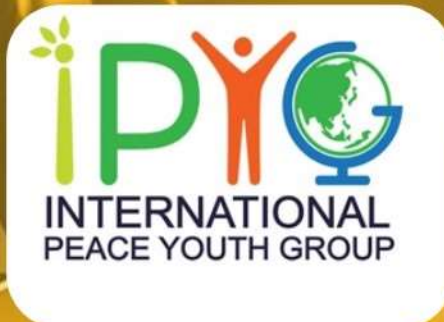


# BEYOND STATE REPORT AND COMPLIANCE:

## SOUTH AFRICA CIVIL SOCIETY ORGANISATIONS CEDAW SHADOW REPORT



### THROUGH THE SUPPORT OF



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## ACKNOWLEDGEMENTS<sup>1</sup>

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*\*Please note that, due to the delays in reporting, some of the facts in the State report have since been overtaken by events which have gone beyond the scope of the reporting period, which made it challenging to compile this report.*

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## LIST OF ACRONYMS

ACHPR	African Commission on Human and People's Rights
ALHRAC	Albertina Luthuli Human Rights Advice Centre-
BDRA	Births and Deaths Registration Act
CEDAW	Convention on the Elimination of all forms of Discrimination against Womxn
CGE	Commission for Gender Equality
CSOs	Civil Society Organisations
DoHA	Department of Human Affairs
DNA	Deoxyribonucleic acid -molecule that carries genetic instructions in all living things
DWYP	Department of Womxn, Youth and Persons with Disabilities
FCS	Family Violence, Child Protection and Sexual Offences
FHR	Foundation for Human Rights
GBV	Gender-based Violence
GoSA	Government of South Africa
IPYG	International Peace Youth Group
Maputo Protocol	African Charter on Human and People's Rights Protocol on the Rights of Womxn in Africa
LASA	Legal Aid South Africa
LGBTIQA+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer and Asexual
NAP	National Prosecution Authority
NSP	National Strategic Plan
SAPS	South African Police Service
SALRC	South African Law Reform Commission
SGBV	Sexual and Gender-based Violence
SGJ	Sonke Gender Justice
Sisonke	National Sex Workers Movement in South Africa
SJF	Social Justice Foundation
Stats SA	Statistics South Africa
TCB	Traditional Courts Bill
SWEAT	Sex Workers' Education and Advocacy Taskforce's
Womxn	All-inclusive term encompassing a broader range of gender identities than 'womxn'

## INTRODUCTION

1. This Shadow report is the result of a series of national consultations with diverse provincial and local womxn and womxn's groups in South Africa. This was with a view to obtain relevant qualitative and evidence-based data to respond to the Republic of South Africa's 5<sup>th</sup> CEDAW Periodic Report submitted in 2019. These consultations were co-facilitated by HURISA, FHR, SGJ, ALHAC, IPYG, Sisonke and SJF. The consultations reached over 100 participants representing diverse interests, from sex workers, gender non-conforming persons, womxn with disabilities, womxn with albinism, womxn living in rural areas, young womxn, migrants, refugee womxn, womxn human rights defender's, womxn lawyers, as well as womxn living in disadvantaged communities, including informal settlements and townships.
2. This report whilst focusing only on Articles one (1) through to six (6) [of the Convention] is aimed at providing the CEDAW Committee with a comprehensive and contextualised picture of the status of womxn and girls and provide practical and actionable recommendations the GoSA can take to address the existing concerns.
3. South Africa 5<sup>th</sup> CEDAW Periodic Report submitted to the CEDAW Committee, outlining the progress and challenges in implementation of CEDAW during the period 2009-2014, was overdue. The CEDAW Committee requested South Africa to submit this 5<sup>th</sup> periodic report in February 2015. The CSOs expected the government to desist from accumulating long overdue periodic reports and end up combining them as submission to the CEDAW Committee. Responses to the Committee's Concluding Observations submitted in September 2015 were two years behind with the stipulated due date, which was February 2013. It is therefore concerning that South Africa continue to be irregular in fulfilling its reporting obligations to the CEDAW Committee.

