

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 48656/22

In the matter between:

THE EMBRACE PROJECT NPC

1ST APPLICANT

INGE HOLZTRAGER

2ND APPLICANT

And

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

1ST RESPONDENT

**MINISTER IN PRESIDENCY FOR WOMAN, YOUTH
AND PERSONS WITH DISABILITY**

2ND RESPONDENT

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

3RD RESPONDENT

FILING NOTICE

DOCUMENT FILED: FIRST RESPONDENT'S ANSWERING AFFIDAVIT

DATED AT SIGNED AT PRETORIA ON THIS 16th DAY OF MARCH 2023



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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NUMBER: 46856/2022

In the matter between:

THE EMBRACE PROJECT NPC

First Applicant

INGE HOLZTRAGER

Second Applicant

And

**THE MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

First Respondent

**MINISTER IN THE PRESIDENCY FOR WOMEN,
YOUTH AND PERSONS WITH DISABILITIES**

Second Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Third Respondent

FIRST RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned

ME¹
um

Leonard Tsietsi Sebelemetja

Do hereby declare under oath as follows:

1. I am an adult male, in the employ of the First Respondent as Chief Director:
Legislative Development
2. I am duly authorized to depose to this affidavit on behalf of the
First Respondent whom I refer to collectively, as the state parties.
3. The content of this affidavit falls within my personal knowledge unless
indicated to the contrary and is true and correct
4. Where I make the admissions of a legal nature, I do so on the advice of my
legal representatives which advice I accept is correct.
5. I have read the Founding affidavit deposed to by the Applicant in this
matter and I wish to oppose the relief sought but before I do so, I would like
to make some comments and observations.

6. The terminology used in the answering affidavit is similar to that used by the Applicants. The terms: gender-based violence (“GBV”) rape, sexual assault, sexual violence is used interchangeably.

INTRODUCTION

7. The first Respondent opposes this application to declare unconstitutional and invalid sections 3, 4, 5, 6, 7, 8, 9, and 11A read with section 1(2) of the Criminal Law (Sexual Offences and Related Matters) Act 32 of 2007. Collectively, the impugned sections are consent based sexual offences. I submit that these sections are not inconsistent with the Constitution of the Republic of South Africa (“the Constitution”)¹ and will expand on the grounds of opposition below..
8. The primary questions to be considered relate to whether the current definition of rape is inconsistent with the Constitution.
9. In the main, the issues raised in this application involve the protection of the rights to dignity,² equality,³ freedom and security of the person,⁴ as well

¹ Act 108 of 1996

² Section 10 of the Constitution.

³ Section 9(1) of the Constitution.

⁴ Section 12 of the Constitution.

as children's rights⁵. These are constitutional issues of considerable public importance.

10. The First Respondent asserts that, considering the scope and ambit of the rights in question, as well as the meaning and effect of the impugned law, it does not infringe the fundamental aforementioned rights. Alternatively, if it does, the infringement is a justifiable limitation.
11. An interpretation of both the fundamental rights in question and the impugned law, must occur to promote the value system of an open and democratic society based on human dignity, equality and freedom as prescribed by section 39(1) of the Bill of Rights. Moreover, the Constitutional Court has consistently held that the Bill of Rights should be interpreted in a purposive manner.
12. The Constitution⁶ provides that "when interpreting the Bill of Rights, a court, tribunal or forum must consider international law". In *Glenister v President of the RSA*,⁷ the Constitutional Court explained that the Constitution reveals a clear determination to ensure that the Constitution and legislation is interpreted in a manner that complies with international law. First, section 233 of the Constitution requires legislation to be

⁵ Section 28(1)(d) of the Constitution.

⁶ Constitution section 39(1)(b).

⁷ 2009(1) SA 287(CC).

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interpreted in compliance with international law; second, section 39(1) (b) requires courts, when interpreting the Bill of Rights, to consider international law; and, third, section 37(4) (b) (i) requires legislation that derogates from the Bill of Rights to be “consistent with the Republic’s obligations under international law applicable to states of emergency”.

