

NATIONAL STRATEGIC  
PLAN ON GENDER-BASED  
VIOLENCE  
SHADOW FRAMEWORK

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**STOP**  
**GENDER**  
**VIOLENCE**  
A NATIONAL CAMPAIGN

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## LIST OF ABBREVIATIONS

<b>AIDS</b>	Acquired Immune Deficiency Syndrome
<b>AU</b>	African Union
<b>CBO</b>	Community-Based Organisation
<b>CSI</b>	Corporate Social Investment
<b>DOH</b>	Department of Health
<b>DOJCD</b>	Department of Justice and Constitutional Development
<b>DSD</b>	Department of Social Development
<b>DV</b>	Domestic Violence
<b>DVA</b>	Domestic Violence Act
<b>FCS</b>	Family Child Abuse and Sexual Offences
<b>GBV</b>	Gender-Based Violence
<b>HIV</b>	Human Immunodeficiency Virus
<b>IMAGE</b>	Intervention with Micro-Finance for AIDS and Gender Equality
<b>IMC</b>	Inter-Ministerial Committee
<b>LGBTQI</b>	Lesbian Gay Bisexual Transgender Queer and Intersex
<b>NGO</b>	Non-Governmental Organization
<b>NPA</b>	National Prosecuting Authority
<b>NSP</b>	National Strategic Plan
<b>OMC</b>	One Man Can
<b>PEP</b>	HIV Post-Exposure Prophylaxis
<b>PC</b>	Portfolio Committee
<b>POA</b>	Programme of Action
<b>RAPCAN</b>	Resources Aimed at the Prevention of Child Abuse and Neglect
<b>SA</b>	South Africa
<b>SADC</b>	Southern African Development Community
<b>SAIPA</b>	South African Integrated Programme of Action
<b>SANAC</b>	South African National AIDS Council
<b>SAPS</b>	South African Police Service
<b>SOA</b>	Sexual Offences Act
<b>TCC</b>	Thuthuzela Care Center
<b>UN</b>	United Nations
<b>UNAIDS</b>	Joint United Nations Programme on HIV/AIDS
<b>UNFPA</b>	United Nations Population Fund
<b>VAW</b>	Violence against Women
<b>VAWC</b>	Violence against Women and Children
<b>VAWG</b>	Violence against Women and Girls
<b>WHO</b>	World Health Organization

## EXECUTIVE SUMMARY

Every year, gender-based violence (GBV) affects the lives of millions of people across South Africa. These individuals are members of families, workers and voters. So significant is the scale of the epidemic of violence in South Africa, that KPMG estimates that it costs the country over R28 billion per annum, amounting to 1% of the GDP (KPMG, 2014). *Too costly to ignore: the economic impact of gender-based violence in SA.*

Over the last 20 years, South Africa has adopted a range of progressive policies and laws designed to address gender-based violence. The National Development Plan (NDP), recently adopted by parliament as a blueprint for reducing poverty and inequality by 2030 – views safer communities as a key developmental prerequisite. Despite this, there has been little impact on the levels of gender-based violence. South Africa has progressive laws and policies in theory to address the unacceptable levels of violence, but implementation has been irresponsibly weak. Indeed, many activists now claim that rates of gender-based violence in South Africa represent deadly negligence. The consequences on the lives of South African citizens, especially women and the LGBTI community, have been dire – exposing a chasm between the daily lives of citizens and apparent gains in the public sphere.

At the same time it is important to remember that South Africa is a democracy. This means that when citizens demand change, the state has a responsibility to listen. The case of the government's response to HIV and AIDS is an important example. When citizens rose up to demand a commitment to antiretroviral medicine (ARVs) within a fully-funded National Strategic Plan as a response to an epidemic that is claiming scores of lives each day, the government eventually listened. The National Strategic Plan on HIV, TB and STIs (NSP) has been a powerful tool to garner the political commitment and funding required in tackling HIV and AIDS. There is no reason why the same cannot be done in addressing gender based violence. Like HIV and AIDS, GBV is a large and complex social challenge that requires a coordinated response among diverse stakeholders, political will at the highest levels of society and significant resource allocation to ensure that programmes that work at community level are funded at scale. Importantly, addressing GBV has an impact on our national efforts at mitigating HIV and AIDS. The most recent NSP on HIV, TB and STIs (2017-2022) shows a disturbing trend; with GBV said to be a significant driver of HIV acquisition among young women – 'of concern are gender based discrimination including community attitudes that permit this'. In sum, safety is said to be the foundation of an effective response to violence against women in the context of HIV.

A National Strategic Plan (NSP) to end GBV will create a roadmap. It will align the country around a set of clear strategic priorities and create an accountability mechanism for the performance of government, the private sector and civil organizations, in addressing GBV. If developed through broad-based national consultations and engagement, the plan to end GBV can be a powerful lever of change. This is not a new experiment, Malawi has committed to a National Plan of Action to Combat GBV 2014-2020, and so did Namibia with National Plan of Action on GBV 2012-2016. The Department of Social Development's engagement with other workstreams paves the way for this collaborative process.



## DEFINITION OF KEY TERMS

**Gender-based violence** is an umbrella term for forms of interpersonal violence characterised by gendered power imbalances. Fitting within this, ***intimate-partner violence*** refers to emotional, spiritual, physical, sexual and financial abuse between people who are intimate. It also fits within broader subcategories of gender-based violence, namely family and domestic violence. South African laws and policy on violence against women acknowledges it to be a significant human rights and public health issue. (Abrahams, N, et al, 2013)

**Femicide:** Killing of women.

**Gender-based homicide:** Homicide with distinct gendered circumstances such as intimate partner femicide and suspected rape homicide.

**Intimate femicide/intimate partner femicide:** Killing of women by intimate partners (i.e., a current or former husband/boyfriend, same-sex partner, or rejected would be lover).

**Non-intimate femicide:** Killing of women by someone other than an intimate partner (stranger, family member, acquaintance, etc.).

**Suspected rape homicide:** Homicide occurring with a sexual component identified during investigation.

# INTRODUCTION

## ***Why a National Strategic Plan on GBV?***

Gender-based violence (GBV) is endemic in South Africa. Reducing violence within our society and communities is a priority. Everyone has a responsibility to reject, prevent and work towards a safer South Africa. The country is hailed for its progressive constitution and commitment to ratification of several international and regional legal instruments to address the issue of GBV (see Appendix 2). Furthermore, several policies and legislative initiatives have been established by the South African government regarding GBV (listed below and further elaborated on in Appendix 1).

The key problem, however, lies in the lack of effective implementation of these laws, policies and commitments. The country is experiencing both precarious and pivotal moments: GBV-specific programmes within government ministries have yielded little or no progress but on the other hand, we have seen a rise in student activism, mainly women who are challenging archaic institutional culture(s) of sexual violence and racism. There is greater demand from the student movement for a nuanced understanding and response to sexual violence; that LGBTQI students should not be excluded and or ridiculed whenever there is a claim to their rights. And that institutions must prioritise psychosocial support for survivors of violence.

Thus there is a need for a renewed strategy relating to the prevention of GBV, the care of its victims or survivors and the response to incidences of GBV. This strategy needs to include better implementation and oversight of the laws and policies that are already in place. For an intervention to have a significant impact, the stigma surrounding IPV as well as underlying values and attitudes to gender would have to be transformed, amongst both service providers and community members.

A National Strategic Plan (NSP) has been defined as

*“a process for defining and determining priorities and strategic directions over a period of time... It sets forth what should be achieved... how it will be achieved, and how it will be known that it has been achieved. It guides decision-making on allocating resources and on taking action to pursue strategies and set priorities.”*  
(WHO, 2015)

As we have learned from South Africa’s experience with HIV, an NSP can be an important tool to garner the political commitment and funding required in tackling large social challenges that require a coordinated response among diverse stakeholders.

Other key advantages of implementing an NSP are:

- It requires a concerted involvement of the local community and civil society, which often serves to put pressure on the government to act and ensures that the voices of those directly or indirectly affected by the issue are taken into account.
- It includes specific goals and timelines for their achievement
- It provides a financial and budgetary outline, which ensures its effective and realistic implementation.

The mission is that the NSP will overcome some of the challenges that face the execution of current legislation and policies dealing with GBV, by garnering political will and sufficient resources. An NSP for GBV will essentially create a national roadmap, align the country around strategic priorities, and create an accountability mechanism for government's performance in addressing GBV. If developed through broad-based national consultations and engagement, an NSP for GBV can be a powerful lever of change.

The NSP for GBV has to be clear and deliberate on contextual issues of:

**Family, law and gender oppression:** There is a strong relationship between family and state. The Law has capacity to enforce or impose obligations between members, with certain members mainly (males), having power over others, this subordination has been institutionalised in earlier codes and enforced by the state, Women and law In Southern Africa (1999).

**Hegemonic masculinity:** understood as both "hegemony over women", and "hegemony over subordinate masculinities<sup>1</sup>", violence is a key aspect of hegemonic masculinity. Groups of men compete to occupy positions of power through subordination. Langa and Kiguwa (2016) argue that in post-apartheid South Africa – social and economic conditions, including the impact of the global financial crisis, make it difficult for many young black men to achieve ideal notions of masculinity, such as securing jobs, marrying, fathering children or establishing their own households.

**Protection of the vulnerable:** this element of social justice involves recognition that there will always be some people in society who will need a lot of support and assistance, no matter how much education, training, encouragement or coercion is provided. This includes many people with a mental illness, other disabilities, literacy problems and other learning difficulties (Ho, 2011).

**Stigma and gender violence:** By marginalizing those deemed to be morally undesirable, stigma functions to maintain social and order and control; for example, society blames survivors of GBV. Sex work and LGBTI identities and practices may be stigmatised because they challenge deeply held beliefs about sex, sexuality and gender; challenge moral codes and norms and challenge ideas around choice.

**Direct violence and structural violence:** whilst it is immediate, concrete, physical violence committed by and on particular, identifiable people, structural violence, in contrast, is less obvious than direct violence. In structural violence, agency is blurred and responsibility is unclear; there may not be any one person who directly harms another (Opatow et al., 2007).

An example of structural violence: Kutlwano Garesape was stabbed to death as he defended his mother from a 32 year old man who tried to rape her, as she was walking her boys to school 7km away due to lack of transport. Public sentiments were centered on the 6 year old as “a

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<sup>1</sup> In gender studies, hegemonic masculinity refers to the belief in the existence of a culturally normative ideal of male behaviour. Hegemonic masculinity posits that society strongly encourages men to embody this kind of masculinity. Hegemonic masculinity is said to be marked by a tendency for the male to dominate other males and subordinate females

hero” and the criminal who deserved to rot in jail, missing the importance of state violence – failing to protect basic rights of accessible schooling, social norms of normalizing GBV and expecting men to defend women. Structural violence is sustained by social, psychological, economic, and political conditions with differential access to effective schools, health care, safe and affordable housing, employment, sanitation services, and transportation. These are social, economic, and political issues while moral exclusion<sup>2</sup> makes structural violence probable, “logical,” and invisible (ibid).

**Table 1. Existing national laws/policies addressing GBV**

South African Integrated Programme of Action addressing violence against women and children (2013-2018)
National Intervention Strategy for Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Sector, 2014
Judicial Matters Second Amendment Act 43 of 2013
Protection from Harassment Act 17 of 2011
Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
365 Day National Action Plan to End Gender Violence, 2007
National Health Act 61 of 2003
South Africa's National Policy Framework for Women's Empowerment and Gender Equality (2000)
Domestic Violence Act 116 of 1998
South African Police Services Act 68 of 1995

**Table 2. South African Constitution: Critical Sections**

Section 9: Everyone is equal before the law and has the right to equal protection and benefits of the law.
Section 10: Everyone has the right to inherent dignity and the right to have their dignity respected and protected.
Section 11: Everyone has the right to life.

**Table 3. Key moments in history of State's attempts to coordinate GBV programmes<sup>3</sup>**

In <b>2000</b> , an Inter-Departmental Management Team (IDMT) was formed to develop a strategy to reduce rape – the strategy had to be costed but was never developed
In March <b>2007</b> , Government launched a National Action Plan (NAP) with 37 priority actions and 91 general actions to be implemented over 5 years. The plan came to end in 2011. A review of the NAP by the Commission for Gender Equality (CGE) in 2013 found that the plan did not succeed.
In December <b>2012</b> , the National Council on Gender Based Violence (NCGBV) was established to develop an NSP on GBV (2013-2018). The IDMT was dissolved.

<sup>2</sup> Moral exclusion refers to the psychological process where members of a dominant group (men) view their own group culture and other norms as being intrinsically superior to others, thereby creating the marginalisation and exclusion of targeted groups.

<sup>3</sup> Planning Meeting for GBV – Mpumalanga Presentation by Watson, J. 2015

Before elections in **2014**, development of an NSP was outsourced to Human Science Research Council (HSRC). The Contract was subsequently cancelled after elections when a new Minister was appointed to the Department of Women. NCGBV was subsequently moved from the Department of Women to the Department of Social Development (DSD) where it is currently an unfunded mandate.

## Why Now?

### *Incidence of GBV*

The scale of gender-based violence in South Africa is high and unacceptable. The rate of homicide of women by intimate partners is six times the global average (Seedat et al., 2009). Even with widespread under-reporting, more than 51,895 sexual offences were reported to the police last year (CrimeStatsSA, 2015/2016). Research indicates that due to under-reporting of incidents, the true number could be up to 9 times higher (Jewkes & Abrahams, 2002). If women fear that they will be punished for being raped and for speaking about it, and they see the evidence of this repeatedly in how other women who survive are treated, it makes sense that although many go for counselling, they may choose not to report to the police (Gqola, 2015).

Though there is no reliable national data for the prevalence of intimate partner violence in South Africa. It is estimated that more than 40% of men disclose having been physically violent to a partner and 40-50% of women have also reported experiencing such violence, while 39% of girls report having undergone some form of sexual violence (i.e. unwanted touching, forced sex, or being exploited by much older men) before they were 18 years old (Seedat et al., 2009).

The daily violence against women is experienced everywhere. GBV is not a stand-alone issue: its intersection with class, race, gender identity and sexual orientation cannot be denied. As Motsei puts it: in South Africa, violence against domestic workers can be linked to the prevailing culture of violence characteristic of the apartheid system. In 2014 Tim Osrin, from the Southern Suburbs of Cape Town, attacked Cynthia Joni, a domestic worker on her way to work. He justified his violence as follows: "I thought she was a prostitute. She was walking in the street at ten to ten in the morning. I told her to get out of my street and she laughed, and I thought she was giving me the finger again. For four years these prostitutes have been giving us the finger. She's probably thinking, 'this white guy slapped me, great ... here comes my Christmas box'. People do these things, you know".

Artist Zwelethu Mthethwa has been found guilty of the murder of Nokuphila Kumalo, a sex worker. The pathologist's report showed that a gross laceration of Kumalo's liver would have killed her by a "mechanism of blood loss". Her liver was split in half. This is not an isolated incident – gender based violence is a life-threatening reality for all people, particularly gender non-conforming people.

*"We see that today women do not feel safe in the streets and homes of South Africa, that women's bodies are seen as accessible for consumption – touching, raping, kidnapping, commenting on, grabbing, twisting, beating, burning, maiming – and control, that women are denied the very freedom the constitution*

### *Cost of GBV*

The cost of GBV is substantial to both individuals and institutions. In addressing GBV, duty bearers and institutions that have a responsibility to meet the constitutional mandate are highlighted in table 1.

Although much research has been conducted on the costs borne by the victims of GBV (i.e. social, physical, emotional, and economic costs), Opatow (2007), analysis of these costs from a social injustice perspective, reflects that its complexity also bears a cost on those who attempt to dismantle. Considering, attempting, and achieving fairness incurs real costs in time, energy, and resources. That, constricting the scope of justice can lead to harmful outcomes. Enlarging the scope of justice, however, is not always possible or desirable (ibid).

On the other hand, very little research has been done on the financial costs associated with GBV with regards to government expenditure. It is necessary to consider such financial costs as “analysing the costs of [gender-based violence] is useful for understanding the severity of the problem as it shows its economic impact on businesses, the State, community groups and individuals. It emphasizes the pervasiveness of such violence and confirms that it is a public concern, not a private issue. Such analysis can provide important information for specific budgetary allocations for programmes to prevent and redress [GBV] and demonstrates that much more should be invested in early intervention and prevention strategies, rather than allowing such violence to continue unabated.” (Report of the Secretary-General, 2006).

A 2014 report by KPMG highlighted additional reasons given as to why it is important to study the economic costs of GBV. Namely:

- The cost of violence demonstrates the waste of resources that can be more effectively used
- Awareness of the costs of GBV to society strengthens arguments for the intervention of government, social institutions and businesses, and provides a reference point to inform the magnitude of such interventions.
- Since the costs affect everyone, even though the abuse may be private, it brings GBV into the open as a societal issue
- Demonstrating the scale of the costs aids the prioritization of relevant policies and informs policy making
- By understanding the costs of GBV, policy makers are able to more effectively allocate necessary resources to relevant service providers.

In terms of actual figures, KPMG has estimated that GBV costs South Africa between R28.4 billion and R42.4 billion per year – or between 0.9% and 1.3% of GDP annually (KPMG, 2014).

A report published by Parliament’s research unit entitled ‘Parliament and Gender-Responsive Budgeting for Gender-Based Violence’ (Thorpe, 2015) outlines the various financial costs attributable to relevant government departments dealing with issues of GBV.

Costs to the SAPS:

- Vehicle costs (including petrol and maintenance costs) involved in travelling to the site of the incident, notifying the respondent, serving protection orders.

- Paperwork and stationery required in the vehicle and in the community service centre and victim friendly rooms.
- Cost of maintaining the domestic violence register
- Cost of debriefing staff and of days off work from exposure to trauma
- Transport costs including costs involved in transporting victims to shelters/places of safety, to the medical facility for examination, to the court for trial dates.
- Cost of telephonic communication and updates with victim regarding status of her/his case
- Cost of ongoing training for police in the implementation of the relevant legislation
- Cost of staff time in responding to incidents of domestic violence
- Cost of equipping and maintaining victim friendly rooms
- Cost of participation in Victim Empowerment Programme (VEP) forums
- Cost of rape kits
- Cost of awareness posters and pamphlets relating to the Sexual Offences Act (SOA) and Domestic Violence Act (DVA) both internally and externally.
- Cost of research related to domestic and sexual violence
- Costs of operational budgets for police stations
- Further costs associated with the Criminal Law (Forensic Procedures) Amendment Bill
- Costs of language and translation of documents
- Cost of mobile/satellite stations in rural areas
- Costs of non-compliance with the DVA via the Civilian Secretariat for Police cases.

Costs to the Department of Justice and Constitutional Development:

- Cost of dedicated staff including dedicated clerks and magistrates at sexual offences courts and related to domestic violence.
- Cost of legal aid to victims of violence against women
- Cost of training specialised staff
- Cost of ongoing training of staff including clerks, sheriffs, magistrates, interpreters and prosecutors.
- Cost of awareness posters and pamphlets relating to the Acts both internally and externally
- Cost of research related to domestic and sexual violence
- Cost of victim support services
- Cost of specialised infrastructure (closed circuit TV, furniture, anatomical dolls) and staff (intermediaries, interpreters) at sexual offences courts.
- Cost of maintaining the National Register on Sexual Offenders
- Cost of court support
- Cost of 24 hour facilities to allow for protections
- Through the NPA, costs associated with Thuthuzela Care Centres (TCCs) including:
  - Staff including the Site Coordinator, Victim Assistance Officer and Case Manager
  - Running costs including fax, groceries, clothing, internet access, telephone access, rentals, cell phones for staff, and travel costs.
- Cost of servicing documents when the complainant cannot afford to pay
- Cost of coordination of the Justice and Crime Prevention Services (JCPS) cluster
- Cost of representation of the accused.