### RECOMMENDATIONS:

- Establish a standing inter-ministerial committee for coordination of human rights reporting obligations and follow up on implementation of recommendations.<sup>2</sup>

## PART I

### ARTICLE 1

#### VISIBILITY OF CONVENTION & ITS OPTIONAL PROTOCOL

##### *Paragraph 11-14*

4. Despite the initiatives underscored by the State report in paragraphs 11- 14 regarding circulation of the Convention and its Optional Protocol, Womxn particularly disadvantaged groups of womxn still experience difficulties accessing information on their rights and available protective mechanisms, especially at the local level. Awareness raising on the Convention and Optional Protocol is a privilege and mostly accessible to a few urban based CSOs with resources to participate in physical meetings or now virtual meetings amidst COVID19 pandemic organised by the Department of Women or other government institutions responsible for gender equality, including national institutions. Although the Womxn's Resource Book is distributed among the urban-based CSOs, it is written in English and not

<sup>2</sup> This recommendation was accepted as one of the outcomes of the 2017 UPR (Universal Peer Review). Also, in the 2012 UPR South Africa was recommended to establish without delay an independent national monitoring mechanism, in line with article 33 of the Convention on the Rights of Persons with Disabilities.

understood by most in communities. This language barrier makes it inaccessible for community-based structures, especially in spaces where there is a great need for its use to claim rights under the Convention and through procedures provided in the Optional Protocol.

5. There is no data that has been produced by the State to indicate the efficiency of any of the training programmes that could allow for an interpretation that more womxn are aware of CEDAW or their rights under CEDAW.
6. The continued lack of gender disaggregated data seriously hampers the ability to monitor and evaluate the effects of any policy measures nor make any effective analytical assessments of the situation of womxn, men and gender non-conforming persons in communities.

#### RECOMMENDATIONS:

- Making the womxn resource book accessible to all in communities, including translating the resource book into indigenous languages, as well as in braille format for access by persons with sight impairments
- Create a structure for monitoring & evaluation for coordinating effective analysis of policy measures for prevention, protection, training programmes with disaggregated data to view impact.

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#### INCORPORATION OF THE CONVENTION

##### *Paragraph 15*

7. We recognise the progress made by State in developing policies and laws to address violence against womxn and promoting equality in political and public life, as well as education, employment, health care, economic and social life, and family life. However, strong evidence exists to suggest that the GoSA has enormously failed to move beyond a purely formal and/or programmatic approach to one that emphasises substantive enjoyment and realisation of the rights in question on the ground. Many womxn including sex workers remain unable to access or enjoy the rights, protections and benefits that have been created. Evidence suggests that the scope and pervasiveness of these failings point to a systemic failure to translate formal equality into substantive equality. For instance, in employment: Protective labour legislation and contributory social security does not extend to seasonal, contract workers and sex workers, many of whom are womxn. Contributory social security programmes such as those that pay compensation in the event of injury are not available for domestic workers [only until recently –the *Sylvia*

In the case of *Sylvia Mahlangu and Another v The Minister of Labour & Others*, the Constitutional Court, on 19 November 2020, handed out an order declaring section 1 (xix)(v) of COIDA unconstitutional. This ruling comes after the Department of Labour was approached regarding compensation following the death of the deceased who was a domestic worker and drowned at employers' swimming pool. The Court further ordered that the declaration of invalidity must be applied retrospectively in order to provide relief to other domestic workers who were injured or died at work prior to the order.

*Mahlangu* case<sup>3</sup>, and unpaid domestic work remains unvalued and unrecognised in the national economy. Our report will highlight other areas in which womxn’s rights continue to be marginalised despite the enactment of laws. The criminalisation of sex work continues to contribute to the infringement of economic freedom and participation in the national economy of sex workers. Inadequate social protections have rendered many womxn vulnerable to ill-health, poverty, inequality and social exclusion throughout their lifecycle.

*Paragraph 17*

8. The State highlights that gender equality is a core right and principle of the South African Constitution. In the period under review, however, there is no overarching national gender law against which all role players may be held legally accountable. In the face of enduring gender inequality on various fronts, there are no laws compelling special corrective measures, especially for womxn subject to multiple vulnerabilities. As an example, there is no comparable legal obligation to meaningfully address persistent lower employment levels among womxn especially black womxn and womxn with disabilities.<sup>4</sup> Another example is the continued criminalisation of sex work, s access to justice, and legal recourse is limited. .
9. Legislative and policy gaps that exist in the current legal framework continue to create an environment that fosters inequality, discrimination, and stigmatisation. ..
10. Many civil society organisations decried the lack of and or insufficient consultation by government with grassroots organisations. Many CSOs such as community-based advice centres are underfunded and yet they play a crucial role in providing services in areas with no state services at all and or are complementary to those provided by the state. They are the eyes and ears of communities by raising public awareness on social justice issues.