13. However, the use of international law as an interpretative tool is limited to those agreements that have been incorporated into our domestic law under section 213(4), of our Constitution. In addition, a principle or rule which is binding on South Africa will obviously have more weight than one which is not.

A NEW CONSTITUTIONAL ORDER

14. The purposive approach should be employed when interpreting the Bill of Rights, in so doing it is important to take into account a number of considerations. Primarily, the historical context in which the Constitution was adopted, is important in that it serves to remind us where we have come from as a nation and where we are going. Undeniably, it serves to remind us of the vision and mission of South Africa which is expressed in the Constitution, namely: *“to establish a new society founded on human dignity, equality and fundamental freedoms.”*⁸

15. It is common cause that the Constitution is borne out of a past in which inequality, authoritarianism and repression were pervasive. No doubt, the new order is premised on values that are justifiable in an open and democratic society based on freedom and equality. Thus in interpreting the Bill of Rights it is important that the Courts give effect to those values.
16. The *Certification Case*⁹ provides historical context to South African society.
[5] "...a deeply divided society characterised by strife, conflict, untold suffering and injustice" which "generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge".
17. The preamble to the Constitution of the Republic of South Africa ("the Constitution") ushered in a new order, a constitutional state, which,
Seeks to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; and
Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law.¹⁰

⁹ Certification of the Constitution of the Republic of South Africa, 1996 (CCT 23/96) [1996] ZACC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) (6 September 1996) at paragraph [5].

¹⁰ Act 108 of 1996.

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18. Chapter 1 of the Constitution, reinforces the constitutional values that underpin our democracy: human dignity, the achievement of equality and the advancement of human rights and freedoms; non-racialism and non-sexism and the supremacy of the Constitution and the rule of law.

THE FOUNDATIONAL PRINCIPLES

19. The constitutional challenge by the Applicants goes to the heart of the foundational principles of our criminal law; the presumption of innocence the onus of proof; and the elements of a crime, in particular intention. The Respondents contend that, the effect of the relief sought will be to revoke the Constitutional rights enshrined in section 35 of the Bill of Rights. In particular-

19.1. Firstly, the application seeks to place the burden of proof on the accused to prove the absence of essential elements of the crime rather than the State proving unlawfulness and culpability (*mens rea*). To do so, will essentially revoke the right to be presumed innocent until proven guilty.

19.2. Secondly, the proposed amendment would be to lower the standard of proof in criminal cases from proof of guilt of the accused person

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beyond a reasonable doubt, to negligence as the applicants purport to do.

19.3. Thirdly, the application¹¹ aims to amend the common law definition of intention (*dolus*) to include negligence (*culpa*)¹² as a form of *dolus eventualis*¹³ when dealing with an offence in contravention of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (“SORMA”). This application aims to include the objective *reasonable person* test used for *culpa* when ascertaining knowledge of unlawfulness.¹⁴

20. Section 7(2) of the Constitution obligates the state “*to respect, protect, promote and fulfil the rights in the Bill of Rights*”. This obligation extends to the rights of the accused person as well as the rights of the community. Thus, in criminal proceedings, there is a constant need to strike a balance between the interests of society in effective criminal law enforcement and the interest of society in the protection of the rights and freedoms of individuals suspected of, arrested for, and charged with crimes.

¹² *Culpa* (negligence) is the objective belief expected from the reasonable person in the position of the accused, or differently put, expecting ‘Objectively reasonable steps’ from the accused similar to a reasonable person in the position of the accused.

¹³ *Dolus eventualis* is the subjective belief held by the accused person of the possible consequences of his unlawful act and reconciled himself with the possibility of those consequences.

¹⁴ Knowledge of unlawfulness refers to the subjective belief held by the accused of the lawfulness of his act.