Costs to the Department of Health:

- Medicines and medical supplies used in the treatment of injuries related to violence
- Forensic specialists for the collection of evidence from the victim's body in the case of a sexual offence (in some provinces this includes forensic nurses).
- Instruments and forms for forensic medical collection
- Staff at TCCs including one forensic medical practitioner, four nurses, one professional nurse, cleaners, locum doctors, locum nurses, and overtime doctors.
- Consumables at the TCCs
- Ambulances in life threatening cases
- Post-Exposure Prophylaxis
- The cost of forensic pathology and DNA analysis
- Medicines to treat sexually transmitted infections (STIs)
- HIV and STI counselling
- Medical equipment.

Costs to the Department of Social Development:

- Social workers for shelters and shelter facilities
- Lay counsellors for victim friendly rooms at some police stations
- Partial funding of shelters and green door facilities (facilities that have been demarcated by the DSD as safe havens for abused women where they can receive counselling and can sleep over).
- TCC counselling services either directly or via funding an NGO
- Costs of maintaining the Child Protection Register
- Costs associated with the National Strategic Plan for Gender-Based Violence
- Partial funding of NGOs servicing victims of violence against women.

Cost to the Department of Correctional Services:

- Transport costs from the court/SAPS station to the facility
- The cost of incarcerating perpetrators and remand detainees
- Rehabilitation programmes for offenders
- Medical costs for prisoners.

***Efficacy of the Integrated Programme of Action***

In December 2012 the South African government committed to developing a national plan to address gender-based violence. The Cabinet-approved National Council on Gender Based Violence (NCGBV) was established to draft the plan. Yet since its formation in 2012, the NCGBV has been destabilized by political changes and lack of funding to execute its mandate. There has been no word on its status since 2014 when Minister Susan Shabangu was appointed as Minister of Women and the Ministry failed to reconstitute the Council and provide an update on its status.

Parallel to the NCGBV, an Inter-Ministerial Committee (IMC) was formed, housed under the Department of Social Development (DSD), to draft a national plan to address violence against women and children (VAWC). This led to the development of the Integrated Programme of Action addressing Violence against Women and Children (POA) in 2013.



However, myriad weaknesses and gaps have been identified therein. First, despite the fact that the POA is dedicated to addressing VAWC specifically and not GBV as a whole – which is problematic in and of itself, as men and LGBTI persons are thus excluded – the terms VAWC and GBV are used interchangeably throughout the POA. Second, the process of developing the POA was not consultative or inclusive. That is, civil society, the private sector and communities were not consulted in drawing up the plan. This exclusion is extremely problematic, as it does not take into account the diverse, yet specific needs of beneficiaries and institutions that form part of carrying out the implementation of the plan itself. Third, the POA homogenises all women and all children into two concrete categories; not accounting for any differences between these two groups. Furthermore, the problem of heteronormativity is evident throughout the POA, as it focuses solely on the abuse women and children experience at the hands of men. Thus same-sex violence is disregarded. Fourth, the plan is not costed. While this is acknowledged at the end of the plan, it is vital to draw attention to the absence thereof, due to the importance of having a fully-costed NSP, outlining the costs each intervention necessitates for its implementation and allowing the government to allocate a budget for this. These and other gaps prevalent in the POA need to be addressed.

Ultimately the formal national process to develop an NSP for GBV has stalled, and thus it lies with civil society to work with allies within government and other sectors to advocate for the NSP as clearly as possible, and to push the fight for funding and political accountability forward.

## **Methodology**

A vast amount of research exists on the nature of gender-based violence in South Africa and on the weakness of the national response. There are also myriad NGO and government reports, inputs from provincial consultative meetings under the Stop GBV NSP Campaign<sup>4</sup>, offering recommendations on how to improve this response. The strategies that are adopted by the Stop GBV NSP campaign flow from the rich history of women mobilising for their emancipation and franchise. Although the activism has produced the current democratic dispensation, it has also exposed contradictions in gender relations that have shaped the unbearable levels of GBV in South Africa. An NSP on GBV cannot be ahistorical, it should recognise and place the contribution of women in politics and how class, race, sexual identity intersect in the context of GBV. This framework synthesizes this existing research and moves towards a formulation of how these critiques and assessments should be channeled into a National Strategic Plan on Gender-Based Violence.

## **Target audience**

The NSP is designed to address GBV on multiple levels; including response, prevention and intervention efforts emanating from both civil society and government. Thus we call for a multi-sectoral, inter-departmental and inclusive approach to be taken with regards to the

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<sup>4</sup> The Stop Gender Violence Campaign is a national campaign formed by a coalition of Civil Society Organisations working together to end Gender-Based Violence. Under this Campaign Provincial Consultative Meetings were held between April 2014 – September 2017

implementation of the NSP. It is crucial for community members, civil society (including grassroots organisations), government, and the private sector to be involved in the preparation and execution of the NSP, to ensure that the NSP is inclusive, holistic and reflective of South African society.

Community members and civil society provide valuable insight into the reality of GBV on the ground and will therefore be able to provide realistic input into the NSP.

The South African government too has a vital role to play in implementing the NSP. The government has pledged its commitment to ending GBV via its ratification of several international and regional legal instruments. It thus has a vested interest in furthering the realization of the NSP, both in terms of legislative commitment, as well as financially (see the 'Cost of GBV' above). This NSP framework identifies several governmental entities that have particularly pertinent roles to play in addressing GBV. These include the Department of Social Development, the Department of Health, the National Prosecuting Authority, the Department of Justice and Constitutional Development, the South African Police Service (SAPS), as well as the Department of Education.

It is only with government support, political will, and mutual cooperation between government, communities and civil society that the NSP will be effective in creating tangible change.

## Goals

The NSP must set out a list of core, achievable and well-defined goals for the period 2016-2020. These must include the following:

- Reduce GBV incidence
- Improve the breadth and quality of services for survivors of GBV with the aim of reducing incidence of GBV towards almost eliminating the culture of violence in South African society.
- Expand the resources available for GBV prevention and response
- Improve reporting and political and administrative accountability on GBV
- Create a detailed, fully-funded budget pertaining to the interventions

## Strategic Priorities

The NSP can help achieve these goals by focusing attention on 5 strategic priorities over the next 5 years. These priorities are:

1. **Expand the Definition:** Create a more encompassing definition of GBV to include all groups of marginalized individuals affected by GBV and not only violence against women and children (VAWC).
2. **Fill the Gaps in Implementing Existing Laws and Policies:** Expand training, resources and accountability to ensure that SAPS, the Department of Health and the National Prosecuting Authority fill the gaps between the law and its implementation.
3. **Improve and Expand Psycho-Social Services for Survivors:** Expand investment in and institutionalization of survivor services, especially psycho-social care and intervention.

4. **Prevention, Intervention, and Research and Documentation:** Significantly increase investment in evidence-based prevention interventions, on individual, community and societal/structural levels.
5. **Establish Robust Accountability Mechanisms and Sufficient Resources:** Commit to fully funding and developing the accountability mechanisms required to realize success in all priority areas.

Significant commitment to and implementation of these 5 priorities would fundamentally alter the course of South Africa's gender-based violence epidemic, save taxpayers and companies billions of Rands, and fulfill the aspirations outlined in the Constitution – that all South Africans have the right to live in dignity and free from violence.

The following sections will describe these priority areas in more detail – in terms of the nature of the challenge, its current gaps and weaknesses, as well as recommended actions that should be incorporated in the NSP.

# PRIORITY 1: EXPAND THE DEFINITION

## 1.1 Contemporary definitions of GBV

In order to create a comprehensive and holistic definition of ‘gender-based violence’, it is useful to consider the development of the term through influential international, regional and domestic human rights instruments.

### *International instruments*

*The UN Convention on the Elimination of Discrimination against Women (1979)*<sup>5</sup> (CEDAW) is a seminal treaty with regards to the protection of women’s rights and freedoms. It recognizes that extensive discrimination against women exists in our society, which violates the principles of equality of rights and respect for human dignity. The term ‘discrimination’ is defined as follows:

*“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, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”* (CEDAW, Article 1)

In particular, CEDAW calls for the end of harmful customary and all other practices that are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. Further, it calls on State Parties to suppress all forms of traffic in women and exploitation of prostitution<sup>6</sup> of women (CEDAW, art 6).

*General recommendation no. 19 of the UN Committee on the Elimination of Discrimination against Women (1992)*<sup>7</sup> (CEDAW Committee) defines GBV as a form of discrimination that seriously inhibits women’s ability to enjoy human rights and fundamental freedoms on a basis of equality with men. More specifically, GBV is defined as including “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty” which is directed against a woman because she is a woman or that affects women disproportionately.

*The UN Declaration on the Elimination of Violence against Women (1993)*<sup>8</sup> (DEVAW) reflects a similar sentiment. The Declaration defines violence against women (VAW) as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological

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<sup>5</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations.

<sup>6</sup> This report promotes the term sex work/sex worker and not ‘prostitute/prostitution’. The use of ‘prostitution’ positions sex work and sex workers in negative ways, it is dehumanising and stigmatizing. Activists and lobby groups have argued that the term ‘prostitute’ also positions sex workers as ‘deserving of violence perpetrated against them’.

<sup>7</sup> UN Committee on the Elimination of Discrimination against Women (CEDAW), *General Recommendations No. 19: Violence against women. Adopted at the Eleventh Session, 1992* (contained in Document A/47/38).

<sup>8</sup> UN General Assembly, *Declaration on the Elimination of Violence against Women*, 20 December 1993, A/RES/48/104.

harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” More specifically, Article 2 states that violence against women shall be understood to encompass, but not be limited to, the following:

- Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.
- Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.
- Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Finally, the Declaration acknowledges that violence against women is a manifestation of unequal power relationships between men and women and a violation of women’s human rights.

The *Beijing Declaration and Platform of Action* (1995)<sup>9</sup> echoes the same definition given in DEVAW above. Yet it also expands the scope of the definition, by adding the following:

*“Other acts of violence against women include violation of the human rights of women in situations of armed conflict, in particular murder, systematic rape, sexual slavery and forced pregnancy. Acts of violence against women also include forced sterilization and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection.”* (DEVAW, ss 114-155).

Furthermore, the Resolution recognizes that certain women have a heightened risk of experiencing GBV, namely: women belonging to minority groups, indigenous women, refugee women, women migrants, including women migrant workers, women in poverty living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women, displaced women, repatriated women, women living in poverty and women in situations of armed conflict, foreign occupation, wars of aggression, civil wars, terrorism (DEVAW, s 116).

In May 2003, the UN High Commissioner for Refugees (UNHCR) issued a report entitled *‘Sexual and gender-based violence against refugees, returnees, and internally displaced persons: guidelines for prevention and response’*.<sup>10</sup> The report states that sexual and gender-based violence (SGBV) is a violation of human rights, and defines the relevant terms as follows:

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<sup>9</sup> United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 27 October 1995

<sup>10</sup> UN High Commissioner for Refugees (UNHCR), *Sexual and Gender-Based Violence Against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, May 2003.

- The term *gender-based violence* is used to distinguish common violence from violence that targets individuals or groups of individuals on the basis of their gender. Gender-based violence has been defined by the CEDAW Committee as violence that is directed at a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threat of such acts, coercion and other deprivations of liberty.
- The term *violence against women* refers to any act of gender-based violence that results in, or is likely to result in, physical, sexual and psychological harm to women and girls, whether occurring in private or in public. Violence against women is a form of gender-based violence and includes sexual violence.
- *Sexual violence*, including exploitation and abuse, refers to any act, attempt or threat of a sexual nature that results, or is likely to result, in physical, psychological and emotional harm. Sexual violence is a form of gender-based violence.

UNHCR employs an inclusive conception of SGBV, which recognizes that although the majority of victims are women and children, boys and men are also targets of sexual and gender-based violence. Furthermore, SGBV is largely rooted in unequal power relations. These perpetuate and condone violence within the family, the community and the State. Though notably the distinction made between public and private spheres should not serve as an excuse for not addressing domestic violence as a form of SGBV.

The UN Population Fund (UNFPA) created the *UNFPA Strategy and Framework for Action to Addressing Gender-based Violence 2008-2011*.<sup>11</sup> With regards to a definition of GBV, the following is stated:

“GBV can apply to women and men, girls and boys. The UNFPA focus remains on tackling violence against women and girls, since it is they who are overwhelmingly affected. This is not to say that sexual abuse of adolescent boys, and the sexual exploitation of young men are not of grave concern to UNFPA. Women and adolescent girls are not only at high risk and primary targets for GBV but also suffer exacerbated consequences as compared with what men endure. As a result of gender discrimination and their lower socio-economic status, women have fewer options and less resources at their disposal to avoid or escape abusive situations and to seek justice. They also suffer SRH [sexual reproductive health] consequences, including forced and unwanted pregnancies, unsafe abortions and resulting deaths, traumatic fistula, and higher risks of sexually transmitted infections and HIV — issues at the core of the UNFPA programming mandate” (p. 7).

This definition is unique – not only does it include men and boys within the victim group of GBV, but it also outlines some of the harmful consequences of GBV.

In 2005, the *Inter-Agency Standing Committee (IASC)* – the primary mechanism for inter-agency coordination of humanitarian assistance, involving the key UN and non-UN humanitarian partners – published guidelines on GBV. These guidelines have subsequently been revised by an

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<sup>11</sup> UN Population Fund (UNFPA), *UNFPA Strategy and Framework for Action to Addressing Gender-based Violence*, January 2009

inter-agency Task Team led by UNICEF and UNFPA, and endorsed by the IASC in 2015.<sup>12</sup> In these guidelines, GBV is defined as follows:

“GBV is an umbrella term for any harmful act that is perpetrated against a person’s will, and that is based on socially ascribed (gender) differences between males and females. It includes acts that inflict physical, sexual or mental harm or suffering, threats of such acts, coercion, and other deprivations of liberty. These acts can occur in public or in private” (p. 5).

Examples of GBV include: sexual violence, including sexual exploitation/abuse and forced prostitution; domestic violence; trafficking; forced/early marriage; and harmful traditional practices such as female genital mutilation, honour killings, widow inheritance, and others.

The guidelines acknowledge that men and boys may also be victims of gender-based violence, especially sexual violence (previously, the focus rested on the phenomenon of ‘violence against women’). They state that “this violence against males is based on socially constructed ideas of what it means to be a man and exercise male power.” Therefore the guidelines draw on the novel message dictated by DEVAW (1993); that is, GBV is “a manifestation of historically unequal power relations between men and women.” Yet, similarly to the UNFPA Strategy/Framework abovementioned, it is deliberately noted in the IASC guidelines that GBV invariably has a greater impact on women and girls than on men and boys. Thus “special attention should be given to females due to their documented greater vulnerabilities to GBV, the overarching discrimination they experience, and their lack of safe and equitable access to humanitarian assistance.” Yet, the guidelines adopt a novel approach to the definition of GBV: they acknowledge that GBV can be directed towards the LGBTI community – GBV committed against LGBTI persons is “driven by a desire to punish those seen as defying gender norms.”

In 2015, the *UN Broadband Commission for Digital Development* released a report concerning the novel – though increasingly pertinent – issue of cyber violence.<sup>13</sup> It states that the growing reach of the Internet and other mobile information and communications technologies (ICTs) has increased the opportunities for harm to be inflicted on women and girls. Though this issue has gone unnoticed for some time, cyber-VAWG is becoming a global concern with serious implications for societies and economies around the world. It is estimated that “73% of women have already been exposed to or have experienced some form of online violence in what must still be considered a relatively new and growing technology.” Apparently women aged 18 to 24 are at a heightened risk of being exposed to every kind of cyber VAWG; they are “uniquely likely to experience stalking and sexual harassment, while also not escaping the high rates of other types of harassment common to young people in general”, like physical threats.

The most common forms of cyber-VAWG include: hacking (gaining illegal/unauthorized access to systems or resources for the purposes of acquiring personal information); impersonation (the use of technology to assume the identity of the victim or someone else in order to access private information, embarrass or shame the victim, or contact the victim); surveillance/tracking (stalking/monitoring a victim’s activities); harassment/spamming

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<sup>12</sup> Inter-Agency Standing Committee, *Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Settings: Reducing risk, promoting resilience and aiding recovery*, 28 August 2015.

<sup>13</sup> UN Broadband Commission for Digital Development, *Cyber Violence Against Women and Girls: a Worldwide Wake-up Call*, 2015.

(continuously contacting, annoying, threatening, and/or scaring the victim); recruitment (luring potential victims into violent situations); malicious distribution (manipulating and distributing defamatory and illegal materials related to the victim); and revenge porn (an individual posting either intimate photographs or intimate videos of another individual online with the aim of publicly shaming and humiliating that person).

Also in 2015, a resolution was passed by the UN General Assembly adopting the *2030 Agenda for Sustainable Development*.<sup>14</sup> The 17 Sustainable Development Goals and 169 targets represent an intention to stimulate action over the next 15 years in areas of critical importance for humanity and the planet. Specifically, goal number 5 is to ‘achieve gender equality and empower all women and girls’, with the following concomitant targets: (a) End all forms of discrimination against all women and girls everywhere; (b) Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation; (c) Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.

Most recently, the *Special Rapporteur on Violence and Torture* published a report on GBV.<sup>15</sup> In this report, GBV is defined holistically and is ultimately aligned with the act of torture:

*“Gender-based violence, endemic even in peacetime and often amplified during conflict, can be committed against any persons because of their sex and socially constructed gender roles. While women, girls, lesbian, gay, bisexual and transgender persons, sexual minorities and gender-non-conforming individuals are the predominant targets, men and boys can also be victims of gender-based violence, including sexual violence stemming from socially determined roles and expectations. As noted by the Committee against Torture in its general comment No. 2 (2007) on the implementation of article 2 of the Convention, gender-based crimes can take the form of sexual violence, other forms of physical violence or mental torment...The purpose and intent elements of the definition of torture (A/HRC/13/39/Add.5) are always fulfilled if an act is gender-specific or perpetrated against persons on the basis of their sex, gender identity, real or perceived sexual orientation or non-adherence to social norms around gender and sexuality ” (paras. 7-8).*

### **Regional instruments**

The *SADC Protocol on Gender and Development* (2008) defines GBV as “all acts perpetrated against women, men, boys and girls on the basis of their sex which causes or could cause them physical, sexual, psychological, emotional or 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 or other forms of conflict” (Article 1). Therefore it incorporates concepts and elements from the preceding definitions, though the Protocol seems to use the term ‘sex’ instead of ‘gender’.

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<sup>14</sup> UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1.

<sup>15</sup> UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 January 2016, A/HRC/31/57.



### ***South African instruments***

The *South African Constitution* (1996) does not contain an explicit definition of GBV. Yet some of its most basic values are the promotion of human dignity, equality and non-sexism. Section 9 provides for the right to equality; meaning that everyone is equal before the law, everyone should have full and equal enjoyment of all rights and freedoms, and neither the State nor any person may unfairly discriminate directly or indirectly on one or more listed grounds (including gender and sex). Section 10 provides for the right to human dignity. Section 12 details the right to freedom and security of the person; that is, the right to be free from all forms of violence and the right to physical and psychological integrity. Similar, section 13 states that no person may be subjected to slavery, servitude or forced labour. Section 28 addresses the fundamental right of every child to be protected from maltreatment, neglect, abuse and degradation. Upon consideration of these rights cumulatively, it is clear that the Constitution condemns the perpetration of GBV.