**RECOMMENDATIONS:**

- Address legislative and policy gaps to ensure stronger compliance and enforcement mechanisms for gender transformation
- Strengthen developmental policies in rural areas, giving attention to access (information, services and opportunities) for children and persons with disabilities
- Prioritise funding support to community- based and womxn rights organisations providing services within communities

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<sup>3</sup> *Sylvia Mahlangu and Another v The Minister of Labour & Others, CCT306/19.*

<sup>4</sup> In an attitudinal study conducted by the FHR in 2011, *Democracy Challenged: South Africa’s largest attitudinal survey on the Constitution* overall levels of awareness of the constitution stood at 47% meaning less than half of South African womxn had even heard of the Constitution.



## ACCESS TO JUSTICE

*Paragraph 28-30*

11. In discussing access to justice,<sup>5</sup> the State report focuses on the services rendered by Legal Aid South Africa (LASA). What it does not mention is that LASA is severely under-capacitated and does not have adequate financial and human resources to provide substantive access to justice to womxn. It is found that LASA provided legal assistance to respondents in limited circumstances but did not extend same legal assistance to complainants who are often womxn to obtain protection orders. This may result in an unequal approach to the process particularly, womxn that are often unable to afford private legal representation to obtain final protection orders. The State also mention womxn and children are prioritised but there's absence of dedicated centres within LASA dealing with these vulnerable groups. Furthermore, access to justice, is impeded by the lack of capacity in handling gender-based offences by different bodies in the criminal justice system. This includes, for example, the police, magistrates/judges and the NPA.
12. There are several factors outside of legal representation that affect access to justice many of which are not limited to affordability, geographical remoteness, and lack of knowledge of rights.
13. The Marriages Act does not recognise marriages that are concluded in terms of religious beliefs and practices in South Africa. This includes the non-recognition of marriages solemnised in terms of the Islamic, Hindu or Rastafari religions. The only protection the parties have is if they are familiar and conclude antenuptial contracts. Already vulnerable womxn are required to approach courts to seek relief, which for many is unaffordable and entrenches womxn's vulnerability within their homes and communities.
14. Significant gaps still existing in pieces of marital regimes in South Africa impact negatively on the rights of womxn. But some positive developments have been made in respect of Customary Marriages. Although the President recently signed into law the Recognition of Customary Marriages Amendment Bill which seeks to strengthen the rights and protection of womxn, especially in rural areas. The Constitutional Court two-year deadline given to the legislature amend provisions of s7(1) of Act, found inconsistent with safeguarded human dignity and unfairly discriminatory, especially of black womxn, remain outstanding. These constant delays by Parliament and government impacts significantly on womxn's access to justice and also erodes the confidence citizens have in their Parliament and government.

*As of 22 October 2020, the new Civil Union Amendment Act, was passed and came into immediate effect. Under this new law, marriage officers may no longer object to solemnising a civil union between same-sex persons. However, the 'separate but equal' marriage regime that continues to discriminate against same-sex couples remains in place. The SALRC and Department of Home Affairs is now in the process of considering a single marriage statute to provide protection for all forms of marriage.*

<sup>5</sup> The Constitution of the Republic of South Africa, 1996 makes provision for access to justice under Sections 35 (2)(c) and Section 35 (3) (g) & (o) of the Constitution of the Republic of South Africa, 1996.



## RECOMMENDATIONS

- The state must sufficiently capacitate the different bodies involved in the criminal justice system. This includes; capacitating the police with the constitution, laws and policies to enable the effective and efficient handling of gender- based crimes; ensuring courts, magistrates and judges and the NPA are adequately resourced and trained
- Legal aid must conduct monitoring and evaluation in collaboration with the CSO's to effectively determine the nature of cases that centre on womxn and specialised attention that may be given to women
- Protection of all marital regimes with comprehensively progressive legislative frameworks

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## MOBILISATION AGAINST THE TRADITIONAL COURTS BILL

15. The State Report mentions the lapse of the Traditional Courts Bill (TCB) in 2014. However, the Report fails to mention the reinstatement of this problematic Bill and its passage in the National Assembly in 2017. This latest version removes the 'opt-out' section. It means traditional courts are the first and last court of instance in traditional disputes or complaints affecting womxn in rural areas. This limitation of no option to opt-out reinforces the patriarchal structures where womxn's voices are largely ignored. Traditional courts are largely male-dominated and this power imbalance, along with mandatory attendance before a traditional court will infringe on the constitutional rights to equality, legal representation, unfair discrimination, human dignity and a fair trial.