21. This dual obligation of the state was highlighted when the constitutionality of the death penalty was challenged, in *S v Makwanyane*.¹⁵ The Constitutional Court warned that even as the death penalty was abolished, in recognition of the new order, the obligation of the state to protect the citizens from the recidivist murderer or rapist remained. In other words, the state must protect society from further harm from the convicted unreformed recidivist killer or rapist.
22. In addition, the determination of the guilt of the accused is based on the full spectrum of facts. As a result, reliable fact-finding process is essential if the criminal justice system is to ensure that the guilty are punished and that the innocent remain free. The criminal justice is a system striving towards maintaining a balance between truth seeking and individual liberties.

LEGISLATIVE RESPONSE TO VIOLENCE AGAINST WOMEN.

23. As has been articulated above, the government recognizes the brutality of rape and its consequences. As a result, the various legislations were enacted in order to combat the scourge of rape.
24. The First Respondent contends that a holistic approach needs to be adopted to end gender based violence ("GBV"). Legislation alone cannot solve the

¹⁵ 1995 (3) SA 391 at paragraph [170]

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problem, as the interpretation and application of the legislation comes into play after the fact. The old adage, prevention is better than the cure is equally applicable to rape. All stakeholders should be engaged in the implementation and application of measures to combat GBV.

25. The state has also introduced socio-economic interventions which will be discussed in more detail hereunder.
26. This Honourable Court can take judicial notice of the fact that, due to her apartheid past, South Africa is a violent society. GBV is a by-product of that legacy. Other factors which contribute to the scourge of GBV are socio-economic, cultural, patriarchy and religion. During her visit in December 2015, the UN special rapporteur on violence against women, Dubravka Šimonović, accepted this. She made the following observation-¹⁶

"The violence inherited from the apartheid still resonate profoundly in today's South African society dominated by deeply entrenched patriarchal attitudes towards the role of women in society which makes violence against women and children an almost accepted social phenomenon"

¹⁶ "South Africa's Still Long Walk to Free Women from the Shackles of Violence" – UN Expert Calls for Change, 15 December 2015, <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=16885&LangID=E>

27. Simonović made the following observation-¹⁷

"Despite an arsenal of progressive laws and policies to deal with gender-based violence put very ably in place, there has been little implementation, hence impact and gender-based violence continue to be pervasive and at the level of systematic women's human rights violation,"
(My emphasis)

28. In line with its national and international obligations, South Africa's legislation regarding violence against women is extensive. It is important to note here that legislation is supported by supplementary legislation and policies, guidelines and frameworks. The laws dealing with violence against women include:-

28.1. The Domestic Violence Act,¹⁸ which places positive duties on the police regarding the protection of women in domestic partnerships, and provides for women to apply for protection orders in order to force a separation between themselves and their abuser.

¹⁷ "South Africa's Still Long Walk to Free Women from the Shackles of Violence" – UN Expert Calls for Change, 15 December 2015, <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=16885&LangID=E>

¹⁸ Act 116 of 1998.

- 28.2. The Criminal Law (Sexual Offences and Related Matters) Amendment Act expanded the definition of rape and created a number of new crimes in order to cover the extent of violence against women in South Africa. Importantly, this Act removed the cautionary rule, where a rape survivor's testimony was to be regarded with suspicion, and ensured that rape within marriage was classified as rape. In addition the Act prescribes certain minimum sentences for certain acts of sexual violence.
- 28.3. The Protection from Harassment Act¹⁹ protects women from harassment and provides for allows them to apply for protection orders in this regard.
- 28.4. The Prevention and Combating of Trafficking in Persons Act²⁰ introduces trafficking as an offence and sets up mechanisms to offer support to victims of trafficking. Importantly, all these legislations give effect to the principles enshrined in the Constitution of South Africa.
29. Socio-economic factors, cultural practices, and patriarchy have been identified as the main contributors to violence against women. South Africa has made every endeavour to promote the equality of women as well.

¹⁹ Act 17 of 2011.

²⁰ Act 7 of 2013.

30. To this end, South Africa has established the legal protection of the rights of women on an equal basis with men and ensured through competent national tribunals and other public institutions the effective protection of women against any act of discrimination. I set out the endeavors by the State to comply with the constitutional imperatives.