As domestic violence falls within the broader term of GBV, it is useful to consider the authoritative definition contained in the *Domestic Violence Act* (DVA).<sup>16</sup> Domestic violence is defined as including the following acts: physical abuse; sexual abuse; emotional, verbal and psychological abuse; economic abuse; intimidation; harassment; stalking; damage to property; entry into the complainant's residence without consent; or any other controlling or abusive behaviour towards a complainant – where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant. Thus domestic violence, a form of GBV, is defined very broadly, to include a number of diverse actions and harms. Further, there is no explicit mention as to the sex/gender of the complainant or perpetrator; therefore the provisions of the DVA are not limited to the protection of women only. The only limitation here is that domestic violence can only be committed within a 'domestic relationship' (i.e. the commission of GBV is limited to a known perpetrator).

A 2001 report published by the South African Department of Education<sup>17</sup> stated that "gender-based violence including rape, femicide, sexual harassment, homophobia and other forms of abuse are wide-spread in South Africa." In understanding GBV, the report begins with the definition of gender: "by gender we don't mean that a person is male or female. Instead we are looking at what being male or female means in our culture and society. We are asking what ideas we have about masculinity and femininity. We are identifying the stereotypes associated with being male or female. We are exposing the many socially constructed myths and misconceptions around both male and female sexuality that may lead to violence." (P. vii)

On this basis, GBV is defined as follows:

*"Gender-based violence occurs when someone is abused because she or he is female or male, and often this is related to a society's version of masculine and feminine behaviour... Gender-based forms of abuse range from everyday incidents of sexual, racial and homophobic harassment to the more extreme forms of child sexual abuse, spousal abuse, sexual assault, gay and lesbian bashing, rape and femicide."* (p. 2)

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<sup>16</sup> Domestic Violence Act 116 of 1998.

<sup>17</sup> SA Department of Education, *Opening our eyes: addressing gender-based violence in South African schools*, 2011.

Women are the usual targets of GBV. However, boys can also be victims of GBV, particularly if they do not take on and exhibit aggressive and heterosexual versions of masculinity. Thus there is a continuation of the concept of GBV not being a strictly female issue, but rather one which confronts the intersection of femininity and masculinity in society. This is a positive iteration as the report thus implicitly includes GBV committed against LGBTI persons. A further commendable aspect of the report is that it focuses on education as a crucial tool in addressing GBV.

The *Sexual Offences Act (SOA)*<sup>18</sup> defines acts of sexual violence (which are a form of GBV). Of particular interest is the revised definition given to the act of rape. In the past, rape was defined as a man having unlawful and intentional sexual intercourse with a woman without her consent. The new definition is much broader: any person who commits an act of sexual penetration with another person without such person's consent is guilty of the offence of rape. Thus both victim and perpetrator can be male or female – the definition is no longer gender specific. Furthermore, the prohibited act has been widened from strict sexual intercourse to include non-consensual sexual penetration (i.e. the insertion, however slight, of objects or body parts into or beyond the mouth, genital organs or anus of another person) and sexual violation (i.e. direct or indirect contact between the genital organs, anus, or breasts and any body part of another person or another object; and direct/indirect contact between the mouth of one person and the genital organs, anus, breasts, mouth or any other body part of another person). Additionally, section 56 of the Act condemns the practice of marital rape.

In 2014 an Inter-Ministerial Committee developed an *Integrated Programme of Action (POA) addressing violence against women and girls*.<sup>19</sup> According to this POA, “violence against women manifests in a continuum of multiple, interrelated and sometimes recurring forms. It can involve physical, sexual, psychological or emotional, and economic abuse and exploitation, and can be experienced in a range of settings across both private and public spheres.” (p. 10) Such violence includes: domestic violence, sex trafficking, sexual violence by non-partners, marital rape, date rape, stalking, sexual harassment, sexual exploitation, domestic homicides and harmful traditional practices such as forced child marriages and female genital mutilation. The IPA also focuses specifically on violence against children – sexual abuse, and physical and emotional violence, including bullying, are the most common forms.

There are particular groups of women who are especially prone to be targeted for violence. These include, but are not limited to, women with disabilities; destitute women; women in institutions or in detention; older women; lesbians, bisexual and transgender women; and women living with HIV and AIDS. Migrant and refugee women and children are also disproportionately exposed to violence because they often lack local support structures and family protection.

Finally, the POA acknowledges emerging issues relating to VAWC: cyber-bullying; corrective rape; violence against elderly women; and albinism and social exclusion.

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<sup>18</sup> Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007.

<sup>19</sup> Department of Social Development, *South African Integrated Programme of Action addressing Violence against Women and Children (2013-2018)*.

Though the POA represents a commendable effort on part of government to create a plan addressing GBV, the current IPA is created with the overarching goal of addressing violence against women and children (VAWC) only. It disproportionately focuses on them, ignoring the greater power dynamic and imbalance that defines GBV, and does not give specific attention to LGBTI and other vulnerable groups of people.

## 1.2 Gaps and Weaknesses

There are several issues prevalent in the abovementioned definitions of GBV, which need to be rectified in order to ensure that a holistic and inclusive definition is provided for in the NSP. Some of the most glaring gaps include:

- The focus is primarily on violence against women and girls. Though GBV of course includes VAW, the two concepts should not be used interchangeably.
- There is little to no mention of LGBTI persons, despite the growing evidence as to their victimisation.
- There is little to no recognition of other groups that are at a high-risk of experiencing GBV, namely: sex workers, refugees, prison inmates, and persons living with HIV/AIDS.
- Other than the UN Broadband Commission report and the POA, there is no mention of online/cyber-GBV, which is evidently becoming an issue requiring significant attention.
- Seldom is reference made to economic violence as constituting GBV.
- Women, men and children are often categorized into distinct homogenous groups.
- Heteronormativity of GBV, as the focus tends to be solely on the abuse women and children experience at the hands of men.

## 1.3 Required Action in the NSP

- GBV must be defined according to the international norms and relevant human rights treaties the state is obliged to follow, through their ratification thereof:
  - GBV is a direct violation of these norms and treaties and must be addressed as such.
  - Many international instruments tend to focus on the plight of women with regards to GBV but it is crucial for the NSP to include other marginalized, high-risk persons. This includes LGBTI people, sex workers, refugees, as well as children who experience violence specifically due to gender issues.
- There are multiple intersecting forms of discrimination and disadvantages that intersect with sex and gender and must be recognized to adequately address GBV across these intersections:
  - These include, but are not limited to: race, colour, religion, ethnicity, political or other opinion, national or social origin, property, marital state, sexual orientation, HIV and AIDS status, migrant or refugee status, age, disability, armed conflict, chronic disease, psychological difficulties and child-headed households.
  - Interventions must be tailored to the specific issues faced by different groups, thus aiming for equality for all. Moreover, the plan should not only promote gender equality and respectful relationships, but should also challenge discrimination and stereotyping based on other identity characteristics.

- It must be acknowledged that GBV can happen in numerous environments: at home, school, the workplace, other public places, as well as online.
- It must be stressed that GBV does not just refer to physical and sexual violence, but also includes verbal, social, psychological, emotional, and economic harm.

It is critical for the NSP to be all-inclusive so that *all* who are victims or survivors of GBV benefit from this plan, regardless of their biological sex. This needs to not only be acknowledged in the introduction or under the definition of GBV, but must be integrated at all levels – in the interventions, activities and indicators created in addressing GBV.

**Proposed definition:**

We define the phenomenon of GBV as violence against a person on the basis of their gender identity. This violence may be physical, sexual, economic, emotional, or psychological. GBV includes, but is not limited to, the following: intimate partner violence; domestic violence; sexual violence by non-partners; marital rape; date rape; stalking; sexual harassment; sexual exploitation; domestic homicides; trafficking; forced prostitution; sexual slavery; forced pregnancy; forced sterilization; forced abortion; cyber-attacks; discriminatory practices on the basis of gender, such as prenatal sex selection and female infanticide; and harmful traditional practices such as forced marriage, early child marriage, wife inheriting, female genital mutilation and forced male circumcision. GBV can be perpetrated against people of all ages and demographics, in any space, including the home, workplace, school, tertiary institution, different modes of public transport and online.

The concept of GBV is often used interchangeably with the concept of violence against women (VAW) – owing to the fact that women and girl children have been and continue to be the primary victims and targets of GBV; and men continue to be the primary perpetrators of such violence (Chitiga-Mabugu, et al. 2014). Yet, it is important to distinguish VAW and GBV and ensure that GBV is not only seen as a heteronormative phenomenon. Essentially, VAW falls within the broader umbrella term of GBV

GBV is a manifestation of unequal power relations, often driven by strongly patriarchal social norms. It is important to note the different contexts and additional cross cutting issues which perpetuate violence experienced by individuals and enhance their vulnerability due to these unequal power relations. This increased vulnerability may be experienced by refugees, prison inmates, individuals in various institutions, sex workers, people with disabilities, the LGBTI community, people living with HIV/AIDS, the elderly and children.

Ultimately GBV is a human rights violation – it is inconsistent with numerous international human rights instruments, as well as the South African Constitution. Particularly, GBV is a breach of the fundamental right to life, liberty, security, dignity, non-discrimination, physical and mental integrity.

## PRIORITY 2: IMPLEMENTING EXISTING LAWS AND POLICIES

Although many of the government's legislative initiatives addressing aspects of GBV may be commendable, numerous studies and reports have documented the denial, inconsistency and poor quality of service provision to victims of gender-based violence. Filling the gaps in implementing existing laws and policies (see Appendix 1 for a summary of these) will improve the quality and consistency of already legally mandated police, judicial and health services.

The NSP must lay out a clear roadmap for how government will improve the scope and quality of services available to survivors and victims of GBV. Improving these services will require that capacity and oversight of key government agencies (that are already legally mandated to provide services) be increased. These key agencies include: the South African Police Service (SAPS), the Department of Health (DOH), the National Prosecuting Authority (NPA) and the South African Judiciary, the Department of Women (DoW), the Department of Social Development (DSD), the Department of Education (DOE), the Department of Correctional Services (DCS), and the Department of Traditional Affairs (DTA).

### 2.1 Current Gaps and Weaknesses

#### 2.1.1 South African Police Service (SAPS)

SAPS's mandate, as outlined in the Constitution and the South African Police Service Act (1995), is to prevent, combat and investigate crime; ensure cooperation between SAPS and the communities it serves in combating crime; operate with respect of victims of crime and an understanding of their needs; and ensure effective civilian supervision over SAPS.

With regards to GBV, they have a number of additional specific requirements under the Sexual Offences Act (SOA) and the Domestic Violence Act (DVA). These include positive duties to protect persons in domestic partnerships who are victims of abuse, to manage the reporting and investigation of sexual offences and to refer those reporting assault to medical services.

Some of the most pressing reported problems – policy and guidelines; training; resources; and accountability and coordination – regarding SAPS management of services to domestic and sexual assault victims, are outlined below.

##### 2.1.1.1 Policy and Guidelines

**Station orders:** The Sexual Offences Act mandates that police stations have “station orders” on policing the DVA and the SOA. Station orders tell the police in very specific ways how to handle certain categories of crime within a police station, yet most stations do not have such orders<sup>20</sup>

**Record keeping:** According to the SAPS National Instruction on Domestic Violence,<sup>21</sup> police must keep a record of their assistance to complainants in either the station's Occurrence Book

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<sup>20</sup> Vetten et al., 2010.

<sup>21</sup> National Instruction 7/1999: domestic violence. Published in the Government Gazette 3 March 2006.

(OB) or in individual police officers' pocket books. Furthermore, all reported domestic violence incidents must be recorded in the Domestic Violence Register. However, a study found that only 19 (15%) of 416 incidents of DV reported at a Mpumalanga station were recorded in the DV register, and that six months' worth of entries were missing from the DV register (Vetten, et al. 2009). The study indicates that this is a trend that is likely to be present in other police stations. According to a 2016 official report by the Civilian Secretariat for Police (CSP),<sup>22</sup> "proper recording in the DVA register (SAPS 508b) and in the SAPS 508a<sup>23</sup> as well as the maintenance of documents in the CSC is still the main challenge that negatively impacts on compliance level [with the National Instructions]" (p. 9).

**Victim Friendly Rooms (VFR):** The Victim Empowerment National Instruction<sup>24</sup> stipulates that every police station must have a VFR to interview victims of crime in privacy. According to the abovementioned 2016 CSP report, 57.8% of stations had a VFR that was resourced and functional; 10.7% had a VRF that was functional but not resourced; 12.8% had a VRF that was not functional; and 18.7% of the stations do not have a VFR at all.

#### 2.1.1.2 Training

**Poor officer communication:** Victims/survivors often do not feel safe or respected when reporting to the police. They are frequently not fully informed about their rights, the processes or procedures to be followed and about the progress on their case (Rape Crisis Town Trust, 2013).

**Highly inconsistent responses:** In an analysis of rape cases in South Africa, Artz and Smythe (2007) found that poor discretion by individual police and police stations have been reported in the following areas: deciding what type of charge to lay against the perpetrator; refusing to allow women to lay charges; not allowing complainants to make their statement privately; making complainants repeat their statement to numerous officers; not carrying out arrests; not allowing complainants to make supplementary statements; not proceeding with an investigation of a rape case; not informing the complainant of an arrest, bail conditions, or what to do in the case of breaches; and not allowing a complainant to make their statement in the language of their choice.

**Poor quality investigations and premature closing of cases:** In the same study, the police were found to have frequently closed cases when a complainant could not be found after reporting an offence, as well as not documenting the required substantiation such as statements from neighbours witnessing that the complainant could not be located. The quality of investigations by the police is generally poor due to the lack of availability of investigating officers, high caseloads, and the extent to which investigating officers are unqualified to investigate rape cases. There is infrequent crime scene investigation (Art & Smythe, 2007; Sigsworth et al., 2009), and often also long delays between rape reporting and arrest (Artz, Smythe & Leggett, 2004).

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<sup>22</sup> Department of the Civilian Secretariat for Police (2016). *Report on the status of DVA implementation and compliance by the SAPS from October 2014 – March 2015*.

<sup>23</sup> A form used to record all incidents of domestic violence and responses by SAPS members.

<sup>24</sup> National Instruction 2/2012: victim empowerment

**Poor statement taking:** Statement taking is often delayed and insufficient with language barriers exacerbating this. Victims are rarely given a copy of their statement and contact information is frequently insufficiently recorded, making follow-up difficult (Sigsworth, Jewkes & Christofides, 2009; Artz, Smythe and Leggett, 2004; Vetten et al., 2008; Rape Crisis Cape Town Trust, 2013).

**Forensic evidence is not appropriately collected and managed:** Insufficient referral for forensic evidence gathering is common. In 41% of cases in which forensic evidence was obtained, the evidence was not sent to the lab (Sigsworth, Jewkes & Christofides, 2009). DNA testing lab results were available in only 2% of dockets and in only 16.4% of cases in which a suspect was arrested did he have his blood tested (Vetten et al., 2008).

**Non-compliance with obligations under the DVA:** In a study conducted by Artz and Jethas (2011), which involved 503 DV applicants being interviewed, it was found that the police are negligent and incompetent when it comes to complying with their obligations under the DVA. Some findings include: 69% of complainants were *not told* they could lay a criminal charge; 53% were told that they were “not allowed” to lay a criminal charge; 96% were *not* given a notice with information on their rights; 98% did not receive a copy of the interim arrest warrant; and 67% were *not* taken for medical assistance when needed/requested. This is in clear violation of the SAPS’ duties under the DVA. Such failure to comply with the duties as outlined in the DVA constitutes misconduct and the Station Commander is expected to institute disciplinary action against the members. However, the CSP report (2016) reveals that out of 67 non-compliance cases that were reported to the CSP, only 55 disciplinary proceedings were instituted.

**Inadequate training:** The current training conducted by SAPS is not consistently monitored and is lacking in content. SAPS claims to have internal quality control measures for their SOA training but these procedures are not public. When and where training happens also remains dependent on station commanders – not based on which units and locations need training the most. There are inconsistencies in the training statistics that SAPS publishes on how many officers are trained and where, and it is thus currently impossible to compare the performance or outcomes of SAPS who have been trained versus those who have not (Wakefield, 2014).

#### *2.1.1.3 Resources*

**Insufficient follow through on protection orders:** A small percentage of those who seek help through SAPS for domestic violence actually ultimately receive a protection order (Vetten et al., 2010). Police often claim they do not have the human or financial resources to follow up adequately.

**Understaffed and under-resourced police stations:** Understaffing at police stations is common (Artz, Smythe & Leggett, 2004). Required reporting forms and VFRs at police stations to take statements in are lacking (Shukumisa, 2014; Rape Crisis Cape Town Trust, 2013; Wakefield, 2014). The latter is most often a consequence of a lack of adequate office space (CSP report, 2016).

#### *2.1.1.4 Accountability and Coordination*

**Lack of referral for medical attention, including HIV post-exposure prophylaxis (PEP):** Police are required to inform rape victims that they should go for PEP after reporting. However,

there is insufficient data as to what degree this occurs. It is essential that police are better trained to counsel victims on the urgency of seeking out medical care, especially PEP, after reporting an assault (Rape Crisis Town Trust 2013; Wakefield 2014). Better coordination is required between SAPS and health clinics.

**Insufficient early engagement of prosecutors in investigations:** Lack of coordination between investigating officers and prosecutors in collecting appropriate and sufficient evidence weakens and delays cases. Cases in which prosecutors are engaged earlier have better outcomes for victims (Artz, Smythe & Leggett, 2004; Vetten et al., 2008). Moreover, this leads to the high levels of impunity of perpetrators of GBV. This engagement and inter-departmental coordination will be discussed in more detail in section 2.5.

**Insufficient oversight of training standards and quality:** In the Western Cape, for example, only 6 out of 150 police stations have reached the required training threshold (once 50% of detectives have been trained in 4 key areas – domestic violence, sexual offences, victim empowerment and vulnerable children – the station is deemed victim-friendly) (Wakefield, 2014). Also highly concerning is that trainee constables (those most recently having completed their basic training, which includes training on domestic violence and sexual offences responses) have been found to struggle most with the implementation of the DVA and the SOA (Combrink & Wakefield, 2009). This could indicate that the training included in the basic training is lacking and not being monitored for impact.

**Submission of reports to Parliament:** According to the DVA, the National Commissioner of the SAPS is obliged to submit six-monthly reports to Parliament outlining complaints against police officers, the disciplinary proceedings instituted against those officers, and the police's response to recommendations made by the Independent Complaints Directorate (ICD). However, studies and reports show that the National Commissioner has failed to comply with this obligation – no reports were submitted between 2000 and 2006, two reports were presented to the Police Portfolio Committee in 2007, one six-monthly report was presented in 2008, no reports on the implementation of the DVA were presented by the SAPS during 2009 or 2010, and the last report submitted was in 2013 (Vetten et al. 2010).

### **2.1.2 Department of Health**

The Sexual Offences Act (SOA) specifically mandates that the Department of Health (DOH) designate health facilities for forensic exams and medical treatment of survivors, including the provision of HIV post-exposure prophylaxis (PEP). However, this only mandates the DOH response for one type of violence: sexual.

The Mental Health Care Act<sup>25</sup> does however state the following:

*“Every organ of State responsible for health services must determine and co-ordinate the implementation of its policies and measures in a manner that – (a) ensures the provision of mental health care, treatment and rehabilitation services at primary, secondary and tertiary levels and health establishments referred to in section 5(1);*

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<sup>25</sup> Mental Health Care Act 17 of 2002.



*(b) promotes the provision of community-based care, treatment and rehabilitation services; (c) promotes the rights and interests of mental health care users; and (d) promotes and improves the mental health status of the population.” (S 4)*

Furthermore, section 5 of the Mental Health Care Act specifically provides that the head of the Department of Health must designate health establishments or part of a health establishment which must serve as: (a) psychiatric hospitals; or (b) care and rehabilitation centres.

It is essential that health care guidelines be established for health care workers, for all forms of violence, including physical, psychological and emotional.