## RECOMMENDATIONS:

- The legislature should ensure protection of womxn living in rural areas, as well as their rights to access justice, and not to be deprived of their ability to choose in terms of the traditional courts bill
- Repeal all laws perpetuating discrimination, inequality and marginalisation of womxn in all public and private spheres

## GUARANTEE OF BASIC HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

## MEASURES TO ADDRESS HARMFUL PRACTICES

*Paragraphs 37-43*

16. South Africa is yet to implement the African Commission on Human and People's Rights (ACHPR) Concluding Observations<sup>6</sup> handed in 2016 to outlaw the traditional practice of "Ukuthwala" (perpetuating forced *child marriages and forced marriages*) and to end abduction of womxn and girls. South Africa is also yet to ratify the International Convention for the Protection of All Persons from Enforced Disappearances which was also listed on the CEDAW Committee Concluding Observation and ACHPR Concluding Observations.
17. Although several crimes are associated with the non-consensual practice of *Ukuthwala*<sup>7</sup>, the practice is still prevalent in certain communities. The Commission for Gender Equality indicated that there is still a high rate of child marriages in the Eastern Cape, KwaZulu-Natal and Gauteng provinces<sup>8</sup>. For a minor to marry in South Africa, they only require the consent of parents/guardians. We submit that children lack the capacity to conclude a contract, and they are incapable of consenting to a marriage. It also constitutes a gender discriminatory practice which continues to impact negatively on the rights and well-being of thousands of girls and young womxn in South Africa.<sup>9</sup>
18. A glaring problem is the lack of official government statistics available on harmful practices such as non-consensual *Ukuthwala* and illegal child marriages. Although there would be statistics on the number of civil marriages concluded each year and the number of customary marriages registered, there are none for those married customarily without registration.
19. South Africa has been at the forefront in pushing for legal equality and recognition for LGBTIQ+ persons internationally, sadly this has not yet translated into reality for many lesbians, gay and transgender persons who continue to face intimidation, stigma, shame, and marginalisation abuse, sexual and physical violence on a daily basis. Despite the establishment of the National Task Team (NTT) in 2011, on Gender and Sexual Orientation Based Violence and the Rapid Response Task Team to urgently deal with pending and reported cases on hate crimes perpetrated against LGBTI person's, homophobic violence persists. The lack of faith in the criminal justice system

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<sup>6</sup> Concluding Observations and Recommendations on the Combined Second Periodic Report under the African Charter on Human and Peoples' Rights and the Initial Report under the Protocol to the African Charter on the Rights of Womxn in Africa of the Republic of South Africa available at [https://www.achpr.org/public/Document/file/English/co\\_combined\\_2nd\\_periodic\\_republic\\_of\\_south\\_africa.pdf](https://www.achpr.org/public/Document/file/English/co_combined_2nd_periodic_republic_of_south_africa.pdf)

<sup>7</sup> According to the South African Law Reform Commission Discussion Paper on Ukuthwala (SALRC), Ukuthwala is an irregular method for commencing negotiations between the families of the intended bride and bridegroom directed at the conclusion of a customary marriage. It is not a marriage in itself. In the evidence that the LRC put before the High Court in the *Jezile v S and Others* 2016 (2) SA 62 (WCC) matter, there are two contrasting understandings of the content of Ukuthwala. On the one hand, there is the traditional conception of Ukuthwala that requires consent and is used primarily to further marriage negotiations. On the other hand, there is the aberration of the traditional conception, which permits rape and abduction. The "bastardised" version of Ukuthwala is the lived experience of large numbers of womxn and children and is a blatant abuse of fundamental constitutional rights.

<sup>8</sup> <https://ewn.co.za/2020/01/23/kzn-ec-gp-still-experiencing-high-rates-of-child-marriages-cge>

<sup>9</sup> Oyienke, Y., Child Marriage: A Human Rights Perspective South Africa Available at:

[http://www.chr.up.ac.za/images/files/research/gender/child\\_marriage/Report%20-%20Child%20Marriage%20-%20South%20Africa.pdf](http://www.chr.up.ac.za/images/files/research/gender/child_marriage/Report%20-%20Child%20Marriage%20-%20South%20Africa.pdf)

is mainly due to the low conviction rates, the shame attached to sexual violence and fear of secondary victimisation by state authorities.