30.1. The Commission for Gender Equality (CGE) is mandated in terms of the Constitution *"to promote respect for gender equality and the protection, development and attainment of gender equality"*.²¹

30.2. The Department of Women, which is now situated in the Presidency, has been mandated to champion the advancement of women's socio-economic empowerment and the rights of women are mainstreamed as well as the promotion of gender equality.

30.3. *"The Sustainable Development Goals are a global call to action to end poverty, protect the earth's environment and climate, and ensure that people everywhere can enjoy peace and prosperity."*²² Gender equality is one of the goals the United Nations is working on in South Africa. The South African government placed the SDGs in the Presidency and issued a publication on gender equality called: *The Presidency of the Republic of South Africa: National Planning Commission National Development Plan 2030: "Our future - make it work (2012)"* provides for the Sustainable Development Goals

²¹ Section 187 of the Constitution.

²² UN SDG in South Africa

(SDGs) includes particularly SDG five²³, which speaks to the achievement of gender equality –

“A target achieving SDG5 includes ending all forms of violence against all women and girls in the public and private spheres South Africa’s national development plan further and visions that, by 2030 people in south Africa should have no fear of crime, and especially women children and those who are vulnerable should feel protected”.

30.4. National Human Rights Institution (NHRI), the SAHRC²⁴ monitors the state’s progress toward combating GBV in all of its forms, including state compliance with international and regional instruments; domestic legislation and national programmes; and achieving the objectives articulated in the SDGs and NDP.

31. Aside from the regular courts, specialized courts have been established to expedite matters related to the discrimination against women as well as gender-based violence in relation especially to children.

31.1. The Equality Courts,²⁵ designated to hear matters relating to unfair discrimination, hate speech and harassment.

31.2. The Sexual Offences Courts, ²⁶ are equipped with specially trained

²³ SDG 5 forms part of the goals Sustainable Development Goals the UN is working on in South

²⁴ Established in terms of South African Human Rights Commission Act, 40 of 2013.

²⁵ Established in terms of section 16 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

²⁶ Established in terms of section 55A (1) of SORMA

prosecutors, court supporters and magistrates as well as CCTV equipment to enable children to testify in a separate room, away from the perpetrator.

THE ONUS AND THE APPROACH TO THE FACTS

32. Our Courts have for decades acknowledged and held similar views expressed by the Constitutional Court in **S v Chapman**²⁷ that

"Rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim. The rights to dignity, to privacy, and the integrity of every person are basic to the ethos of the Constitution and to any defensible civilisation. Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity of their homes without the fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives."

33. Not only does South Africa have a comprehensive legal framework to address GBV, the Constitution enjoins the country's courts to actively play an instrumental role in the fight against GBV. Important judgments include

²⁷ 1997 (3) SA 341(SCA) at paragraphs [3] to [4]

Carmichele v Minister of Safety and Security,²⁸ where the Constitutional Court held that the state is obliged in terms of the Constitution and international law to prevent violence against women and to protect the dignity, freedom and security of women.

34. In *Masiya v Director of Public Prosecutions*,²⁹ when exercising its power to develop the common law under section 39(2) the court held that where there is deviation from the spirit, purport and objects of the Bill of Rights, courts are obliged to develop the common law by removing the deviation. Consequently, the Constitutional Court extended the definition of rape to include non-consensual anal penetration of females, which was previously not included in the definition.
35. In support of their claim of unconstitutionality, the Applicants have only provided examples of two cases wherein an injustice arose as a result of the subjective test when determining consent in sexual offences; the case of the second applicant, *S v Amos (unreported)* and the *Coko v S*³⁰ case.
36. With regard to the Amos's case, I aver that for reasons stated herein the decision was wrongly decided. Similarly, in the Coko case, the state is not satisfied with the finding of the High court and therefore is appealing the

²⁸ 2001(4) SA 938 (CC)

²⁹ 2007(5) SA 30 (CC)

³⁰ 2002(1) SACR 24 (ECG)

decision, an appeal is pending before the SCA in the case of *S v Coko*.