Beyond the policy considerations, there are also numerous gaps in the appropriate delivery of health services to victims of gender-based violence, in violation of existing law and policy. These include the translation of policy into usable guidelines, and ineffective training.

#### *2.1.2.1 Policy and guidelines*

**No existing mandate to address physical, psychological and emotional violence:** Currently, the DOH has established guidelines only on responding to sexual violence in line with the SOA. It is essential that physical, psychological and emotional violence be part of the health care mandate. The rationale for establishing such broader guidelines are that physical, psychological and emotional GBV are shown to impact health outcomes and have firmly been established by the World Health Organization as a health issue (WHO, 2013). South Africa need not invent its policies and guidelines to respond to GBV in the health sector, it can draw upon clinical and policy guidelines published by the WHO (2013) and use these to create adapted guidance for training, clinical tools, and support of clinicians.

#### *2.1.2.2 Training*

**Lack of trained staff:** There are insufficient numbers of forensic nurses available to conduct forensic exams in a timely manner (Rape Crisis Town Trust, 2013). The lack of training in South Africa goes far beyond the shortcomings of post-rape care. Health staff in primary health care clinics should be able to identify, treat, and respond to violence reported by any patient, yet at the moment virtually no clinic staff receive any type of training or tools (Hatcher et al., in press). This lack of trained staff results in the poor quality of services, a lack of sensitivity and information sharing, and poorly administered violence response (i.e. PEP).

**Poor quality forensic exams, lack of sensitivity and information sharing:** The Rape Crisis Town Trust (2013) reports that forensic examiners do not always take seriously the completion of the J88 form (which documents in detail the incident of sexual violence and required the collection of evidence samples), and do not always draw blood samples from the arrested suspect. Rape Crisis also documented that in some instances medical personnel were rude and insensitive, gave no explanation of the medical procedures to the victim, did not give the victim any choices, gave no information about PEP to the victim, did nothing to improve the survivor's adherence to PEP, gave no information about the option of testing the alleged offender for HIV (which is their right), and gave no information about additional referral services relating to sexual offences.

**Lack of holistic care and over-emphasis on PEP:** Most healthcare workers have not received training in the holistic management of rape survivors' care. Lack of training and empathy among nurses can contribute to secondary traumatization (Coovadia, 2009; Christofides, 2005). There is often an overemphasis on PEP, rather than on the full range of services needed by survivors, including emotional and psychological support (Rohrs, 2011). The need for better psycho-social care will be discussed in the following section (i.e. priority 3).

**Poorly administered PEP:** Ironically, given the heavy emphasis on PEP, nurses often do not explain the PEP treatment course sufficiently or send victims home without clear instructions and information on adherence (Rape Crisis Town Trust, 2013; Rohrs, 2011). This leads to poor adherence on PEP among survivors. Vetten and Haffejee (2008) found that about a third of survivors report taking the wrong number of pills.

**Refusal to treat before a criminal case has been opened:** Healthcare workers often misunderstand the policy guidelines, and mistakenly assume that victims must file a claim at a police station before being able to access PEP; or simply do not offer PEP to victims (HRW, 2004; Christofides, 2005; Rohrs, 2011). This mistake can be corrected by establishing clear guidance on what is expected of health workers who are responding to cases of sexual violence.

### ***2.1.3 National Prosecuting Authority/Department of Justice and Constitutional Development***

The mandate of the Department of Justice and Constitutional Development (DoJ&CD) is to provide transparent, responsive and accountable justice for all. It is required to provide a framework for the effective and efficient administration of justice. The National Prosecuting Authority Act<sup>26</sup> forms part of this legislative framework. This Act confirms the establishment of a single national prosecuting authority (in line with s 179 of the Constitution), which has the power to institute criminal proceedings on behalf of the state and to carry out any necessary functions incidental to instituting criminal proceedings. There is thus an inextricable link between the DoJ&CD and the NPA, and it is useful to consider them together.

The DoJ&CD laid out a set of commitments in the National Policy Framework for the Management of Sexual Offences to uphold its obligations as mandated in the SOA. These include: to ensure adequately skilled personnel manage sexual offences cases effectively and efficiently; to increase conviction rates; and to ensure victims of sexual offences have positive criminal justice experiences. The Judicial Matters Second Amendment Act,<sup>27</sup> passed in January 2014, also provides the legal framework for the permanent establishment of the Sexual Offences Courts. The judicial system struggles with providing these mandated quality services to GBV victims due to a lack of training, resources, and weak accountability and coordination.

#### *2.1.3.1 Training*

Prosecutors and magistrates who work with victims of sexual abuse need to have specific training and experience – to improve judgments and sentencing, and to avoid victims' secondary traumatization. The SOA requires this training, but the actual existence and efficacy of such

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<sup>26</sup> National Prosecuting Authority Act 32 of 1998.

<sup>27</sup> Judicial Matters Second Amendment Act 43 of 2012.

training is not sufficiently known. There is also no evidence that training participants are being assessed on learning outcomes (Waterhouse et al., 2014). National Guidelines for Victims of Sexual Offence (1998),<sup>28</sup> published by the DoJ&CD, acknowledge that the “present arbitrary or haphazard approach to victims of sexual assault has proved to be ineffective and in most cases leaves the victim with a sense of betrayal by the courts (often referred to as ‘secondary victimization’).”

### *2.1.3.2 Resources*

**Prosecutors are overworked and under-resourced:** Prosecutors’ caseloads are too high and there are backlogs of cases in the courts. This limits the time available for prosecutors to consult with victims and other witnesses before the trial. It also, when combined with the pressure to deliver convictions, provides a perverse incentive to withdraw cases (RAPCAN, 2014; Rape Crisis, 2013).

**Budget shortfalls:** Sexual Offences Courts (SOC) will likely not be given the resources they need in the current budget environment. In 2013 the NPA informed the Parliamentary Committee on Justice and Constitutional Development that it had a major budget shortfall – this was even before the legislative recommitment to SOCs in early 2014. The Treasury has made no provisions for additional funding for the SOCs, so the funds will have to be found within the existing, already insufficient, budget. The NPA’s strategic plan for 2013 to 2018 notes that there is “severe stress” on their compensation budget. Without additional resources to pay salaries, it is unclear how they will be able to hire the additional required staff to properly staff the new SOCs.

### *2.1.3.3 Accountability and Coordination*

**Cases repeatedly postponed:** Repeated postponements are a key factor as to why victims drop out of cases. Long-dragged out cases are both emotional and financial burdens on victims. Postponed cases prolong stress and anxiety and cost victims money due to transport and absenteeism from work and school. Repeated trips to the courts force the victim to relive the experience and interrupt recovery processes (RAPCAN, 2014).

**Low conviction rates:** Although it is quite difficult to get accurate statistics because of issues with SAPS and NPA reporting, one rough estimate finds a meagre 6.9% conviction rate (RAPCAN, 2014). A review of smaller jurisdictions find even worse conviction rates – as low as 4% in Gauteng (Vetten et al., 2008) – 3% of adults and 7.4% of children’s cases in 2006 (Jewkes et al., 2009) and in one locality in Mpumalanga, as low as 4.1% for rape cases involving children and 0.8% for adult women (Vetten, van Jaarsveld & Riba, 2012).

## **2.1.4 Department of Social Development**

The DSD has several mandated responsibilities, working towards social transformation. Recently, these have come to include obligations relating to children as well as persons with disabilities. There are, however, several weaknesses in the current legislation and policy, and in the provision of adequate resources.

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<sup>28</sup> Available at [http://www.justice.gov.za/policy/guide\\_sexoff/sex-guide04.html#1](http://www.justice.gov.za/policy/guide_sexoff/sex-guide04.html#1)

#### 2.1.4.1 Policy and guidelines

**Provision of shelters:** The South African Police Service Act<sup>29</sup> states that the SAPS may “render such assistance to the complainant as may be required in the circumstances, including assisting or making arrangements for the complainant to find suitable shelter and to find medical treatment”. As it currently stands, the Act is silent on whose statutory duty it is to provide and fund the shelters. It is taken for granted that the DSD is responsible (as it the provision of shelters can be seen as falling within the ambit of the Victim Empowerment Programme [VEP]), yet no obligation is authoritatively placed upon the DSD. This gap weakens referral systems and contributes to fragmented responses to domestic violence by various service providers (Simpala, 2012).

**Register for Sexual Offenders:** The aims of the National Register for Sex Offenders (NRSO) (established in 2009, in terms of Chapter 6 of the Sexual Offences Act) are to protect children and persons who are mentally disabled against sex offenders, by establishing and maintaining a record of persons who have been convicted of/alleged to have committed a sexual offence against a child or a person who is mentally disabled. The rationale is to curb the high incidence of sexual violence perpetrated against these two categories of people by restricting the registered offenders from working in environments that will expose them to these victims. The problem is that the National Child Protection Register – created in terms of the Children’s Act (38 of 2005), under the guardianship of the DSD – is substantively similar to the NRSO. According to Mollema (2015),

*“The two registers are so similar that one questions the reasoning behind instituting two separate schemes which double the administrative burden not only for Government, but also for the employer. It seems as if the Register for Sex Offenders served as an interim stopgap, as the chairperson of the Portfolio Committee for 2006 explained, that the Register needed to be established “as soon as possible because it could very well take a substantial time for the more comprehensive register in the Children’s Act to be made operational” (Fuller Bureaucracy versus Democratisation 17).” (p. 479)*

Moreover, the Register does not include perpetrators of sexual violence against mentally stable adults. It thus focuses only on a narrow definition of ‘sex offender’, excluding a host of perpetrators.

#### 2.1.4.2 Resources

**Inadequate shelters:** according to the *Minimum Standards on Shelters for Abused Women* (2001),<sup>30</sup> the DSD (as the lead department on the Victim Empowerment Programme) is required to “facilitate and fast track the provision of shelters for abused women, as well as ensuring the availability and accessibility of counselling services to women and children”. Yet the department has cited insufficient resources and budget constraints for its inability to implement shelter provision (Bhana et al., 2013). Despite the limitations in funding, shelters need to cater for the

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<sup>29</sup> South African Police Service Act 68 of 1995.

<sup>30</sup> Available at [http://www.gov.za/sites/www.gov.za/files/shelter\\_0.pdf](http://www.gov.za/sites/www.gov.za/files/shelter_0.pdf)

practical needs of women and their children. This includes food, school-related costs, transport, healthcare and toiletries. DSD's grant funding does not cover all these costs. In particular, children accompanying women to shelters are not receiving adequate services. Ultimately, shelters' resource limitations simply do not allow shelters to meet all the legitimate needs of the women and their children.

**Insufficient VEP implementation:** the Victim Empowerment Programme (VEP) is failing many victims of domestic violence, largely due to the inadequate allocation of resources to implement the programme as well as the Minimum Standards for Service Delivery in Victim Empowerment (Simpala, 2012). The DSD has noted that "there was insufficient staff numbers to implement the programme and that a lack of budget for raising awareness about domestic violence hindered their progress in combating this problem" (Thorpe, 2014, p. 24).

**Shortages and overburdening of social workers:** social work in South Africa has been declared a 'scarce skill'. There are an inadequate number of social workers employed by the DSD, which has the ripple effect of overburdening the existing staff members. In a study conducted by Naidoo and Kasiram (2006), social workers' caseloads in South Africa were found to generally be in excess of 120 cases (compared with a maximum of about 12 in the UK), leading to high levels of stress and frustration among professionals. According to a research consortium commissioned by the Department of Labour (Earle, 2008),

*"Social workers are frustrated with the overwhelming needs of the community in relation to their own relatively low numbers and their limited (or lack of) access to resources such as adequate supervision, stationary, office space and furniture, information technology, administrative and language support, vehicles and supporting professionals and institutions such as places of safety... The combination of these factors results in extremely high caseloads, inefficiency, workplace stress and anxiety, empathy exhaustion, emotional burnout, and even incidents of malpractice as social work is reduced to crisis management. Related to this, the staff turnover of social workers particularly in NGOs is high, with this exacerbating the conditions for those left behind as workloads increase proportionally and time is lost in retraining new junior staff." (p. 72-73)*

### **2.1.5 Department of Education**

The Department of Education (DOE) is responsible for the protection of learners from crime and violence within the school environment and for the support of learners if they become victims of crime or violence, especially when it occurs within the school environment, but also if learners become victims as a result of events occurring outside the school environment.

Schools are supposed to have in place policies and a learner code of conduct to deter violent behaviour. These are meant, among other things, to impede the use of drugs or any intoxicating substance, the carrying of weapons or any sharp objects, the use of violent or vulgar language, and also to discourage threats against persons or their property. Despite the existence of such policies, violence, physical and sexual abuse and gang activities are still the order of the day in many South African schools (Mncube, et al., 2012). Furthermore, the DOE does not designate lesson plans within the curriculum to GBV and violence prevention.

School GBV is “any form of violence or abuse that is based on gendered stereotypes or that targets students on the basis of their sex. It includes rape, unwanted sexual touching, unwanted sexual comments, corporal punishment, bullying, verbal harassment and so forth ” ( USAID, 2008, as cited in Chabaya, 2009, pp. 97). The main victims of school-related GBV are girls and LGBTI individuals.

GBV in schools can be perpetrated by both learners and educators. Twenty-seven complaints of sexual misconduct against teachers were received by the South African Council of Educators between January and October 2008, and in some cases the teacher-learner relationships took place with the consent of the children’s parents based on some kind of financial agreement (Mncube, et al., 2012).

School-based GBV should be a primary concern for the DOE, as it is seriously detrimental to children’s wellbeing and education, which ultimately affects society as a whole.

#### *2.1.5.1 Policy and Guidelines*

**Code of conduct:** According to the South African Schools Act (SASA),<sup>31</sup> governing bodies of public schools must adopt a code of conduct for the learners. The code of conduct comprises a set of rules, which sets the standard for learner behaviour, outlines positive behaviour, indicates how misbehaviour will be dealt with, and sets guidelines for the maintenance and improvement of the quality of the educating process. In general, schools depend on their code of conduct to address bullying, but unfortunately bullying (which often involves instances of GBV) is hardly ever explicitly mentioned therein as a transgression (Laas, 2014). Furthermore, codes of conduct often do not clearly explain what would constitute ‘sexual misconduct’ between learners (Coetzee, 2012).

**Corporal punishment:** regardless of the fact that corporal punishment has been legislatively sanctioned in South Africa (by SASA), there remains evidence of its perpetration. In a recent investigation into corporal punishment in schools in South Africa by the *Mail and Guardian* newspaper (John, 2012), it was reported that corporal punishment was rife in Gauteng according to the children’s rights body Childline, which said that more than 300 cases were reported to its Gauteng crisis line in 2011. Childline visited 76 schools in Gauteng in 2011 and in almost every school, children reported that corporal punishment was still happening (Mncube, 2012). The spokesperson of the South African Council of Educators said the council had received 161 formal complaints since April 2011, but warned that incidents of corporal punishment were “grossly underreported”. The article further reported that many parents still favoured corporal punishment and that teachers were not trained in alternatives.

According to a recent policy paper (Education for All Global Monitoring Report, UNESCO, and the UN Girls’ Education Initiative, 2015), corporal punishment has a strong gendered element and thus underpins GBV in schools:

*“...Punishment and discipline are often highly gendered in practice, and are pivotal in enforcing gender roles and expected behavior in schools (Humphreys, 2008). In some countries, boys are perceived as tough and undisciplined, and consequently*

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<sup>31</sup> South African Schools Act 84 of 1996.

*more likely to be subject to physical punishment, while girls are likely to be victims of psychological and verbal forms of punishment (Pinheiro, 2006). Male teachers use physical punishment to assert their authority, whereas female teachers may be more likely to use verbal chastisement – and girls are often punished for not being sufficiently submissive and ‘ladylike’ (Leach et al., 2014).” (pp. 7)*

**Cyber-bullying:** Current South African school legislation protects learners from bullying generally, to a certain extent. However, cyber bullying is a relatively new phenomenon and, to date, it is not specifically regulated in South African law and thus cannot be responded to as a violation of any law (Moodley, 2012). This is a serious problem, considering the significant increase in the pervasiveness of cyber-bullying amongst children and teens.

#### *2.1.5.3 Resources*

**Lack of school nurses:** the first National School Health Policy was developed in 2003, yet there were several deficiencies that marred its effective implementation – low service provision coverage, sub-optimal nurse to school ratios, and the absence of referral services to respond to identified problems (Shung-King, 2013). Consequently, an Integrated School Health Policy (ISHP) was developed in 2012, in an effort to respond to and rectify these and other issues. The fundamental premise of the ISHP is the collaboration between the DoH, DoE and DSD. Unfortunately, the implementation of the ISHP will require major financial and human resources. At present the number of school nurses is woefully inadequate.

#### *2.1.5.4 Accountability and Coordination*

**Educator-learner GBV:** Under the Employment of Educators Act,<sup>32</sup> acts of serious misconduct include “committing an act of sexual assault on a learner, student or other employee, having a sexual relationship with a learner of the school where he or she is employed, and causing a learner or a student to perform any of [these] acts.” Schedule 2 of the Act describes disciplinary procedures and sanctions for such acts of misconduct. Nevertheless, sexual violence persists in South African schools – in 2011, the UN CEDAW Committee “expresse[d] grave concern about the high number of girls who suffer sexual abuse and harassment in schools by both teachers and classmates, as well as the high number of girls who suffer sexual violence while on their way to/from school [in South Africa].” (Brock, et al., 2014, pp. 3) There is a worrying culture of impunity, based on the inadequacy of structures and processes capable of ensuring educator accountability.

#### **2.1.6 Department of Correctional Services**

The Correctional Services Act<sup>33</sup> (CSA) governs the duties of the Department of Correctional Services (DCS) and the treatment of prison inmates. Despite progressive provisions relating to the human dignity of prisoners, GBV continues to be a pervasive and normative aspect of prison life. The most common form of GBV in prisons is sexual violence and rape, which are often perpetrated as a means of displaying power, status, and masculinity. The key targets of such

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<sup>32</sup> Employment of Educators Act 76 of 1998.

<sup>33</sup> Correctional Services Act 111 of 1998.

violence are mainly men, who are either newcomers to the prison and/or who are considered to be relatively effeminate.

In line with the CSA, the DSC has a clearly legislated duty to provide safe custody to prisoners in its care, and to take all necessary steps to prevent general and sexual victimisation of prisoners by prisoners and staff.

#### *2.1.6.1 Policy and Guidelines*

The CSA makes no mention of sexual violence, and a brief section on sexual assaults in the more detailed B Orders (which delineate staff duties) provides only vague and minimal direction to staff, and then mainly medical staff.

Currently the DCS does *not* have an official comprehensive policy on the prevention of GBV in prisons or the care of GBV victims. This raises concern, as prisoners are likely unaware of their rights, prison officials do not know how to deal with or respond to GBV cases amongst prisoners, and sanctions are not imposed on perpetrators of GBV (be it inmates or prison officials).

#### *2.1.6.2 Training*

Inefficacy, indifference and corruption on the part of prison officials reportedly contribute to the high incidents of sexual violence and coercion within prisons.

**Medical staff:** existing evidence highlights significant gaps in medical officials' handling of cases of sexual violence in prison. According to an ISS article (Gear, 2010), "the most common scenario seems to be that staff, who receive no dedicated training to deal with sexual violence, operate on the assumption and acceptance that it is 'part of prison life' and/or not something they can do – or are expected to do – much about. Staff complain, for example, of a lack of management prioritisation of the issue, of relevant training, and of mechanisms to deal with perpetrators and protect victims. The result is that widespread abuse fails to get the close attention it requires, and DCS fails in its obligation to keep inmates safe." (pp. 28)

#### *2.1.6.3 Resources*

**Staff shortages:** The DCS Annual Report (2014/15) reveals that there is an insufficient ratio of officials-to-inmates. The inspections survey found a shortage of nurses and a shortage of social workers in many of the centres visited: 25 of the 90 (28%) centres inspected had a shortage of nurses; and 33 of the 90 (37%) centres inspected had a shortage of social workers. This is particularly concerning with regards to a lack of service provision to inmates, plus a lack of adequate supervision over inmates. According to Muntingh and Satardien (2011), a key factor that facilitates the prevalence of sexual violence in prisons, is the general lack of active supervision of prisoners by staff due to high prisoner-to-warder ratios and overcrowding.