20. GoSA is yet to tackle abuses in traditional healing institutions. Initiation schools are part of our cultural practices in South Africa and are protected by the Constitution under s31. However, rights of womxn initiates are not being protected in some traditional institutions. The reports of violations have surfaced in worrying levels, demonstrating the deep rootedness of violence even in the era of COVID-19 pandemic, where strict observation of health protocol and social distancing is required. Torture inhuman and degrading treatment, isolation, right to health, privacy, and confiscation of personal properties of initiates is not addressed despite reports to law enforcement<sup>10</sup>. The South Africa Witchcraft Act is outdated and has been considered unconstitutional since 2006. Thus, the law remains silent as it pertains to the rights of initiates in traditional institutions.

#### RECOMMENDATIONS:

- The GoSA must implement the concluding recommendations from the committee on the rights of the child that both the marriage act and recognition of customary marriages act be amended to ensure that the minimum age for all marriages is 18. Any sections that allow parental consent to be given in order for a minor child to be married must be removed from all legislation relating to marriage as is the case in the civil unions act 17 of 2006 <sup>11</sup>
- We encourage GoSA to enact legislation that would define and criminalise forced marriages in any context
- It is necessary for GoSA to review and amend provincial legislation that may give defences for *Ukuthwala*
- Improved implementation of laws and policies to protect womxn and LGBTIQ+ persons including finalising the hate crimes legislation; the experiences of survivors must guide the response to gender-based violence, and be at the centre of the manner in which we measure progress and success
- Commission for the promotion and protection of culture religion and linguistic communities should promote amendment of the Witchcraft Act 3 of 1957 for it to provide adequate protection of initiates rights in traditional institutions, in accordance with constitutional provisions of the bill of rights

<sup>10</sup>“Participation as an initiate in traditional institutions is as if one serves a prison sentence”. This was expressed by a survivor in three traditional healing institutions. She revealed the untold traumatic stories, often left unattended by law enforcement. Degrading treatment to her human dignity and privacy was violated as she had to take a bath in the yard, violate her privacy in sleeping with six initiates of which some were male in one room. She learnt that law enforcement is impeded to protect rights and apprehend the perpetrators because of the unconstitutional Witchcraft Act crafted during apartheid era.

<sup>11</sup> The Civil Unions Act recognises the union between couples of the same sex and allows for them to enter into a civil union. The age of consent to enter into such a union is 18 years and no exception provision is allowed for. The Act also regulates unions between couples of different sexes who do not wish to enter into a marriage in terms of the Marriages Act. In order for this union to be legally recognised it must be registered with the Department of Home Affairs and a certificate issued.

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## RIGHTS OF REFUGEE WOMXN AND GIRLS

21. Refugees and asylum seekers for various reasons, are vulnerable or have traditionally been victims of human rights violations and consequently require special protection for the equal and effective enjoyment of their human rights.
22. The state report does not make any mention of refugee, asylum seekers or migrant womxn. We refer to the critical observation made in the 2011 Shadow Report Submitted to the CEDAW Committee's 48th Session "*There is a critical and articulated silence on: vulnerable groups, in particular, indigenous womxn; the routine violence and discrimination experienced by ... transgender womxn; refugees and undocumented migrants; womxn seeking asylum;...*" It is inconceivable that such a high-level state report consistently fails to comment on intersectional discrimination and oppression experienced by these vulnerable groups.

### RECOMMENDATIONS:

- The state must include within its reports reference to the experiences of asylum seeker, refugee, and migrant womxn in South Africa
- The state must commit human, financial, and other resources to increasing access for asylum seekers, refugees, and migrants to the necessary administrative processes and departments to ensure their identification documents remain valid and they have unhindered access to related services

## ARTICLE 4

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### TEMPORARY SPECIAL MEASURES

#### *Paragraph 48*

23. The State report alludes to the 2014 Presidential Declaration to establish the Department of Womxn, Youth and Persons with Disabilities which evolved the department from focusing on the plight of marginalised and vulnerable groups only, to including issues of womxn's socio-economic empowerment and gender equality. However, the Department of Womxn has struggled with under-funding, which has also impacted on its ability to fully make an impact in its mandate. Vulnerable womxn, especially womxn with albinism, mentally challenged are rarely counted when expressing the continued marginalisation, exclusion, and economic disadvantage than the male counterparts.
24. The State report does not make any reference to the Commission on Gender Equality, a Chapter 9 institution established to monitor and evaluate the implementation of gender transformational regulatory frameworks to ensure promotion of gender equality in both the private and public spheres of life in South Africa.<sup>12</sup>

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<sup>12</sup> The Bare Minimum, Commission for Gender Equality Report on South Africa's Compliance with CEDAW Committee 2011 Concluding Observations & Recommendations, Research Report 2020.

