described the increase of rape by police officers and the **230% increase of sexual abuse cases perpetrated by teachers** in the last 5 years

Tshwaranang study in 2012: only 340 **(8.6%) of a total of 3,953 rape cases reaching a guilty verdict**

A KPMG costing study (2015), using 2012/2013 GBV statistics, found GBV costs South Africa between R28.4 billion and R42.4 billion per year – **or between 0.9% and 1.3% of GDP annually.** The true impact is severely underestimated as additional social costs that compromise sexual and reproductive health, mental health, social well-being, productivity, mobility and capacity of survivors to live healthy and fulfilling lives are not fully considered.

DOMESTICATING INTERNATIONAL AND REGIONAL OBLIGATIONS

— SA RESPONSE

Domestic Violence Act (116 of 1998): Aim to protect those experiencing domestic violence, through **provision of a protection order** against an abuser in a domestic relationship. (WLC

<http://www.probono.org.za/Manuals/Family-Law/Domestic-Violence/domesticviolenceguide-WLC.pdf>)

Sexual Offences Act (2007, as amended): Sexual acts are offences (crimes) if they are committed **without the consent (permission) of one of the people involved in the sexual act**. ‘Consent’ means voluntary or unforced agreement – when someone **freely, willingly and deliberately agrees** to the sexual act; and **understands what they are consenting to** (<http://genderjustice.org.za/publication/a-summary-of-the-criminal-law-sexual-offences-amendment-act/>)

Sexual Offences courts: Only deal with sexual offences and provide special services to survivors. They are sensitive to the survivor and help to reduce trauma, speed up cases, and increase convictions. Only 60 in SA (<https://rapecrisis.org.za/courts/>; <https://shukumisa.org.za/wp-content/uploads/2017/11/Shukumisa-fact-sheet-sexual-offences-court.pdf>)

Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA): **Prohibition of unfair discrimination on the ground of gender, including GBV** (Art 8); **Prohibition of harassment** (Art 11); Remedy – Equality Court.

<http://www.justice.gov.za/legislation/acts/2000-004.pdf>

SA RESPONSE (CONT.)

Trafficking in Persons Act (2013): **Criminalises** the delivery, recruitment, procurement, capture, removal, transportation, transfer, harbouring, sale, exchange, lease, disposal or receiving of a person, within or across the borders of the Republic, by various means, including threat of harm, fraud or abuse of power (<http://www.loc.gov/law/foreign-news/article/south-africa-anti-human-trafficking-legislation-signed-into-law/>)

Protection from Harassment Act (2011): Provides protection order against **sexual harassment and any forms of direct or indirect conduct that cause harm or makes the complainant feel in danger** of being harmed – mental, psychological, physical or economic harm. (<https://www.w24.co.za/Work/Legal/SAs-new-Harassment-Act-explained-20130422>)

Employment Equity Act (1998): **Scope S6(3):** Harassment of an employee is **a form of unfair discrimination**, prohibited on any one, or combination of grounds of unfair discrimination listed in ss1.

Code of Good Practice on the Prevention and Handling of Harassment in the Workplace (2022): Addresses a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm and includes GBV and Harassment. (<https://www.labour.gov.za/DocumentCenter/Code%20of%20Good%20Practice/Employment%20Equity/Code%20of%20Good%20Practice%20on%20the%20Prevention%20and%20Elimination%20of%20Harassment%20in%20the%20Workplace.pdf>)

National Strategic Plan on GBVF: Six pillars - Leadership; Prevention; Justice; Care; Economic Empowerment; Research/Info management <https://www.justice.gov.za/vg/gbv/NSP-GBVF-FINAL-DOC-04-05.pdf>

DISCUSSION

How do we **transform the gender norms**, that are at the heart of discrimination and that enable and perpetuate GBV?

How do we **hold the state accountable** to implement its legal obligations to eradicate discrimination, implement the international and domestic legal framework, and comprehensively address GBV?

What **responsibility do WE have, what can WE do.....** to raise awareness, speak out, challenge, report, support..... and END GBV?