#### *2.1.6.4 Accountability and Coordination*



**Complaints mechanism:** The internal DCS complaints mechanism available to inmates has been described as ineffective, especially with regards to dealing with a sensitive issue such as sexual violence (Muntingh and Satardien, 2011).

### ***2.1.7 Department of Traditional Affairs***

One of the key roles of the Department of Traditional Affairs (DTA) is to assist the institution of traditional leadership to transform themselves to be strategic partners with Government in the development of their communities. One of the key challenges facing the DTA is the practice of female genital mutilation, ukuthwala, virginity testing and witchcraft –incited murders

#### *2.1.7.1 Policy and Guidelines*

**Female Genital Mutilation (FGM):** FGM is a traditional cultural practice, which – despite condemnations from the World Health Organisation (WHO) and other international bodies – remains prevalent in several African countries. According to section 13 of the Children’s Act (2005), FGM is prohibited in South Africa. Additionally, the Promotion of Equality and Prevention of Unfair Discrimination Act (2000) (PEPUDA) prohibits the unfair discrimination of any person on the basis of gender, including FGM. Though these are clear condemnations of the practice of FGM, there is some evidence that FGM continues to exist in some parts of South Africa; namely amongst the Venda community of north-east of South Africa (Kitui, 2012).

The main problems associated with the abovementioned legislation include: the definition of FGM in the Children’s Act is not sufficient, and no definition of FGM is provided in PEPUDA.

## **2.2 Required Actions in the NSP**

The NSP can address the gaps described above by mandating and investing in reforms and interventions addressing policy and guidelines, training, resources, and accountability and coordination for the SAPS, DOH, DOE, NPA, Sexual Offences Courts, DTA, and DSD.

### ***2.2.1 Policy and Guidelines***

#### *2.2.1.1 South African Police Services*

Station commanders must monitor and ensure that:

- All stations have “station orders” (directives on how certain situations must be handled) in a clearly visible and easily accessible place for both victims and police.
- SAPS members are consistently recording cases of domestic violence and non-compliance – monitoring and accountability procedures should be put in place.
- The station under their command has a Victim Friendly Room (VFR) or an adequate alternative private space

Station Commanders must be consistent and vigilant in conducting disciplinary proceedings against SAPS members who do not comply with Domestic Violence Act (DVA) obligations.

#### *2.2.1.2 Department of Health*

The Department of Health's National Directives and Instructions<sup>34</sup> require revision. Issues currently plaguing the National Directives and Instructions; they:

- Do not highlight the importance of starting PEP as soon as possible. This focus is necessary if health care providers are to prioritize this aspect of the medical management of rape cases.
- Make no provision for health care professionals dealing with sexual offences to be provided with an updated list of referrals to services relevant to survivors of sexual offences, and which are specific to their local area.
- Are insufficiently clear on the role of the health care provider with regard to informing the rape survivor about the possibility of having the alleged offender tested for HIV, which is their right.
- State that forensic examination and medical treatment of rape survivors can occur only after the victim has laid a charge at the police station. This information is incorrect and denies victims of sexual offences the choice of reporting the offence within six weeks, should they change their minds after initially failing to report the crime. This needs to be amended and relayed to health care providers.
- Do not acknowledge that emergency medical treatment must be prioritized over the forensic examination and other medical treatment of sexual offence survivors.

Furthermore, the DOH should urgently implement a version of the clinical and policy guidelines published by the WHO (2013) in order to ensure that primary health care is able to respond to cases of sexual, physical, and emotional violence among patients.

#### *2.2.1.3 Department of Social Development*

**Legislative mandate:** A policy should be created and implemented, or legislation should be amended, in order to specify which department – likely the DSD – is responsible for the provision and funding of shelters for victims of abuse.

**Merger of the National Child Protection Register (NCPR) and the National Register for Sex Offenders (NRSO):** in order to mitigate the challenges of two similar policies existing simultaneously, the DSD and DoJCD should come together to facilitate an appropriate process of collation (DOJCD report, 2014), as well as broaden the scope of the NRSO to include all perpetrators of sexual offences.

#### *2.2.1.4 Department of Education*

**Code of Conduct:** Every school's code of conduct should include and address the following:

- Bullying, including acts of GBV

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<sup>34</sup> National Directives and Instructions on conducting a Forensic Examination on survivors of Sexual Offence cases in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007, 6 March 2009.

- Forms of learner-on-learner sexual misconduct (defined in alignment with existing legislation, such as the SOA)

**The Integrated School Health Policy (ISHP):** The ISHP should be amended to include broader health promotion (i.e. address causal factors and indicators of health and GBV issues), as opposed to simply focusing on service delivery.

**Corporal punishment:** The effective eradication of corporal punishment in schools must be strictly monitored by the DOE.

#### *2.2.1.5 Department of Correctional Services*

It is imperative for an official comprehensive policy to be developed by the DCS, which addresses the prevalence of GBV in prisons, through prevention mechanisms, and outlines the steps to be taken in caring for and providing internal support to the victims.

#### *2.2.1.6 Department of Traditional Affairs*

South African legislation prohibiting FGM appears to be insufficient. It is proposed, in alignment with UNICEF (2010) recommendations, that the following provisions be included:

- The prohibition of FGM needs to be coupled with sanctions or penalties (i.e. the law should include measures that punish all individuals, including all categories of medical staff that practice FGM).
- The law should make reference to the widely used WHO (2008) definition in defining the different forms of FGM that are prohibited:

*“Female genital mutilation comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. Type I: Partial or total removal of the clitoris and/or the prepuce (clitoridectomy); Type II: Partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora (excision); Type III: Narrowing of the vaginal orifice with creation of a covering seal by cutting and appositioning the labia minora and/or the labia majora, with or without excision of the clitoris (infibulation); Type IV: All other harmful procedures to the female genitalia for non-medical purposes, for example: pricking, piercing, incising, scraping and cauterization.”* (pp. 4)

- The law should address FGM as a form of GBV and a violation of women’s and girls’ human rights
- The law should clearly prohibit FGM, regardless of whether women or girls have consented to being cut, because the practice is fundamentally a violation of human rights
- The law should support the funding and provision of long-term, accessible, integrated, comprehensive, child-friendly and gender-based interventions that protect girls and women from FGM. These interventions should include broad campaigns for raising awareness about GBV and violations of children’s and women’s human rights and

specific awareness-raising about the FGM laws. They should also provide girls and women with the skills to claim their rights.

- The law should provide funding to establish and support comprehensive, child-friendly and gender-balanced integrated support services to assist those who have been cut. It should ensure that these services include health care, psychosocial support, legal assistance and legal protection.
- The law should establish effective child- and gender-sensitive systems and procedures for reporting and investigation of Female genital mutilation cases.

### **2.2.2 Training**

Training on comprehensive GBV responses and on department-specific policies and guidelines need to be expanded. Training must be rigorously monitored and evaluated to ensure that it improves performance. Moreover, sensitivity training for police and health care workers, including the rights of victims/survivors and the language that needs to be used when dealing with them, is important to positively and appropriately respond to their situation.

#### *2.2.2.1 South African Police Service*

As previously described, there is wide variance in GBV competencies across police stations, which can be attributed in large part to inconsistent and insufficient training. The quality of SAPS services could be improved with increased oversight and increased training on the duties of SAPS to GBV victims. These trainings should include:

- Sensitivity training (i.e. language used, empathy, discretion)
- Completion of Domestic Violence Act (DVA) training programmes and continuous information sessions with SAPS members at police station level. (CSP report, 2016)
- Educational programmes on relevant updated legislation
- Technical training, such as professionalism and efficacy in investigating cases and collecting evidence.

Such training should be given to all SAPS members, so as to maximize the number of police officers that can deal effectively with GBV cases.

Better training materials, oversight and reporting mechanisms on training need to be implemented and enforced in all police trainings and in all police stations across the country, with refresher trainings conducted on a regular basis for all police officers.

Minimum norms and standards for service delivery by the police, by victim support volunteers and by NGO service providers attached to police Victim Friendly Rooms must be developed (or reviewed where they already exist) in line with the above. Police officers must be trained on these standards and their implementation carefully monitored.

Provincial managers must ensure that all police stations have the required documentation available.

One additional strategy to build on better training is to create a set of job aids for officials dealing with sexual offences (that could also be useful to victims of sexual offences and could be

adapted into a set of handbooks). This could help improve officials' adherence to the law and also assist them in better supporting victims. For example, this could include a flow chart diagram that police officers are required to walk through with victims so they can explain how their case will proceed.

The police are often the first point of contact for victims of GBV. It is therefore of utmost importance that they are trained in how to respond appropriately to the needs of victims/survivors to avoid secondary victimization.

#### *2.2.2.2 Department of Health*

Nurses and doctors need to be sufficiently trained both in their legal responsibilities to survivors as well as in comprehensive GBV response:

- Sensitivity training will be vital in terms of exercising discretion as well as engaging with victims.
- Technical training will be required with regards to relaying relevant information to the victim/patient, filling out forms diligently, performing medical exams thoroughly and recommending PEP appropriately.

Some guidelines are being developed for the South African setting (e.g. Jewkes et al., 2007, Hatcher et al., 2014), and a new DOH initiative can draw upon global best practice for training health workers to respond to GBV (WHO, 2013).

It is vital to bear in mind that mental health services too fall within the ambit of the DOH. These are an important part of the treatment process for victims of GBV, as good mental health interventions and care can serve to prevent, or at least mitigate, long-term physical and mental impairment. Therefore doctors and nurses should be given special training in being able to identify and be cognizant of mental health issues afflicting GBV survivors, and provision should be made for specialized mental health care personnel to be available.

#### *2.2.2.3 National Prosecuting Authority*

According to the National Policy Framework on the Management of Sexual Offence Matters (2012), a key initiative that may eliminate the potential of secondary victimization of victims of sexual offences is the provision of training to judges and prosecutors – “The training curriculum of service providers must, among other things, address the poor attitudes of certain criminal justice officials towards victims of sexual offences. It must also enhance the knowledge of the Act and related policies, and develop the requisite skills for the management of these cases, e.g. skills for interviewing traumatized victims.”(p. 15)

It is evident that training for prosecutors and magistrates needs to be improved and better monitored. It should include a practical component (e.g. shadowing other prosecutors/judges or a moot court exercise) and must be complemented by a strong performance management system that evaluates the impact of the training. Debriefing sessions for court staff should also be periodically offered, to help them avoid vicarious trauma, which can lead to staff burnout. Notably, these requirements should be equally applicable to all cases of GBV, not just sexual violence.

#### *2.2.2.4 Department of Education*

School authorities are not always knowledgeable on aspects of the law; especially in relation to cyber-bullying, which is a new and increasingly prominent issue. It is imperative that training is provided to principals, teachers and other school staff educating them about the various forms and methods of cyber bullying, and the laws that could regulate the practice. Training should also be provided to learners on cyber bullying in general. In this regard, learners should be made aware of their legal rights and the consequences of their actions should they become cyber victims or cyber bullies (Moodley, 2012).

With regards to other forms of school-related GBV, teachers should receive sensitivity training so that they are able to engage appropriately and empathetically with children that are being abused. They should be taught practical skills in being approachable to the children, such that the children feel comfortable to confide in the teacher about being abused at home, by a fellow learner or even by another teacher. All teachers must be educated on the official school protocols for such situations, in terms of referring the child to the appropriate person and informing the child's parents.

#### *2.2.2.5 Department of Correctional Services*

To effectively address GBV within prisons, it is vital for the DCS – in collaboration with civil society – to create a training curriculum. A comprehensive component of the training must be on the prevention and management of sexual violence and other acts of GBV in detention facilities, and on the promotion of sexual health and sexual rights of inmates. Such training must be given to new prison staff as well as current officials, with special guidance given to medical staff members.

### **2.2.3 Resources**

Government departments responsible for sexual offences and domestic violence response must clearly budget for and sufficiently resource their services.

#### *2.2.3.1 South African Police Service*

SAPS resource allocation across provinces and police stations must be better managed. SAPS currently has poor resource allocation across all provinces, especially regarding vehicles (Wakefield, 2014). However, fuel, not the number of cars, is the primary barrier to timely responses to DVA calls. There are also insufficient resources allocated for forensic social workers. Ideally, there should be an increase in resource allocation to issues of GBV – including domestic violence calls, training, and the employment of social workers.

#### *2.2.3.2 Department of Health*

Primary health care currently has access to limited resources for responding to sexual violence and no resources for other physical or emotional violence. Resources are required for patient access to psychologists, counselors and social workers in every primary health care clinic (a resource that can be shared across clinics in a single region).

#### *2.2.3.3 National Prosecuting Authority*

The Judicial Matters Second Amendment Act of 2013, which establishes a legal framework for the Sexual Offences Courts (SOCs), unfortunately fails to provide adequate direction to the DoJCD regarding the pace of roll out of the courts, and does not include minimum standards for resourcing and practices of these courts (Waterhouse, 2014). In order to be effective, the SOCs need to be appropriately costed and resourced. A resourcing plan thus needs to be created. According to the Shukumisa Campaign, this should be in alignment with the recommendations given by the 2013 Ministerial Advisory Task Team on Sexual Offences (Waterhouse, 2014).

#### *2.2.3.4 Department of Social Development*

With regards to the provision of shelters, we support the recommendations made by Jen Thorpe on behalf of Parliament (2014), namely:

- The National DSD must come up with funding guidelines to bring a level of uniformity to the funding of shelters.
- The DSD must consider ways of increasing funding for NGOs, as it is clear that Government was unable to do all of the work on its own.
- The Women's Shelter Movement recommended that a proper costing model be done for best practice at a shelter (to include facilities, services, programmes and salaries) to ensure that the DSD is able to correctly assess the costs of running a shelter.

The DSD must also budget for the employment of an increased number of social workers, in order to be able to effectively carry out their work without being overburdened.

Heinrich Boell Stiftung Southern Africa together with the National Shelter Movement of South Africa have launched a European Union supported project entitled 'Enhancing State Responsiveness to GBV: Paying the True Costs', which aims to research and analyse the need for domestic violence sheltering services in South Africa. This includes a focus on government's responsibility – specifically DSD – to provide and maintain shelters. The results of this project could provide a useable model by which to hold DSD to account in terms of its responsibility and resource allocation.

#### ***2.2.4 Accountability and Coordination***

Family Child Abuse and Sexual Offences (FCS) units in police stations and Sexual Offence Courts must be institutionalized through clearer mandates and specific funding allocations, as should coordinating mechanisms between SAPS and the NPA.

##### *2.2.4.1 South African Police Service*

**Institutionalizing FCS units in all police stations:** Within the GBV scope, specialized units have demonstrated better sensitivity and produced better outcomes and services for survivors and victims of violence. While all police must be better trained, the quality of services improves dramatically when specialized teams provide them. As such, FCS units should be rolled out at all police stations across the country. Specific statutes that apply to the establishment of sufficient FCS units of the SAPS and their on-going sustainability should be developed. There is currently a lack of clarity and planning about the further rollout of FCS units, as the ratio of FCS units and police stations per province remains very low (Wakefield, 2014).

It is important for attention to be drawn to some of the problems that face FCS units, in order to

make a concerted effort to put measures in place to overcome them. In the Khayelitsha Commission Report (2014), the following issues with FCS' in the Khayelitsha area are identified: under-performance; low morale and lack of commitment, owing to the nature of the cases; repeat build-up of a backlog of cases; poor quality investigations; and insufficient counselling for the officers. It is critical for these and other related issues to be addressed in the NSP, to ensure that the proposed establishment of an increased number of FCS in police stations will be effective.

**Maintaining community policing:** According to S18 of the SAPS Act, the SAPS are required to establish and maintain community police forums and boards. The existence of such community policing initiatives is intended to result in greater communication between the police and the community, which ultimately garners mutual trust and respect; improve the service provided by the SAPS to the community; and improve accountability of the SAPS to the community. The efficacy of this initiative should be monitored by the Department of Community Safety.

**Monitoring of oversight bodies:** Oversight bodies are an important mechanism by which to hold institutions to account. There are three key oversight bodies responsible for ensuring that SAPS is running efficiently and working effectively, namely: Parliament, the Civilian Secretariat for Police, and provincial government. It is important for CSOs to monitor these bodies and ensure that they are complying with their oversight duties.

#### *2.2.4.2 Sexual Offences Courts*

**Institutionalize Sexual Offences Courts:** Specific statutes that apply to the establishment of sufficient specialized Sexual Offences Courts and their ongoing sustainability should be developed. The 2014 amendment has now firmly committed the government to the permanent establishment of Sexual Offence Courts, which have higher conviction rates due to their specialized nature, but specific instructions need to be issued as to how they will move forward. The law safeguards the future existence of these courts, but does not provide a clear roadmap for the implementation, standards, and functioning of the Courts. The SOC model should include provisions for infrastructure, staff, minimum training, victim support, and data collection (Artz, Smythe & Leggett, 2003). According to the Shukumisa Campaign, "to strengthen prosecution outcomes and ensure that the needs of complainants are met from their entry into the system through to the finalisation of the court case, coordination and collaboration among different government departments and civil society is essential" (Waterhouse, 2014).

#### *2.2.4.3 National Prosecuting Authority*

**Improve coordination between SAPS and NPA:** Prosecutors need to be involved in guiding police investigations as a matter of course since this has proven to significantly increase conviction rates and to minimize the burden on survivors of working with multiple role players. Prosecutor involvement from an early stage can help finalize cases more quickly and avoid unnecessary delays and postponements (Artz, Smythe & Leggett, 2003; Artz & Smythe, 2007). Prosecutors must also be required to be more transparent and accountable when giving reasons to complainants why they have decided that a matter will not be prosecuted. Clear communication and coordination between all parties is necessary to speed up and improve the prosecution process.



#### *2.2.4.4 Department of Education*

**Sanctions for educators:** there is a silence around educator-on-learner GBV, which needs to be addressed. Learners who have been victims of such abuse must be encouraged to come forward, such that it is not committed with impunity. Sanctions and disciplinary proceedings must be enforced by the school's governing body.

**Reporting systems:** If learners have suffered violence within the school environment, they may have difficulties seeking assistance due to feelings of shame, fear, or intimidation. The DoE should engage in consultation and research to develop discreet, accessible, and gender-sensitive reporting processes (SAHRC, 2008). These reporting processes must be well advertised among learners and must ensure that learners have multiple channels by which to report violence. Learners must be assured that such reports will remain confidential to the maximum extent legally possible.

#### *2.2.4.5 Department of Correctional Services*

- Prison staff must engage appropriately with the DCS complaints mechanism that has been put in place. Staff should be disciplined for refusing to take inmate complaints, or for not taking action in response to inmate complaints.
- Prison officials and senior DCS members must take the issue of corruption seriously. They must act decisively against staff who engage in corrupt practices, including those of selling inmates to other inmates, accepting bribes to turn a blind eye, and preventing inmates from accessing services such as health-care and medical assistance (Gear, 2009).
- Strengthen cooperation with the criminal justice system, so that referrals by the DCS to the SAPS are taken seriously and followed up, so that the DCS allows and assists the SAPS to conduct full investigations in correctional centres, and cooperates with, for example, medical examination requirements and, bringing witnesses to court (Gear, 2009).