## RECOMMENDATIONS:

- Prioritise funding for the department of womxn youth persons with disabilities and support the work of CGE . Merely acknowledging the lack of funds and nothing is done about it emboldens the marginalisation of womxn and girls in South Africa, further enforcing patriarchal rule and inequality in society
- Ensure that marginalised womxn including womxn with disabilities, womxn with Albinism participate in decision making processes and ensure that policies are informed by the experiences of caregivers and, families of persons with disabilities

## ARTICLE 5

### CAUSES, SCOPE AND EXTENT OF ALL FORMS OF VIOLENCE AGAINST WOMXN

#### *Paragraph 51*

25. The State has referred to a case which considered the rights of pregnant learners and policies that were found to violate their rights. While pregnant learners are allowed to attend school, due to the burden of care which falls disproportionately on womxn and girls, these learners particularly in rural areas struggle to go back to school once they have given birth. They often have to take care of their babies while boys who would have impregnated them continue with school. Also, as submitted in the previous report almost half of men in South Africa are absent fathers, who by virtue of their absence cannot and do not share the full parenting responsibilities with mothers of their children. The state report does not address any measures to ensure that it promotes the recognition and assumption of parenting roles by those who impregnate learners.

26. According to a report by Section 27 in 2013 over 99 000 learners in South Africa fell pregnant.<sup>13</sup> Stats SA asserts approximately 97,143 teenage births in 2017.<sup>14</sup> These high rates of teenage pregnancies are of great concern since the rights of pregnant learners to continue with their education is constantly violated by teachers and school governing bodies who disregard the law as well as the school policies. Pregnant learners continue to be faced with discrimination, stigma, labelling, and feelings of embarrassment within the school environment, often leading to learners dropping out of school. This further hampers their access to employment and thus negatively affect the broader South African economy.

#### *Paragraph 54-58*

27. While the government report alludes to the creation of the Ministerial Task Team on the Sexual Offences Matters (MATTSO) and the Sexual Offences Court Model as a success, the reality on the ground is that there have been challenges with implementation of the model ranging from the lack of adequate resources, training of court officials on how to handle sexual offences. The creation of the Sexual Offences court model did not translate to meaningful

<sup>13</sup> <http://section27.org.za/wp-content/uploads/2017/02/Chapter-8.pdf> accessed 3/3/2021.

<sup>14</sup> Statistics South Africa Statistical Release P0305 Recorded Live Births 2017, p13. Available from <http://www.statssa.gov.za/publications/P0305/P03052017.pdf> accessed 3/3/2021.

change and increase to access to justice for victims of sexual violence. There continues to be high attrition of cases, poor investigations and many offenders continue to walk free.

*Paragraph 61-65*

28. Whilst the Thuthuzela Care Centre (TCCs) model has been applauded world over, to provide womxn and children with better, humane treatment by reducing secondary victimization, timeous finalization of a case, and improving the conviction rate, implementation on the ground has been inconsistent. The TCCs have been largely dependent on donor funding which can be withdrawn at any time and with limited budget from the government to sustain the model that has had the effect of leaving many survivors in dire straits.<sup>15</sup> It has been reported that half of the country's TCCs are without counselling services or have been forced to rely on one or two social workers to attend to survivor's months after they lost international donor support<sup>16</sup>. CSOs that work with survivors have reported that many of the victim friendly facilities and TCCs are poorly resourced to meet the demands of survivors.<sup>17</sup>
29. Poor investigation by the police, secondary victimisation of survivors and victim blaming have contributed to the continued scourge of GBV. South Africa continues to face alarming levels of GBV. According to Stats SA femicide in the country is 5 times higher than the global average, and patriarchy continues to be deeply entrenched in society. The mechanisms alluded to by the government have not translated into meaningful change in the lives of womxn and girls who continue to live in fear for their lives.