37. The Applicants allege that the impugned provisions create an insurmountable burden of proof for the state as it is difficult to prove the subjective belief of the accused. However, the applicants have not referred to cases where an acquittal resulted from considerations of cultural practices, patriarchy and religion as alleged.
38. It is trite that the onus of proof rests on the state to prove the accused's guilt beyond a reasonable doubt. Where the accused's exculpatory version is reasonably probably true, he or she must be acquitted.
39. The proper approach to the facts in a criminal trial has remained the same. Malan AJA in *R v Mlambo*³¹ stated the following:

"In my opinion, there is no obligation upon the crown to close every avenue of escape which may be said to be open to an accused. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man, after mature consideration much more comes to the conclusion that there exists no reasonable doubt that an accused has committed the

³¹ 1957(4) SA 727 (A) 738A .

crime charged. He must, in other words, be morally certain of the guilt of the accused.

40. Malan AJA in ***R v Mlambo***³² at 738B-C further stated :

"An accused's claim to the benefit of a doubt when it may be said to exist must not be derived from speculation but must rest upon a reasonable and solid foundation created either by positive evidence or gathered from reasonable inferences which are not in conflict with, or outweighed by, approved facts of the case."

41. From the above, it is evident that the facts are key. The courts are enjoined

*"When interpreting the Bill of Rights...to promote the values that underlie an open democratic society based on human dignity, equality and freedom."*³³

42. Section 39(3) of the Constitution provides-

"When interpreting any legislation, and when developing the common law, every court, must promote the spirit, purport and objects of the Bill of Rights".

³² R v Mlambo 1957 (4) SA 727

³³ Section 39(1) of the Bill of Rights

43. The courts should not therefore, interpret the impugned provisions in a manner that is inconsistent with the Bill of Rights. The suggestion by the Applicants that the impugned provisions causes the Courts to favour the accused to the detriment of the victim is wrong.
44. The First Respondent concede that despite all the endeavors set out above, GBV in South Africa remains unacceptably high. However, South Africa continues to impress upon various government departments the urgency to adequately prioritise and effectively implement various policies and programmes that seek to minimize, and ultimately prevent, such incidences from occurring.
45. The First Respondent is cognisant of their obligations, both in terms of the Constitution and international treaties and agreements ratified.
46. In criminal proceedings there is a constant need to strike a balance between the interests of society in effective criminal law enforcement and the interest of society in the protection of the rights and freedoms of individuals suspected of, arrested for, and charged with crimes.
47. Whilst society requires criminal justice that is a reliable and fair system where the guilty are separated from the innocent. In doing so, due process demands that there must be practical limitations on state power should be

restrained in the detection, investigation, prosecution and punishments of crimes, appreciating the fact that innocent people can get drawn into the system.

48. There can be no doubt that individuals and society suffer severely at the hands of criminals, but there can also be no doubt that unbridled state power which does not protect the substantive rights such as the right to dignity and equality, individuals and society will also suffer at the hands of the State and its officials.
49. A system which is essentially weighted in favor of due process does not ignore the rights of the victim of crime, however, seeks to ensure that vindication of the rights of the victim does not trigger or lead to further injustices. Reliable fact finding is essential if the criminal justice system is to ensure both that the guilty are punished and that the innocent remain free, which means the law striving towards maintaining a balance between truth seeking and individual liberties.
50. The idea of a Constitutional State presupposes a system whose operation can be rationally tested against or in terms of the law. Arbitrary action or decision making is incapable, in its nature, of providing a rational explanation, and without a rational justifying mechanism, unequal treatment will follow.