## **PRIORITY 3: IMPROVE AND EXPAND PSYCHO-SOCIAL SERVICES FOR SURVIVORS**

The NSP must improve and expand psycho-social services provided through the Department of Social Development (DSD), the Department of Health (DOH), and civil society partner organizations. The Domestic Violence Act (DVA) and the Sexual Offences Act (SOA) laws have insufficient stipulations regarding the provision of psycho-social care to victims of gender-based violence (GBV), thus the NSP must formalize the statutes and institutional arrangements required to secure psycho-social care of victims, and fully fund and support these mandated services.

### **3.1 Current Gaps and Weaknesses**

#### ***3.1.1 Fewer Services, Poorer Quality***

A reduction in psycho-social services as well as a deterioration of the quality of such services have become the norm in the GBV response (Shukumisa, 2014). This is primarily due to two key factors: the lack of trained psychologists working for the DOH, and the decline in DSD-employed social workers due to funding cuts that began in 2010. A case study of 17 organizations found that between 2010 and 2013 they had cut 100 positions and were forced to stop offering a range of key services (Shukumisa, 2014). The number of service providing NGOs has also shrunk as demand has increased (Thorpe, 2014b).

#### ***3.1.2 DSD Funding Policy***

Current DSD funding policy hurts organizations' ability to deliver services. A 2011 DSD policy on financial awards to service providers determined that DSD would pay for only 75% of salaries at implementing organizations. This has caused high levels of turnover and overburdening of underpaid staff. According to the Shukumisa Campaign, "many organizations are thus subject to ongoing processes of de-skilling and de-professionalization. Institutional memory and experience are also being constantly eroded and the effectiveness of programmes diminished by their closure and reinstatement, as well as changes to management." (Shukumisa, 2014)

The limited DSD budget has also led to perverse trade-offs in serving victims of domestic violence. The majority of services are provided by NGOs, but the DSD only provides partial funding to these. Yet when DSD provides services directly they are fully funded, and when private companies provide the services the DSD pays them at cost plus profit (Thorpe, 2014). The decision to allow provinces to fund shelters differently has led to inconsistent services – amounts available per province and per client vary widely, which means not all women have equal access to shelter or freedom from violence.

In the DSD 2011 meeting report, it was determined that the Victim Empowerment Programme (VEP) is underfunded and understaffed (and its sustainability is unclear due to dependence on international donor funds). In 2012/3 the National Treasury made additions to the Programme, but much of this money never made it to the intended NGOs and instead was used by provincial DSD offices for internal government expenses, rather than on direct service delivery (Thorpe, 2014).

In addition to inefficiencies in how services are funded, there is also simply insufficient funding allocated to provide the quantity and quality of services required. Increased funding for NGOs is needed – especially for VEP grants to civil society organizations that run shelters and other services for domestic violence victims. We propose that funding for NGOs should be increased. Many of these organizations are providing psycho-social services that the DSD should be, and thus the Department should support and fund these.

### 3.2 Required Actions in the NSP

The DSD funding model for survivor services needs to be reviewed and rationalized. We support the Shukumisa Campaign recommendations that:

- The KPMG costing model should be used to inform DSD’s budget allocation to NGOs. This model may need to be adjusted in relation to rape and domestic violence services due to the original exercise having been mainly focused on the costs of old age and children’s homes, as well as facilities for people with disabilities<sup>35</sup>.
- DSD expenditure on programmes needs to be closely monitored to ensure that legislated or policy-based social welfare services are taking clear and obvious precedence over programs that are not mandated by law or policy. Funds to services must also be ring-fenced to prevent their being diverted elsewhere.

Furthermore, we recommend that there be increased inter-sectoral coordination between the DSD and the DOH in providing psycho-social and medical care to GBV victims – there should be a ‘one stop shop’ for the victims. That is, at a single location, survivors should be able to have access to and be provided with a myriad of required services – i.e. health, welfare, counselling, and legal services. According to a UN Women’s report (2012), it has been shown that when comprehensive one-stop shops are adequately resourced, staffed and managed, reporting and demand for services increases. South Africa has been praised for the establishment of Thuthuzela Care Centres – an initiative of the NPA’s Sexual Offences and Community Affairs Unit (SOCA), in partnership with various departments and donors as a response to the urgent need for an integrated strategy for prevention, response and support for rape victims. However, there has been some concern that these TCCs are focused primarily on rape victims, giving less attention to victims of domestic violence (Ellsberg, 2015). That is, the emphasis lies with medical examinations and the administration of PEP, while psychological counselling may be left by the wayside. Thus, the NSP calls for the maintenance and development of TCCs that are well-resourced, well-staffed, and which give adequate attention to not only sexual violence victims but also victims of other forms of GBV.

An additional support mechanism is greater community involvement and education. GBV can be described as violence provoked by different embodiments of socially ascribed concepts of

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<sup>35</sup> The judgment in the NAWONGO case against the Department of Social Development in the Free State (*National Association of Welfare Organisations and Non-Governmental Organisations and Others v MEC for Social Development, Free State and Others* (2013) ZAFSHC 49) resulted in DSD commissioning KPMG to calculate the actual cost and value of Victim Empowerment Programme social services provided by NGO partners nationwide. Unfortunately VEP services continue to be underfunded, as current DSD funding does not reflect the calculations by KPMG.

gender; therefore community programmes should be introduced that target the issue of gender norms. Greater community acceptance and understanding of GBV, and a concerted focus on breaking down common patriarchal social norms, could potentially decrease social ostracism and stigmatisation of GBV survivors and could even have certain preventative effects. Interventions by progressive community and religious leaders could impact positively on the psycho-social care of GBV victims. Additionally, the involvement of men in the prevention of GBV is a fast-emerging intervention that is proving to have positive results. The NSP should promote the establishment of community education programmes, support groups, and the training of community-based support workers, and funding should be made available by the DSD for NGOs carrying out this mandate.

Additional recommendations relevant to this priority area are made under section 5 on accountability and resources.

## **PRIORITY 4: PREVENTION, INTERVENTION RESEARCH AND DOCUMENTATION**

The NSP for GBV must create a fully funded investment strategy in violence prevention, interventions and research. To effectively create and implement primary prevention and intervention methods, it is important to research, understand and address the root causes, prevalence and impact of all forms of GBV. This requires significant resources and funds allocated to various stakeholders involved in the campaign to end GBV.

### **4.1 Understanding GBV drivers**

Effective prevention needs the underlying drivers of GBV to be tackled.

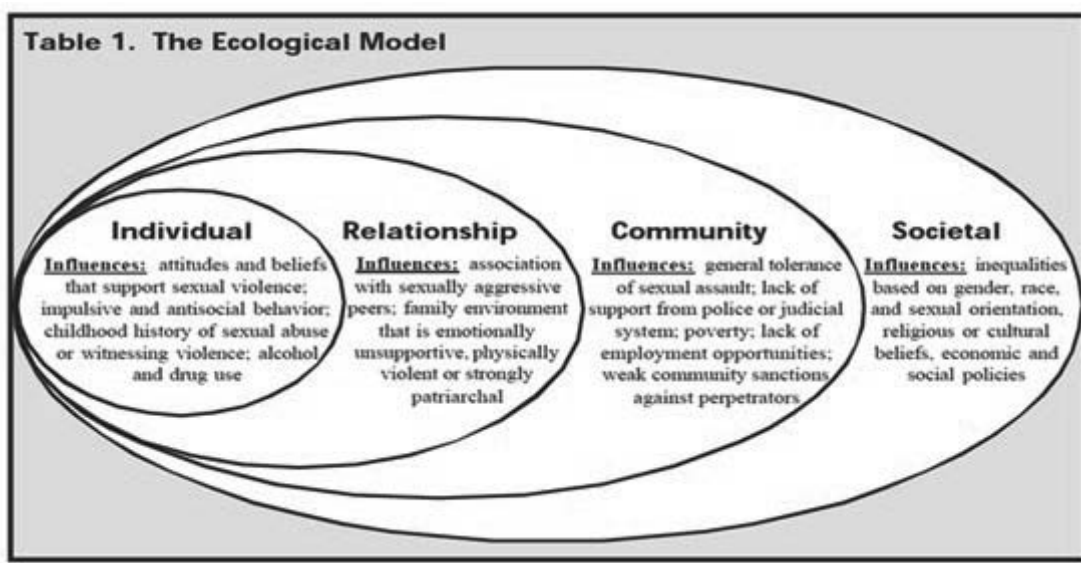
#### ***4.1.1 Ecological model***

The dynamics that support gender-based violence are complex – from poverty to alcohol abuse, patriarchal gender norms to children’s exposure to abuse. The drivers of GBV and interventions to prevent such violence can best be understood using the *ecological model of violence*, which maps how there is not one factor that “causes” violence, but rather how violence is a function of many factors that interact on the individual, relationship/family, community, and societal levels (Heise, 2012).

The ecological model<sup>36</sup> offers an approach to understanding GBV that not only addresses an individual’s risk of becoming a victim or perpetrator of violence, but also the norms, beliefs and social and economic systems that create the conditions for intimate partner and sexual violence to occur. At the core of the approach is a strong emphasis on the multiple and dynamic interactions among risk factors within and between its different levels.” This approach is particularly helpful in designing a comprehensive multi-sectoral violence prevention plan, as it addresses multiple levels and factors at once, namely the individual and family levels and the societal and structural levels, as described below.

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<sup>36</sup> WHO, 2010



**Individual and family levels.** Some of the key drivers of GBV include:

- Childhood exposure to domestic and sexual violence and harsh physical punishment
- Alcohol abuse
- Employment or unemployment related stress
- Limited educational attainment of both partners
- Access to guns.

**Societal and structural levels.** Some of the key driver of GBV include:

- Inequitable gender order: lack of economic rights for women, discriminatory family laws
- Gender norms: expectations of male dominance, power over women, sense of entitlement to women's bodies and labour, level of societal acceptance of marginalised groups such as LGBTI people.
- Poor legal regime: lack of social sanctions for violence (i.e. inadequate laws or poor implementation).
- Poverty and structural inequality may also play a contributing factor.

#### **4.1.2 Factors associated with violence with the strongest evidence base**

With the approaches of the ecological model and its various intersecting levels in mind, three main factors associated with violence have been identified and are discussed below due to their strong evidence base:

- **Childhood exposure to violence:** Men who witness or experience violence as boys are much more likely to engage in violence themselves as adults. A systematic review found that exposure to violence during childhood resulted in a 3 or 4-fold increase in the likelihood of intimate partner violence perpetration among men (Gil-Gonzalez et al, 2008). Moreover, girls who are survivors of witnessing or experiencing violence during childhood are also at an increased risk of becoming victims in future adult relationships. According to a KPMG report (2014), a woman who has experienced violence in childhood is 3.11 times more likely to have experienced violence in the last 12 months and 2.78 times more likely to experience violence in her lifetime; and a woman who has

witnessed violence in childhood is 1.89 times more likely to experience violence in her lifetime.

Potential interventions to mitigate this factor include: counselling for children experiencing violence, parenting programmes, as well as a governmental and legislative commitment to end corporal punishment in the home. A recent systematic review of parenting training and support programmes in low and middle-income countries found the former approach to be quite promising (Knerr, Gardner & Cluver, 2013). Though as yet there is no evidence of parenting programmes interrupting the GBV cycle.

- **Excessive alcohol consumption:** Alcohol abuse has been strongly associated with higher levels of violence in nearly every context in which it has been studied. A number of cross-sectional studies from low and middle-income countries have found that men who abuse alcohol are 1.6 to 4.8 times more likely to perpetrate intimate partner violence than their counterparts (WHO, 2010).

A range of public health interventions to decrease alcohol consumption include: reduction of outlet density, coupons to ration alcohol, higher taxes, and increased access to alcohol counseling and treatment. These have been associated with reduced GBV and child abuse rates (Jewkes et al., 2014).

- **Gender norms:** There is strong evidence that societal, community and individual norms around gender, masculinity and the acceptability of violence affect levels of violence. According to Michau et al. (2015):

*“Women’s and girls’ vulnerability to violence is deeply rooted in the greater power and value that societies afford men and boys in access to material, symbolic, and relational resources, compared with women. Simply stated, to be born a girl in a patriarchal society is a fundamental risk factor for various types of gender-based violence. This gender-based risk is often compounded by other forms of discrimination and inequality based on, for example, race, class, ethnicity, caste, religion, disability, HIV status, migration status, sexual orientation, and gender identity, which affect both exposure to violence and experiences of response.”* (pp. 1674)

Interventions – such as small group participatory workshops to challenge existing norms and large-scale education/entertainment campaigns – have been proven to change reported attitudes and beliefs, and in some cases reduce the incidence of gender-based violence.

There is also growing evidence regarding the association between women’s economic empowerment and levels of violence, but reviews by Heise (2012) and others have found the evidence for this factor to be more context-specific and complex. For example, in the short-term women’s economic empowerment can actually increase violence, often due to the shifting relational dynamics between her and her partner, and the socially and culturally entrenched norms of the breadwinner in a family. On the other hand, increased access to assets could reduce a woman’s risk of violence in many ways: “financial autonomy could enable women to leave a violent relationship; it could also increase a woman’s value to the household, and increase a woman’s relative bargaining power within the relationship. More broadly, reductions

in household poverty could reduce economic stress and so reduce potential triggers for conflict.” (Ellsberg, 2015) However, there is not a direct causal relationship between a women’s employment or assets and the likelihood that she will experience violence. Clearly other factors, such as the intimate partner’s education and employment status, community norms and the household’s overall economic security, are contributing factors.

## **4.2 Gaps and weaknesses**

While the government has made some significant progress over the last 20 years in developing laws and policies dedicated to improving the response to gender-based violence once it has occurred, they have lagged far behind on primary GBV prevention (i.e. Effort’s to enhance the protective factors that prevent GBV) and secondary prevention methods (i.e. interventions that aim to moderate the immediate effects of GBV). The 2006/07 365-Day National Action Plan outlined a progressive vision with a heavy focus on prevention, but implementation was weak and the action plan lost momentum. Thereafter, there has been no real concerted national effort to promote primary prevention.

In recognition of the importance of primary prevention efforts, the prevention programming field has seen a number of initiatives in recent years. However, many of these appear to suffer from similar challenges and issues (Michau, 2015; Ellsberg, 2015):

- Focus is often on awareness-raising, which while it can be a positive endeavour, a sole focus on awareness can detract from creating actual changes in the attitudes, norms, and behaviours that help to sustain GBV.
- Action often occurs without collective analysis. That is, programmes move directly into the action phase of work without first building a collective understanding of GBV and without developing skills and support necessary to make meaningful change.
- Efforts might become silo-ed. Programmes often work with a single population group or sector, without making the necessary connections with other groups, issues and institutions.
- Individual-level change can be less effective. Rather, community-level work is necessary to make broader change at a population level.
- Legislative reform addressing GBV is often not accompanied by budget allocations.
- Some interventions targeting men and boys have been successful in changing attitudes towards gender equality and the use of violence, yet they have not resulted in significant behavioural changes.

The development of the NSP for GBV presents an opportunity to make a critical national investment in not only response strategies, but also evidence-based primary prevention strategies.

## **4.3 Required Actions in the NSP**

The NSP should establish a GBV Prevention Fund that will manage a comprehensive portfolio of investments in interventions, and in research on the efficacy of those interventions. The National Council for Gender Based Violence should be revived and should be the primary



recipient and manager of these funds, distributing the funds to specific Departments and NGOs responsible for GBV prevention and intervention programmes.

There are many drivers of sexual and intimate partner violence in South Africa. However, there are also prevention programmes that work, both at an individual/family/community level and at societal/structural level. Both sets of interventions are essential in stemming the tide of GBV in our society. Some programmes that have been proven to work will be examined below. These include both primary and secondary prevention.

#### **4.2.1 Primary Prevention**

There are a number of evidence-based interventions that have been proven to disrupt the dynamics of violence and aid in the prevention of GBV. The WHO 2010 review of intimate partner and sexual violence prevention<sup>37</sup> found that the following interventions had clear or emerging evidence of effectiveness:

- Interventions for children and adolescents subjected to child maltreatment and/or exposed to IPV.
- School-based training to help children recognize and avoid potentially sexually abusive situations and to prevent dating violence.
- Empowerment and participatory approaches for addressing gender inequality: microfinance and gender-equality training.
- Empowerment and participatory approaches for addressing gender inequality: communications and relationship skills training.
- Reducing access to and harmful use of alcohol.
- Changing social and cultural gender norms through the use of social norms theory, media awareness campaigns, and working with men and boys.

Specific case studies that have shown to be effective in terms of primary prevention are as follows:

##### *4.2.1.1 Adolescent and school-based interventions*

School-based interventions, and interventions engaging adolescents, attempt to address gender norms and equality early in life, before gender stereotypes become deeply ingrained in children and youth. Some examples of such interventions are briefly described below.

<b>Programme</b>	<b>Description</b>
SKILLZ Street	The programme was designed by the South African Sport for Development (S4D) NGO, Grassroot Soccer. It is an after-school educational intervention programme, incorporates soccer into dynamic lessons, and provides safe

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<sup>37</sup> World Health Organization/London School of Hygiene and Tropical Medicine (2010) *Preventing intimate partner and sexual violence against women: taking action and generating evidence*.

	spaces. Uses Social Learning Theory. <a href="http://www.grassrootsoccer.org">www.grassrootsoccer.org</a>
Stepping Stones and Creating Futures	Stepping Stones and Creating Futures intervention is a participatory gender transformative and livelihoods strengthening intervention that aims to prevent Intimate Partner Violence and HIV-vulnerability amongst young women and men in urban informal settlements <a href="http://www.whatworks.co.za">www.whatworks.co.za</a>
Champion's League	Another programme designed by Grassroot Soccer in South Africa, it is an all-male intervention that uses the power of soccer to work with unemployed men (aged 18-25) and their peer networks. It focuses on preventing alcohol and substance abuse, GBV and HIV. <a href="http://www.grassrootsoccer.org">www.grassrootsoccer.org</a>
Rock Girl on the Road	A grassroots movement that started in Manenberg in the Western Cape, to inspire, encourage and invest in girl-initiated and girl-focused projects in South Africa's private and public sectors. <a href="http://www.rockgirlsa.org">www.rockgirlsa.org</a>
Breakaway	A soccer-themed video game created by Champlain College students under the sponsorship and guidance of the United Nations Population Fund (UNFPA), Population Media Center, and faculty and staff at the Emergent Media Center. <a href="http://www.unfpa.org">www.unfpa.org</a>
Soul City	South African programme which uses a series of radio and television episodes to highlight intimate partner violence, date rape and sexual harassment, among other social problems. The series is accompanied by information booklets that are distributed nationally. <a href="http://www.soulcity.org.za">www.soulcity.org.za</a>
One Man Can	Designed and implemented by South African NGO, Sonke Gender Justice. It aims to examine the links between gender, power, and health (alcohol use, violence, HIV/AIDS); reflect on masculinities as these are practiced in relationships with women, other men, and the broader community; and use a rights-based approach to reducing violence against women and HIV risks. <a href="http://www.genderjustice.org.za">www.genderjustice.org.za</a>
SASA! in Uganda	A community mobilization intervention that seeks to change attitudes, norms and behaviours that drive gender-based violence, gender inequality and HIV. <a href="http://raisingvoices.org">raisingvoices.org</a>

For more detailed information on these interventions, please visit their respective websites as given above. .

#### **4.2.2. Secondary Prevention/Response**

In addition to primary prevention of GBV, the Prevention Fund should consider investments in secondary prevention efforts that focus on improving the immediate response to violence. For example, many South African citizens are still unaware of the availability of HIV post-exposure prophylaxis (PEP), and are thus often unable to access it within the required 72 hours of an

assault. Time is often wasted waiting at the police station or clinic. Increased awareness of the urgency of accessing PEP should increase timely uptake after an assault.