*Paragraph 71*

30. The State Report alludes to the establishment of The Inter-Ministerial Committee on the Root Causes of Violence against Womxn and Children in 2012 to develop a comprehensive strategy to deal with the scourge of violence against womxn and children. Despite this violence against womxn remains very pervasive in South Africa. Efforts to address VAW remain fragmented, and most are a knee-jerk response and do not adequately address the root causes. Sexual and Gender-based violence in South Africa is not only widespread but is increasingly normalised and underreported<sup>18</sup>. Characterised by gender inequality and deeply rooted in discriminatory patriarchal practices it constitutes a systematic violation of the rights of womxn and girls<sup>19</sup>.
31. While there is an understanding that sexual violence and GBV is staggeringly high. There is still no centralized and disaggregated statistics on incidents and types of violence against womxn. Besides the mere recording of sexual offences crimes under the Sexual Offences Act in the South African Police Service (SAPS) released annually as observed by the UN Special Rapporteur on Violence Against Womxn, Ms. Dubravka Šimonović on her mission to South Africa in 2015.<sup>20</sup>

*Paragraph 73*

32. The State report mentions Government taking proactive steps in running public awareness campaigns. However, most of these dealt with human right issues with limited linkage to sex stereotypes, refugees, discrimination based on sexual orientation, womxn with disabilities, womxn with albinisms, womxn living in rural area, indigenous

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<sup>15</sup> Process Evaluation of NGO Services at Thuthuzela Care Centres(2018) Report compiled on behalf of NACOSA available at <https://www.nacosa.org.za/wp-content/uploads/2018/09/GBV-Evaluation-Report-Web.pdf>

<sup>16</sup> <https://bhekisisa.org/article/2019-06-11-00-thuthuzela-care-centres-funding-global-fund-counselling-services-cut/>

<sup>17</sup> Remarks by participants to CEDAW Shadow Report Consultative Webinar held on 18 February 2021.

<sup>18</sup> Machisa, M., Jewkes, R., Morna, C., & Rama, K. (2011). THE WAR AT HOME: Gender Based Violence Indicators Project. Gauteng Research Report. Johannesburg, South Africa: Gender Links & South African Medical Research Council.

<sup>19</sup> Ibid.

<sup>20</sup> Report of the Special Rapporteur on violence against womxn, its causes and consequences on her mission to South Africa A/HRC/32/42/Add.2

womxn, among others and harmful cultural practices. Furthermore, the State offers no evidence of the impact of such initiatives.

33. Anecdotal evidence suggests that for many, formal justice remains inaccessible despite the ongoing judicial reforms in the country. Pursuing justice is a long, cumbersome process and bottlenecks exist at almost every stage within the criminal justice system. There are reports that police action/inaction compromises cases from womxn not being believed when they report cases. This includes dockets going missing whilst under police custody. DNA backlogs in sexual offences cases or forms being filled incorrectly resulting in weak evidence for trial. In some remote and marginalised areas, they do not even have the forms or adequate rape kits and victims are not given sufficient psycho-social support. By May 2014, SAPS reported that it had only 176 FCS (Family, Violence and Child Protection) units servicing 1 135 police stations countrywide, which is wholly inadequate.<sup>21</sup> Also many of the survivors and victims often lack knowledge regarding national or even international laws that protect their rights.

#### RECOMMENDATIONS:

- The State must invest in a sustained public awareness campaign and education on GBV using a rights-based approach, which includes accessible psycho-social support services and prioritise implementation of preventative measures to eliminate GBV
- State must ensure widespread and consistent stocking of GBV commodities at all state institutions, such as police stations, prioritising remote and marginalised areas
- The advent of covid19 has demonstrated that the state is capable of compiling and collating disaggregated data. It is recommended that the state demonstrate the same political will and avails adequate resources to compile and collate data on VAW
- The state centralise and disaggregate statistics on incidents and types of violence against womxn, ensuring all womxn are covered including refugees, migrants, persons with disability, albinism, sex workers, LGBTI, indigenous populations, those living in rural communities, townships and informal settlements
- Targeted innovative interventions are required to address the engendered disparities which impact on womxn's livelihoods

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<sup>21</sup> Joy Watson, The role of the state in addressing sexual violence: Assessing policing service delivery challenges faced by victims of sexual offences available at <https://www.saferspaces.org.za/uploads/files/No-13-The-role-of-the-state-in-addressing-SV.pdf>



## ARTICLE 6:

### TRAFFICKING IN WOMXN & EXPLOITATION OF PROSTITUTION

#### Paragraph 92

34. The state continues to conflate trafficking of persons and sex work. The risks associated with trafficking and exploitation of womxn continue to be aggravated by the continued criminalisation of sex work. The phenomenon of trafficking is being addressed through laws that are not premised on a sound and credible understanding of how it is experienced by womxn and girls. A lack of proper policy and legislative implementation results in the systematic exclusion of particularly vulnerable womxn from accessing social and economic development resources such as land, property, housing, and credit. A major challenge is the lack of adequate data on the trafficking, which affects mechanisms to address it.