Health care settings are often the first place that a survivor goes following GBV, and should therefore be home to innovations in GBV response. The secondary prevention efforts of the Prevention Fund can focus on safe identification of survivors, rapid response, and holistic medical care that includes onward referral to other services. This reiterates the importance of maintaining and developing effective TCCs.

Citizens are also often not clear about their rights within the criminal justice system. They are often unsure about what role they are expected to play and what services they can rightfully expect (Bornman et al., 2013). Dey et al. (2011) found that victims' lack of knowledge about the criminal justice system, and their rights within it, was a major challenge. Existing legislation does not sufficiently compel officials to inform victims about their rights, an area that needs to be strengthened to ensure victims are well informed and aware of their rights at all levels – from reporting the crime, to the prosecution of the perpetrator.

Criminal prosecution can be an important source of secondary prevention, as it serves as a deterrence for future potential perpetrators. However, the prevalence of GBV within prisons cannot be ignored. Prisons are notorious for acts of violence and rape, with men/boys and transgender persons being most at risk. Thus, whilst criminal prosecution should be encouraged as a form of punitive justice for victims of GBV, cognizance must also be taken of the conditions within prisons that fuel and exacerbate the incidence of GBV.

The DSD has recently established the GBV Command/Call Center – a 24-hour call centre dedicated to provide support and counselling to victims of gender based violence. The idea is commendable, as it is an integrated and holistic approach to dealing with GBV. However, there is some concerns as to its effectiveness as well as its reach in terms of people's awareness of its existence.

#### **4.2.3 Investment**

The Fund should invest in efforts to popularize the law for citizens through handbooks, newspaper supplements, websites, mass media, and radio and television programmes – in addition to in-school education programmes for children and support groups for adults. Through this knowledge, individuals will be informed and aware of their rights and the procedures to follow should they be victims of GBV at some stage in their lives.

Investment must also be made in expanding the evidence base of what works, through investing in research and rigorous evaluation of new and innovative interventions (such as the use of sport, communications and technology). Such research should focus on the discovery and development of new interventions and strategies of response to GBV, and the advancement of optimization studies on the implementation and impact of these innovations. Currently, the majority of research on violence prevention is happening in high-income countries. South Africa should lead the way on supporting new research in this field, which will in turn strengthen the national and global response to GBV.

## **PRIORITY 5: ESTABLISH ROBUST ACCOUNTABILITY MECHANISMS AND SUFFICIENT RESOURCES**

There is a common set of challenges across GBV prevention and response efforts that must be addressed in the NSP, including: lack of resources, insufficient accountability mechanisms and poor information and performance management systems. The NSP must establish a new architecture to monitor implementation and effectiveness at both the departmental and cross-sectoral levels, including a reconstituted robust National Council on GBV to guide and be responsible for the national response.

### **5.1 Current Gaps and Weaknesses**

#### ***5.1.1 Resources and Budgeting***

Most Departments do not have the funds or staff capacity needed to execute their legal responsibilities. There is no multi-sectoral budget request process for GBV, nor are Departments required to report on what they are spending specifically on GBV programmes.

For example, the DoJ&CD has a shortage of social workers to implement DVA legislation because they are forced to approach Treasury separately for budgets, rather than through a multi-sectoral process. As they are not the lead Department, they may have obligations under the legislation, but are not allocated resources to act on those obligations (Thorpe, 2014).

#### ***5.1.2 Accountability***

Required Departmental reporting to Parliament is often late and inconsistent and Portfolio Committees do not carefully review what is reported. Additionally, complaints systems for victims are weak or non-existent.

Parliamentary Portfolio Committees are overburdened and understaffed and thus often do not sufficiently scrutinize what is submitted to them. For example, SAPS reporting on its obligations under the DVA and SOA have been inconsistent and are of poor quality (i.e. 2 pages reciting obligations under DVA rather than reporting on actual services provided).

Part of the challenge is that there is not one specific Committee with a mandate for women's rights and gender equality nor joint sittings to exercise oversight, as the DVA and SOA involve many Departments across the board. Additionally, civil society does not sufficiently serve as a watchdog, tracking progress and reporting to Parliament by holding Departments accountable when they neglect their responsibilities.

#### ***5.1.3 Information and Coordination***

The lack of systematic data collection inhibits proper assessment of service delivery and interventions. Furthermore, the lack of information integration across Departments makes it difficult for victims and service providers to track a case through the system, further enforced by a lack of leadership from coordinating bodies.

##### ***5.1.3.1 Lack of Integrated Inter-Departmental Information System***

It is quite difficult to track a case through the system, as victims are assigned different case numbers at the police station, health facility and court. Thus one incident will have multiple case numbers and files. This not only makes it difficult for a victim to track their own case, but also limits coordination across Departments, including following-up and budgeting. There has been some discussion of establishing an Integrated Justice System in order to enhance information systems (Wakefield, 2014), but it is unclear how far that development has gone. The DoJ&CD has said they are working on an improved integrated case flow management system, but it is unclear from publicly available information where progress stands. In addition, it is unclear if/how their current Integrated Case Management System (ICMS) is connected with SAPS and DOH systems.

#### *5.1.3.2 Limited Departmental Data Systems*

All key government agencies have demonstrated serious limitations in appropriately collecting data and reporting on their work. This makes it very difficult to track changes in performance over time and to identify areas where efficiencies can be gained across departments.

- **SAPS:** SAPS has produced inconsistent reporting from year to year (as political priorities change), making it difficult to observe trends. Since 2007, SAPS has only collected data on “sexual offences” as a whole – without a specific breakdown on rape, sexual assault, sexual grooming and others (there are more than 30 types of sexual offences). SAPS has access to crucial disaggregated information, but this is not being recorded or collated. Additionally, the NPA said it does not keep these records and refers requests to SAPS. This creates a cycle of unaccountability in record keeping, while SAPS data collection through incident books, dockets and other management systems are not coordinated or synced with the NPA system (Parliament Research Unit, 2013; Bornman et al., 2013; Wakefield, 2014).
- **NPA:** The Parliament Research Unit highlighted a number of concerning issues with how the NPA collects and reports data. NPA self-reported conviction rates are inflated and do not accurately measure the number of cases opened compared to the number of convictions – of all cases reported only 6.9% lead to convictions, with many reported cases never going to trial. There are also big gaps in data, for example discrepancies between the total number of reported cases and the sum of cases withdrawn and cases that went to trial. In total there were 176,699 cases unaccounted for between 2007/08 and 2010/11. There are also disparities between convictions for sexual offences and people actually in prison for sexual offences.

#### *5.1.3.3 Lack of Leadership from Coordinating Bodies*

The Inter-Sectoral Committee for the Management of the Sexual Offences Matters has been slow and unresponsive. It took six years to finalize the National Policy Framework (NPF) – completed in 2013 – which was required by the 2007 SOA to coordinate the multi-sectoral services mandated by the SOA. The new NPF outlines coordination structures at the national and provincial levels, but not at the local levels. According to the SOA (ss 62 and 63), the Inter-Sectoral Committee was meant to provide a monitoring framework overseen by the most senior government officials. This structure [would aim] to eradicate the fragmented nature of service

delivery. It is unclear to what extent this is actually occurring and to what degree the Five-Year Inter-Departmental Plan is being monitored or adhered to.

## **5.2 Required Action in the NSP**

### ***5.2.1 Resources and Budgeting***

- Departments must be required to report on the extent of their budgeting specifically towards the DVA and SOA implementation. They should also report on the full extent and use of donor funding to support DVA/SOA activities.
- Budget must be allocated to address the lack of resources available to the police and strategies must be put in place for dealing with high caseloads, delays, language barriers and the lack of accessibility of trained police officers.
- Resources must be allocated to the NPA to allow for high caseloads, lack of equipment and court backlogs to be addressed and strategies put in place for doing so.
- The issue of lack of funding to NGO service providers needs to be addressed so that these services can become part of the court's services to witnesses.
- The private sector should be encouraged to contribute more significantly to women's well-being by increasing their support to services for survivors of rape and domestic violence. In 2012, the corporate sector gave R3 billion through Corporate Social Investment (CSI) – 15% of this went to social services (R300 million), of which only 5% (R15 million) went to victim services (Thorpe, 2014a).
- A detailed budget and financial plan must be provided for in the NSP.

### ***5.2.2 Accountability***

#### *5.2.2.1 Reporting Requirements and Processes*

- Ensure that legislated commitments on GBV form part of Departments' key performance indicators. Policies and Directives regulating conduct in GBV matters should be legislated into positive duties. These can then be enforced with disciplinary procedures against officials. They can form part of performance management procedures at every level, and there can be sanctions for non-compliance.
- Oversight committees and civil society should exercise caution with regards to the interpretations offered by Departments of their particular statistics, and may wish to consider obtaining separate external analyses of this information.
- Create a Portfolio Committee in Parliament dedicated specifically to women's rights and gender equality. The workload of the current PCs is an obstacle to efficient and timely oversight.
- Invite a diversity of NGOs and other civil society groups to comment on and engage with all of these processes, particularly where they have knowledge that could enhance a Portfolio Committee's ability to carry out their evaluative functions.
- Create a civil society report monitoring committee that tracks whether reports are being submitted on time. When reports are not submitted or those that are submitted are

inadequate, the committee would follow up in a timely manner with the relevant Department.

#### *5.2.2.2 Complaints Management*

- Set up effective complaints mechanisms such as an independent Victims' Ombud with far reaching powers to handle complaints across sectors. This structure could be tasked with establishing and maintaining the integrated information management system.
- Police officials must be held accountable for their non-compliance through internal mechanisms put in place for this. Victims must also be properly informed of these complaints mechanisms and how to use them.

### **5.2.3 Information and Coordination**

#### *5.2.3.1 Improving Cross-Departmental Coordination and Information Management*

- Develop a single integrated information management system between police, health facilities and courts to be used for tracking cases, updating victims and officials with information on individual cases, investigating complaints about cases and measuring the effectiveness of services in place to address high levels of sexual offences. SAPS and other Departments should prioritize the implementation of the Integrated Justice System.
- Provide victims with a "Road to Justice" card, like a "Road to Health" card so they can track information about their case.
- Put guidelines in place for formalized inter-sectoral collaboration ensuring coordination between service providers at police stations, health facilities and courts. These guidelines should be adopted by the Inter-sectoral Committee on Sexual Offences.
- SAPS statistics that are reported to the public annually should be disaggregated by the type of sexual offence, by sex and by age.
- Conviction rates reported annually by the NPA should be disaggregated by the type of sexual offence, by sex and by age.
- Coordination structures are required not just at the national and provincial level, but also at a local level.

#### *5.2.3.2 Creating an Independent Representative Structure to Oversee and Lead the*

- Reform and revitalize the National Council on Gender-Based Violence (NCGBV) as the primary coordinating, leadership, oversight, support and engagement body for the NSP and associated new funding for GBV. This structure should be independent and potentially modeled on SANAC's oversight of the national AIDS response.
- The Council should coordinate and delegate responsibilities and activities to various stakeholders and levels of government, while maintaining control of all high-level decisions concerning the implementation of the NSP.
- Decisions of the Council should be implemented by an adequately resourced and

technically expert central government unit with cross-portfolio responsibilities and a strategic mandate to drive action in ensuring that the NSP's actions and strategies are developed and implemented in an integrated and coherent way.

- The Council should support local organizations and networks to drive activity at the community level and ensure coordinated action across different geographical locations.



# RECOMMENDATIONS

## 1. To the Government of South Africa:

### *1.1 Information and Coordination*

- Measure the scale of the problem of GBV in South Africa and agree on how progress in reducing incidence of GBV will be tracked over time.
- Develop a single integrated information management system between police, health facilities, social workers, and courts to be used for tracking cases, updating victims and officials with information on individual cases, investigating complaints about cases and measuring the effectiveness of services in place to address high levels of intimate partner and domestic violence, including sexual offences. SAPS and other Departments should prioritize the implementation of the Integrated Justice System.

### *1.2 Accountability*

- Create a Portfolio Committee in Parliament dedicated specifically to women's rights and gender equality. The workload of the current PCs is an obstacle to efficient and timely oversight. All relevant PCs should invite a diversity of NGOs and other civil society groups to comment on and engage, particularly where they have knowledge that could enhance a Portfolio Committee's ability to carry out their evaluative functions of key Departments and legislation.
- Reconstitute and revitalize the National Council on Gender-Based Violence (NCGBV) as the primary coordinating and oversight body for the National Strategic Plan and associated new funding for GBV.
- Ensure that legislated commitments on GBV form part of Departments' key performance indicators. Policies and directives regulating conduct in GBV matters should be legislated into positive duties. They should form part of performance management procedures at every level, and there should be sanctions for non-compliance.

### *1.3 Funding*

- Dramatically increase funding for the overall national GBV response through ring-fenced allocations, based on the costing of the NSP. Additional funds must specifically be allocated to address the lack of resources available to the police and strategies must put in place to use these funds to deal with high caseloads, delays, language barriers and the lack of accessibility of trained police officers. Resources must also be allocated to reduce high caseloads, lack of equipment and court backlogs in the NPA. Funding for NGO service providers must also be significantly increased in order to expand the range and improve the quality of services available to survivors.
- Require Departments responsible for sexual offences and domestic violence response to clearly budget for and sufficiently resource their services. Departments' budgeting and actual spending on these services should be clearly and publically reported, as should any donor assistance they use towards these services

- Review, rationalize and track all government expenditure with regards to GBV – particularly the DOH, the Department of Defence, the Department of Education, the Department of Correctional Services, the Department of Women, and the Department of Traditional Affairs, to name a few. In particular, the Department of Social Development (DSD) funding model for survivor services should be reviewed. DSD expenditure on programs needs to be closely monitored to ensure that legislated or policy-based social welfare services are taking clear and obvious precedence over programs that are not mandated by law or policy. Funds for these services must also be ring-fenced to prevent their being diverted elsewhere.
- Establish a GBV Prevention Fund that will support the scale up of evidence-based interventions, as well as programmes that need to be researched and piloted. The National Council for Gender Based Violence should be the primary recipient and manager of these funds, which could then grant to specific government Departments, community based organisations and NGOs.

#### **1.4 Service Provision**

- Expand training (technical expertise as well as sensitivity training) for front-line rape responders within different government departments and civil society on their legal obligations, as well as comprehensive GBV response.
- Institutionalize FCS Units in police stations and Sexual Offence Courts within the NPA, which have been proven more effective than mainstreamed services.
- Ensure that psycho-social services are offered to survivors of GBV, through coordination of the DOH and DSD.
- Put guidelines in place for formalized, intersectoral collaboration ensuring coordination between service providers at police stations, health facilities and courts. These guidelines should be adopted by the Intersectoral Committee on Sexual Offences.

## **2. To South African Civil Society:**

- Create a monitoring committee that tracks whether Departmental reports on DVA and SOA implementation are being submitted on time. When reports are not submitted or those that are submitted are inadequate, the committee should follow up in a timely manner with the relevant Department, or with public advocacy in the face of no response.
- Be more critical of the interpretations offered by departments of their particular statistics, request explanations, and consider obtaining separate external analyses of this information.
- Play an active and engaged role in the relevant Portfolio Committees and the National Council on GBV.
- Document the programmatic interventions to prevent and mitigate the impact of GBV in ways that produce credible evidence of what works for scale-up.
- Create and engage in GBV support groups and educational programmes, in an effort to challenge prevailing social norms and to provide care to GBV victims/survivors.

### 3. To the Private Sector in South Africa:

- Contribute specifically to the support and management of a GBV Fund.
- Provide project-management and technical support to coordination and integration of services (leveraging private sector best practices).
- Create programmes and put in place health and safety measures that minimize opportunities for GBV, especially in communities where private sector activities create environments conducive to GBV (e.g. mines, large-scale infrastructure projects, etc.). Also employee wellness programmes in which screening for GBV/IPV form part of the programme and awareness training for HR staff
- Contribute more significantly to women’s wellbeing by increasing support to services for survivors of rape and domestic violence. These funds could be donated directly to service providers, or ideally would be channeled through a centralized fund, managed by the NCGBV.

## CONCLUSION

GBV is a disturbing phenomenon that is both persistent and prominent throughout the world. Its prevalence appears to transcend borders, culture, race and gender. In the past, violence against women and girls was the key issue, and many international and domestic legal instruments were geared towards its prevention and eradication. In recent years, however, concern has been broadened to a wider variety of victims and acts of victimisation. ‘Gender-based violence’ has subsequently become an umbrella term, including all forms of physical, verbal, emotional, economic, and sexual harm perpetrated against women, girls, men, boys, LGBTI persons, and other vulnerable groups (such as sex workers, refugees, prisoners, and HIV-positive persons).

South Africa has some of the highest rates of GBV in the world. There have been several initiatives undertaken by the government to address GBV, however these have either been inadequate or ineffective. In response to this, as well as to the surging scope of GBV, we call upon civil society organisations and government to come together to implement this NSP for GBV.

#### **The NSP calls for the following:**

- 1) Recognizing the inadequacies prevalent in contemporary definitions of GBV, the NSP seeks to adopt a modified, more inclusive, and holistic definition of GBV.
- 2) Existing laws and policies should be revised, adequately implemented and compliance therewith should be monitored.
- 3) Expand and ensure the provision of psycho-social services to survivors of GBV.
- 4) Prioritize funding for GBV research, prevention, intervention programmes.
- 5) Ensure the existence and sustainability of accountability mechanisms with regards to GBV programmes and the NSP as a whole.
- 6) A costed and fully-funded NSP for GBV.

Through the adoption of this NSP, the hope is that both government and civil society will have a better understanding of the prevalence of GBV in South Africa, and the shortcomings in dealing with this critical issue. Furthermore, effective implementation of the recommendations contained within the NSP for GBV will hopefully achieve the desired outcomes of an improvement in services offered to survivors of GBV, and ultimately a decrease in GBV in South Africa.

The Stop Gender Violence Campaign welcomes the Department of Social Development's initiative in starting the consultative process with workstreams for input into the Integrated Programme of Action addressing Violence Against Women and Children (IPA) document, and will endeavour to collaborate with the Department.

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## Appendix 1: Summary of Existing Laws and Policies addressing GBV

### *South African Constitution (1996)*

- The Bill of Rights includes: the right to equality; the right to dignity and to have one's dignity respected and protected; the right to freedom and security of person (i.e. the right to be from all forms of violence and the right to bodily and psychological integrity); the right to privacy; the right of children to be protected from abuse; the right to have access to health care; the right to have access to information; the right to just administrative action; and the right of access to courts
- Under section 27, citizens have the right to emergency health services. However, there is currently no case law on whether rape care or PEP are considered emergency services.

### *Domestic Violence Act (1998)*

- This Act places positive duties on police regarding the protection of persons in a domestic relationship (which is defined broadly to include marriage, domestic partnership between the same or opposite sex partners, children, family members, roommates, and casual dating relationships).
- The Act broadly defines domestic violence in order to include an extensive list of abuses.
- Complainants may apply for protection orders in order to force a separation between themselves and their abuser. The Act places positive duties on court officials to hear cases pertaining to domestic violence and enact the protection orders.

### *Sexual Offences Act (2007)*

- This Act expands the definition of rape (e.g. it ensures rape within marriage is classified as rape) and creates a number of new crimes. The Act removes the cautionary rule, where rape survivors' testimony was to be regarded with suspicion. In addition, the Act specifies minimum sentences for certain categories of sexual violence, including minimum life sentences in cases of rape where the victim was raped more than once, is under the age of 16, is physically disabled or mentally ill and several other circumstances.
- In addition the SOA specifies a range of responsibilities and requirements for the South African Police Service, the health system, and the judiciary:

#### **SAPS Requirements**

- *National Instructions:*<sup>38</sup> The National Commissioner of SAPS is required to issue national instructions on sexual offences. These instructions include those on: how police should deal with the reporting of a sexual offense, how these cases should be investigated; when/why cases may be discontinued; when police may apply for perpetrator HIV testing and how to deal with applications for compulsory HIV testing including confidentiality issues; how police should execute court orders

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<sup>38</sup> Written in 2008 but not publicly published until 2011.

- *Training*:<sup>39</sup> Requires development of training courses to maximize the number of police officers who can deal with sexual offences. SAPS must create, implement and report on trainings.
- *Reporting*: Annual reporting to Parliament on implementation of SOA

### **Healthcare Provisions**

- *Provision of PEP*
  - No right to PEP in the law [“victims *may* receive PEP”], thus unclear whether rape survivors’ entitlement to PEP is actionable.
  - No treatment clause that guarantees a right to other treatment in addition to PEP, but survivors must be informed of the need to obtain medical advice and assistance regarding STIs.
  - Despite misperceptions among healthcare workers, provision of PEP at a health facility does not depend on laying a charge with the police first.
- *Designation of health facilities for forensic exams and medical treatment of survivors*
  - DOH National Policy Guidelines, National Instructions and National Directives focus on advising caregivers about working with the court on evidence gathering; uniform procedures on forensic exams – how to treat victims etc.
- *Compulsory HIV testing of alleged offenders*
  - Duties of police and medical professionals regarding HIV testing of perpetrators is outlined in law (not left to policy) – but does not specify sufficiently about required training for these professionals.

### **Judicial System Provisions**

- Includes a set of revisions to evidentiary rules that had impeded successful prosecution in the past.
- Requires the creation and regular review of a National Policy Framework<sup>40</sup>
- Inter-sectoral Committee established to measure progress on NPF objectives.
- Requires Parliamentary reporting.

### ***National Policy Framework for the Management of SOA (2013)***

- The NPF commits to the “progressive realization” of all the requirements throughout the document, but provides no timelines for that realization.
- Acknowledges that “interventions must be appropriately costed and resourced”, but does not offer sufficient specifics.
- Deemed insufficient by several civil society actors.

### ***Judicial Matters Second Amendment Act (2013/2014)***

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<sup>39</sup> There have been repeated public acknowledgements of the inadequacy of training. No specific mention in budgeting of funds required to implement DVA and SOA. SAPS has sought foreign donor funds (USAID) to support some activities

<sup>40</sup> SOA was implemented in 2007, but the draft NPF was not presented until June 2012 and finally approved/published until September 2013.

- Signed in January 2014, providing legal framework for establishment of Sexual Offences Courts. The law safeguards the future existence of these courts, but does not provide a clear roadmap for implementation, standards, functioning for DOJCD.

***Additional Relevant Laws and Policies:***

**Medium Term Strategic Framework for 2009-2014**

- Crime and corruption listed as a national priority in MTSF, as well as the more recent National Planning Commission.

**Prevention and Combating of Trafficking in Persons Act 7 of 2013**

- This Act provides for the prevention of the crime of trafficking and for the protection and assistance to victims of trafficking
- Trafficking is an example of GBV, therefore this Act is relevant in the consideration of GBV eradication and prevention strategies

**Protection from Harassment Act 17 of 2011**

- Harassment is an example of GBV
- This Act provides for complainants to apply to the court for a protection order – the court must consider the application and may issue an interim protection order, which may be finalized at a later date

**Child Justice Act 75 of 2008**

- This Act provides for the protection of rights of children; and the special treatment of children in the justice system, including the use of restorative justice processes (such as diversion)
- This Act applies to children under the age of 10, up to the age of 18, who have committed a criminal offence

**Service Charter for Victims of Crime (Victims' Charter) of 2004**

- Focuses on treating victims with respect and dignity; encourages participation of the victim in the process; and ensures protection and support services for victims
- Minimum Service Standards for Victims of Crime was developed in conjunction
- Critiqued as not having much weight because there was no associated budget or implementation plan (Dey 19)

**Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000**

- This Act defines discrimination on the ground of gender to include gender-based violence.

**Film and Publications Act 65 of 1996**

- Provides for the establishment of the Film and Publication Board whose role includes combating child pornography and the negative stereotyping and representation of women

**Criminal Procedure Act 51 of 1997**

- This Act further amended the provisions relating to bail to ensure that persons who are accused of having committed serious offences are not released on bail. These offences often involve women and children as victims.

**South African Police Services Act 68 of 1995**

- National Commissioner must develop an annual plan with priorities and objectives for the next fiscal year, and a report on that plan must be submitted within 3 months of the end of the fiscal year.

## **Appendix 2: GBV-related commitments ratified by the South African government**

### ***UN COMMITMENTS***

#### **Report of the UN High Commissioner for Human Rights: Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity (2011)**

- State have several obligations to prevent violence and discrimination based on sexual orientation and gender identity. Namely: (1) To protect the right to life, liberty and security of persons irrespective of sexual orientation or gender identity; (2) To prevent torture and other cruel, inhuman or degrading treatment on grounds of sexual orientation or gender identity; (3) To protect the right to privacy and against arbitrary detention on the basis of sexual orientation or gender identity; (4) To protect individuals from discrimination on grounds of sexual orientation and gender identity; (5) To protect the right to freedom of expression, association and assembly in a non-discriminatory manner.
- All people, including lesbian, gay, bisexual and transgender (LGBT) persons, are entitled to enjoy these protections.

#### **Beijing Declaration and Platform of Action (1995)**

- The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all States and should be addressed
- Developing a holistic and multidisciplinary approach to the challenging task of promoting families, communities and States that are free of violence against women is necessary and achievable.
- In addressing violence against women, governments and other actors should promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes
- Action to be taken by governments:
  - 1) Condemn violence against women and refrain from invoking any custom, tradition or religious consideration to avoid their obligations with respect to its elimination
  - 2) 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;
  - 3) 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;
  - 4) Adopt and/or implement and periodically review and analyse legislation to ensure its effectiveness in eliminating violence against women;
  - 5) Work actively to ratify and/or implement international human rights norms and instruments as they relate to violence against women;
  - 6) Implement the Convention on the Elimination of All Forms of Discrimination against Women;



- 7) Promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes related to violence against women;
  - 8) Provide women who are subjected to violence with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies for the harm they have suffered and inform women of their rights in seeking redress through such mechanisms;
  - 9) Enact and enforce legislation against the perpetrators of practices and acts of violence against women, such as female genital mutilation, female infanticide, prenatal sex selection and dowry- related violence, and give vigorous support to the efforts of non-governmental and community organizations to eliminate such practices;
  - 10) Formulate and implement, at all appropriate levels, plans of action to eliminate violence against women;
  - 11) 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;
  - 12) 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;
  - 13) Ensure that women with disabilities have access to information and services in the field of violence against women;
  - 14) 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;
  - 15) Adopt laws, where necessary, and reinforce existing laws that punish police, security forces or any other agents of the State who engage in acts of violence against women in the course of the performance of their duties;
  - 16) Allocate adequate resources within the government budget and mobilize community resources for activities related to the elimination of violence against women;
- Action to be taken by government, CSOs, NGOs, educational institutions, and the public and private sector:
    - 1) Provide well-funded shelters and relief support for girls and women subjected to violence, as well as medical, psychological and other counselling services and free or low-cost legal aid
    - 2) Establish linguistically and culturally accessible services for migrant women and girls
    - 3) Support initiatives of women's organizations and non-governmental organizations all over the world to raise awareness on the issue of violence against women and to contribute to its elimination;
    - 4) Organize, support and fund community-based education and training campaigns to raise awareness about violence against women;

- 5) Recognize, support and promote the fundamental role of intermediate institutions, such as primary health-care centres, family-planning centres, existing school health services, mother and baby protection services, centres for migrant families and so forth in the field of information and education related to abuse;
- 6) Organize and fund information campaigns and educational and training programmes in order to sensitize girls and boys and women and men to the personal and social detrimental effects of violence in the family, community and society;
- 7) Disseminate information on the assistance available to women and families who are victims of violence;
- 8) Provide, fund and encourage counselling and rehabilitation programmes for the perpetrators of violence and promote research to further efforts concerning such counselling and rehabilitation so as to prevent the recurrence of such violence;
- 9) Raise awareness of the responsibility of the media in promoting non-stereotyped images of women and men

### **UN Declaration on the Elimination of Violence against Women (1993)**

- States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women:
  - 1) Refrain from engaging in violence against women;
  - 2) Prevent, investigate and punish acts of VAW;
  - 3) Develop sanctions to punish and redress the wrongs caused to women
  - 4) Develop national plans of action to promote the protection of women against any form of violence
  - 5) Develop preventative approaches;
  - 6) Include in government budgets adequate resources for their activities related to the elimination of violence against women;
  - 7) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;
  - 8) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;
  - 9) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;
  - 10) Foster international and regional cooperation with a view to defining regional strategies for combating violence, exchanging experiences and financing programmes relating to the elimination of violence against women; and promote meetings and seminars with the aim of creating and raising awareness among all persons of the issue of the elimination of violence against women.

### **Vienna Declaration and Programme of Action (1993)**

- The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.
- Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.

#### **UN Convention on the Rights of the Child (1990)**

- States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse
- States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
- States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.
- States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

#### **UN Convention on the Elimination of All forms of Discrimination against Women (1981)**

- States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women
- States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary 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 men and women; and to suppress all forms of traffic in women and exploitation of prostitution of women.

#### **International Covenant on Civil and Political Rights (1976)**

- States Parties undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

#### **International Covenant on Economic, Social and Cultural Rights (1976)**

- States Parties undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

#### **Universal Declaration of Human Rights (1948)**

- Everyone has the right to life, liberty and security of person. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

## **AU COMMITMENTS**

### **AU Gender Policy (2009)**

- The desired effect and impact of this Policy is to offer opportunities for empowerment of women, guarantee their protection against violence and rape, as well as ensure their participation in public and economic life. To achieve this, a paradigm shift is inevitable.
- One objective of the Policy is to promote the development of guidelines and enforcement of standards against sexual and gender-based violence and gender insensitive language and actions in the workplace.

### **African Youth Charter (2006)**

- Include as part of the education curricula issues such as HIV/AIDS, reproductive health, substance abuse prevention and cultural practices that are harmful to the health of young girls and women.
- State parties should eliminate all traditional practices that undermine the physical integrity and dignity of women.
- State Parties should enact and enforce legislation that protects girls and young women from all forms of violence, genital mutilation, incest, rape, sexual abuse, sexual exploitation, trafficking, prostitution and pornography.

### **AU Solemn Declaration on Gender Equality in Africa (2004)**

- Initiate, launch and engage within two years sustained public campaigns against gender based violence as well as the problem of trafficking in women and girls.
- Reinforce legal mechanisms that will protect women at the national level and end impunity of crimes committed against women in a manner that will change and positively alter the attitude and behaviour of the African society.

### **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)**

- States Parties undertake to combat all forms of discrimination against women at all levels and in all fields: ensure that men and women have the same rights; and enact and effectively implement appropriate laws or regulatory measures that prohibit and punish harmful practices which endanger the health and general well-being of women.
- Women shall be protected against all forms of violence, particularly sexual violence such as rape, or sexual harassment.
- States Parties shall take appropriate and effective measures to:
  - 1) Enact and enforce laws to prohibit all forms of violence against women including physical violence such as beating a woman, verbal abuse such as slurs or harassment, and rape, sexual relations that men force on women without their consent, be it in the marital home, workplace, on the farm or any other place;
  - 2) Enact such laws as may be necessary in society to ensure the existence of economic resources and measures to ensure the prevention of all forms of violence, all forms of suffering against women;

- 3) Identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;
  - 4) Punish the perpetrators of violence against women;
  - 5) Establish mechanisms and accessible services for information distribution, rehabilitation and reparation for female victims of violence against women;
  - 6) Prevent and condemn trafficking in women, including women and girls that are sent from one village to another or from one country to another to be sexually or economically exploited. Women exposed to this type of danger should be protected. Those who traffic in or exploit women should be punished;
  - 7) Prohibit all medical or scientific experiments on women without their informed consent;
  - 8) Provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women;
- States Parties shall prohibit and condemn all forms of harmful practices which negatively affect women's human rights and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including: creation of public awareness; prohibition of female genital mutilation; protection of females at risk of being subjected to harmful practice; and assist survivors by treating them in hospitals and taking legal action.
  - Furthermore, States must: protect women, especially girls, from all forms of abuse, including sexual harassment in schools; provide protection to elderly women against violence, including sexual abuse, discrimination based on age and the right to be treated with dignity; and ensure the right of women with disabilities to freedom from violence, including sexual abuse.

#### **African Charter on the Rights and Welfare of the Child (1999)**

- States Parties shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.
- States Parties shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular: those customs and practices discriminatory to the child on the grounds of sex or other status.
- States Parties shall undertake to protect the child from all forms of sexual exploitation and sexual abuse (i.e. coercion to engage in sexual activity; pornography; prostitution)

#### **African Charter on Human and People's Rights (1986)**

- The State shall ensure the elimination of every discrimination against women and also censure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

#### ***SADC COMMITMENTS***

#### **SADC Protocol on Gender and Development (2008)**

- State Parties shall enact and enforce legislative and other measures to eliminate GBV
- State Parties shall adopt laws, policies and programmes to ensure the development and protection of the girl child by protecting girls from...all forms of violence including sexual abuse
- State Parties shall provide support services, namely: accessible information on services available to survivors of GBV; accessible, effective and responsive police, prosecutorial, health, social welfare and other services to redress cases of GBV; accessible, affordable and specialized legal services to survivors of GBV; specialized facilities (including support mechanisms) for survivors of GBV; and effective rehabilitation/reintegration programmes for perpetrators of GBV
- State Parties shall introduce, promote and provide gender education and training to service providers involved with GBV; and community sensitisation programmes
- State Parties shall work to achieve the following:
  - 1) Adopt and implement gender sensitive educational policies/programmes addressing gender stereotypes in education and gender based violence
  - 2) Enact and enforce legislation prohibiting all forms of gender based violence; and ensure that perpetrators of GBV (i.e. domestic violence, rape, femicide, sexual harassment, female genital mutilation) are tried by a court.
  - 3) Ensure that laws on GBV provide for the comprehensive testing, treatment and care of survivors of sexual offences.
  - 4) Review and reform their criminal laws and procedure applicable to cases of GBV.
  - 5) Put mechanisms in place to prevent and deal with trafficking.
  - 6) Put in place mechanisms for the social and psychological rehabilitation of perpetrators of GBV.
  - 7) Ensure that cases of GBV are conducted in a gender sensitive environment.
  - 8) Establish special counseling services, legal and police units to provide dedicated and sensitive services to survivors of GBV.
  - 9) Take measures to discourage traditional norms which legitimize and exacerbate the persistence/tolerance of GBV with a view to eliminate it.
  - 10) Introduce and support gender sensitization and public awareness programmes aimed at changing behaviour and eradicating GBV.

### **SADC Gender Policy (2007)**

- SADC Member States shall promote an environment of zero tolerance to gender based violence at all levels in order to provide a secure region where women, men, girls and boys are safe and free to equitably contribute to and benefit from the region's development.
- A key Policy objective is to prevent and eliminate all forms of gender based violence in public and private spheres. To achieve this objective SADC members will undertake to:
  - 1) Promote the enactment, strengthening and implementation of laws against gender based violence, particularly domestic violence, sexual offences, femicide and human trafficking, enforcing stiff penalties for perpetrators;
  - 2) Compile a regional directory of decided cases on gender based violence for reference by magistrates and judges;
  - 3) Establish codes of conduct in all institutions at national level to define and prohibit sexual harassment in all spheres and design deterrent sanctions thereto;

- 4) Adopt specific measures for ensuring provision of post exposure prophylaxis to survivors of sexual assault and provide counseling services and information centres to create awareness of available services;
- 5) Facilitate increased recognition of violence against women, girls and boys as a social problem requiring commitment from government, civil society and all citizens to eliminate it
- 6) Conduct gender sensitization and public awareness campaigns directed towards both women and men to enable greater awareness of legal, human and women's rights, and the legal and social-economic consequences of abusive behavior, as well as the impact on future generations;
- 7) Establish partnerships among the public sector, civil society, private sector, local communities, those in leadership positions and other institutions such as the media and development partners to formulate and implement integrated gender based violence programmes including counseling, legal, medical and police protection units;
- 8) Provide the review of examinable school curriculum to include the concept of gender based violence and other forms of violence and their devastating impact and means of gaining self-esteem and confidence to combat them;
- 9) Design programmes for reaching out to vulnerable groups especially those with disabilities and special needs to protect them against gender based violence;
- 10) Enhance the capacity of law enforcement institutions to implement gender responsive policies and programmes that address gender based violence;
- 11) Design and implement programmes aimed at eradicating all harmful traditional norms, beliefs, attitudes and practices that legitimize and exacerbate the persistence and tolerance of gender based violence at all levels;
- 12) Design programmes aimed at addressing perpetrators of gender based violence and other forms of violence against women and girls;
- 13) Encourage sharing of best practices within and among member states on mitigation programmes including the establishment and operations of victim support units, survivor shelters, as well as the monitoring of such interventions;
- 14) Establish and disseminate regional and national data on gender based violence and devise appropriate mechanisms for measuring reduction of cases at different levels; and
- 15) Establish and strengthen comprehensive shelters for victims of gender based violence.

**Prevention and Eradication of Violence against Women and Children; addendum to the SADC Declaration on Gender and Development (1998)**

- Existing measures to protect women and children against violence have proved inadequate, ineffective and biased against the victims.
- Therefore the following measures must be adopted:
  - 1) Enacting laws such as sexual offences and domestic violence legislation making various forms of violence against women clearly defined crimes, and taking appropriate measures to impose penalties, punishment and other enforcement

- mechanisms for the prevention and eradication of violence against women and children;
- 2) Reviewing and reforming the criminal laws and procedures applicable to cases of sexual offences, to eliminate gender bias and ensure justice and fairness to both the victim and accused;
  - 3) Introducing, as a matter of priority, legal and administrative mechanisms for women and children subjected to violence, effective access to counselling, restitution, reparation and other just forms of dispute resolution;
  - 4) Adopting such other legislative and administrative measures as may be necessary to ensure the prevention and eradication of all forms of violence against women and children;
  - 5) Promoting the eradication of elements in traditional norms and religious beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women and children;
  - 6) Introducing and supporting gender sensitisation and public awareness programmes aimed at eradicating violence against women and children;
  - 7) Providing easily accessible information on services available to women and children victims/survivors of violence;
  - 8) Ensuring accessible, effective and responsive police, prosecutorial, health, social welfare and other services, and establishing specialised units to redress cases of violence against women and children;
  - 9) Providing accessible, affordable and specialised legal services, including legal aid, to ensure the just and speedy resolution of matters regarding violence against women and children;
  - 10) Providing easily accessible, affordable and, where possible, free social, and administrative services for the empowerment of women and children victims/survivors of violence;
  - 11) Encouraging the exchange of national, regional and international best practices for the eradication of violence against women and children;
  - 12) Ensuring that all these measures are implemented in an integrated manner by all stakeholders;
  - 13) Allocating the necessary resources to ensure the implementation and sustainability of the above programmes

### **SADC Declaration on Gender and Development (1997)**

- Member States commit themselves to:
  - 1) Repealing and reforming all laws, amending constitutions and changing social practices which still subject women to discrimination, and enacting empowering gender sensitive laws;
  - 2) Protecting and promoting the human rights of women and children;
  - 3) Recognising, protecting and promoting the reproductive and sexual rights of women and girl child;
  - 4) Taking urgent measures to prevent and deal with the increasing levels of violence against women and children









# STOP GENDER VIOLENCE

A NATIONAL CAMPAIGN



TOGETHER WE CAN  
STOP GENDER-BASED  
VIOLENCE

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