### SEX WORK

#### Paragraphs 95-96

35. First and foremost, the Constitution of South Africa guarantee individuals the freedom of choice to trade or occupation in section 22. It is important to note that the GoSA has used two headings referring to adult prostitution and sex work. The language in the report itself is problematic. *“Sex work and prostitution are, strictly speaking, not the same concept. Prostitution is viewed as coerced sex work where womxn have no choice in the matter and is necessarily demeaning and womxn are victims. Sex work, on the other hand, indicates agency and therefore allows for womxn’s decision making power in capitalist systems. These views have been influenced by feminist thinking on issues of prostitution.”*<sup>22</sup>

#### Paragraph 97

36. Although the report acknowledges the South African National Aids Council having taken measures to ensure the health of sex workers and their clients through the implementation of the South African National Strategic Plan (NSP ON GBV-F) on HIV, STIs and TB 2012–2016. The report fails to acknowledge the state of limbo regarding the stigma and discrimination left by the criminalisation of sex work and sex workers rights. Several reports produced by civil society organisations have documented clear violations of human rights and bias towards sex workers by the State Police.<sup>23</sup> The government has not taken any measures to address how sex work is perceived. Instead through criminalisation, the State has contributed to the various forms of discrimination faced by sex workers.
37. The current legal framework, in which both the sex worker and the client commit criminal offences, creates an environment for police harassment and abuse of sex workers rights guaranteed in constitution. This amount to violation of section 205(3) of the Constitution which places a duty on police to: “Combat and investigate crime;

<sup>22</sup> Commission for Gender Equality, Decriminalising of Sex Work in South Africa. 2013 <http://www.cge.org.za/wp-content/uploads/2014/05/CEG-Decr.pdf>

<sup>23</sup> Sonke Gender Justice, the Policing of Sex Work in South Africa. 2018 <https://genderjustice.org.za/publication/the-policing-of-sex-work-in-south-africa/> and Womxn’s Legal Centre, Police abuse of sex workers, 2016 available at <http://wlce.co.za/wp-content/uploads/2017/02/Police-abuse-of-sex-workers.pdf>

maintain public order; protect and secure the inhabitants of the Republic, their property; uphold and enforce the law.

38. The Constitutional court in *S v Jordan (2002) 6 SA 642 (CC)*, considered the vulnerability of sex workers, finding that the legislature should consider the appropriate legal framework but also was obliged to ensure the rights of sex workers are protected.

#### RECOMMENDATIONS:

- It is strongly recommended the State take steps to decriminalise sex work as a way to protect the constitutional rights of sex workers. The recently promulgated national strategic plan on GBV & femicide recommend that sex work be decriminalised. Government is urged to urgently take steps to ensure this reality
- Further efforts to de-stigmatise sex work is required especially amongst the law enforcement in the form of positive policing practices. Successful examples of this approach can be seen in the positive policing partnerships<sup>24</sup>
- Ensure sex workers access health care services, sanitary pads, protection of sexual reproductive health rights
- The state should ensure that the language used to refer to sex workers is affirming and in recognition of the struggles faced by these marginalised classes of womxn and as per recommendations of the international labour organisation and various labour organisations in South Africa
- Policies and processes on decriminalisation should include sex workers for them to be effective

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<sup>24</sup> Sonke Gender Justice, Positive Policing Practices and Sex Work, 2019. <https://genderjustice.org.za/publication/positive-policing-practices-and-sex-work/>

## GENERAL RECOMMENDATIONS 12 AND 19

### *Paragraph 186*

39. Due to poverty, high unemployment levels and the disproportionate burden of unpaid care work, womxn are less likely than men to challenge unfair labour practices and gender-based abuse in the workplace. Because work is scarce, and because their families tend to depend on their incomes.

## CONCLUSION

40. Where there is legislative compliance and where efforts have been made towards harmonising national laws with requirements of the CEDAW. i.e. in areas of equality, marriage, access to justice, the right to political participation, the right to education, significant knowledge and implementation gaps still exists. This includes the legislative gains have yet to translate to meaningful change particularly for the lives of South Africa's marginalised womxn. These gaps continue to represent a major barrier in womxn's ability to access their rights. The government must be regular in reporting and state compliance. This will lead to moving beyond reporting to effective tackling of deficits and vigorously on issues of discrimination and gender-based violence that has caused untold suffering for thousands of womxn, girls and their families.