51. In **S v Cloete** ³⁴ Davis J observed that,

"It is wrong to conclude that an attempt to preserve the Constitution is necessarily a nod in the direction of criminals. The Constitution is not the cause of crime in this country, the court's task is to uphold the Constitution in such a manner that gives it proper effect which is considered to achieve some balance between the models of crime control and due process. "

52. Jansen JA in **S v Ngubane** ³⁵ held that

" If the objective test for culpa is applied, the question is whether the conduct of the agent measured up to the standard of the reasonable man in the circumstances; if the subjective test were to be applied, the question appears to be whether the conduct of the agent measured up to the standard of his own capabilities."

53. Internationally, excluding the concept of consent has proved impossible even

where it is absent from the definition of rape or sexual assault it inevitably emerges as a defence. This is primarily due to the fact that in many instances

it is only the absence of consent that criminalises the behaviour under

³⁴ 1999 (2) SACR 137 (C)

³⁵ [1985] 2 All SA 340 (A)

scrutiny, it is the sexual nature of the offence that makes it so difficult to circumvent the element of consent , whilst the victims' consent to physical assault may not constitute a defence, sexual relations are not prima facie unlawful to deem them to be so would be to adopt a **social** norm that has yet to gain purchase.

54. The applicants complained that retaining consent goes beyond shifting the focus from the accused to the complainant's behavior and detracting from the brutal and destructive nature of the crime of rape, it also assumes an equality between parties both as regards the ability to consent and the weight accorded to the perpetrator and complainant voices.
55. Our courts have recognized the abuse of power, and inequality between the parties was taken into consideration before the enactment of SORMA. For example in **S v Egglestone**³⁶ and **S v SM**.³⁷ In addition section 1(3) of SORMA proscribes unequal consent and coercion.

AD PARAGRAPHS 1-3 THEREOF:

56. The allegations in these paragraphs are noted.

³⁶ 2009(1) SACR 244(SCA)

³⁷ 2013(2) SACR 111 (SCA)

AD PARAGRAPH 4 THEREOF:

57. I admit the characterization of the application by the applicants; however, I deny that:

57.1. the impugned legislation enables an accused to successfully avoid a conviction on the basis of his subjective understanding of whether the complainant consented to the sexual act.

57.2. the proposition by the Applicant fails to recognize the right of the accused person to be presumed innocent until proven guilty and also places a burden of proof on the accused person to prove the absence of essential elements of crime rather than the state proving their existence.

57.3. with regard to the examples proffered by the Applicants in support of their contention, section of SORMA criminalized non-consensual sex between partners. Our courts have accordingly convicted persons who rape their partners. The relevant case law will be referenced at the appropriate time.

57.4. Similarly, our courts have recognized that consent may be revoked at any time.

AD PARAGRAPH 5 THEREOF:

58. The allegation in this paragraph is denied. The applicants have deliberately misrepresented the interpretation and application of the standard of proof

58.1. Firstly, section 35 of the Constitution provides that everyone is presumed innocent until proven guilty.

58.2. Secondly, the accused person must be proven guilty beyond a reasonable doubt, and not beyond any doubt however unreasonable.

58.3. In the circumstances, an accused person who has an unreasonable belief that the complainant consented when she had not, would have been at least reckless as to the existence of consent and the requirements for *dolus eventualis* would have been met.³⁸ Especially, where it was proved that the accused had no reasonable objective belief in consent. Unreasonable beliefs are held by our Courts as not 'reasonably possibly true' and rejected as false³⁹.

AD PARAGRAPH 6 THEREOF:

59. The First Respondent note the definition of rape in so far as it correctly reflects the provision cited.

³⁸ R v Z 1960 (1) SA 739 (A)

³⁹ Ngoyelo v S (A40/2021) [2021] ZAFSHC 258 (26 October 2021)

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AD PARAGRAPH 7 THEREOF:

60. It is correct that the conduct must not only be unlawful but also intentional. However, it is wrong for the Applicant to suggest that the act of knowing relates to reckless behavior which disregard risk. Intention must be accompanied by actus reus. Further argument will be advanced at the hearing of this application. I reiterate that *dolus eventualis* will be invoked where an accused act unreasonably.

AD PARAGRAPH 8 THEREOF:

61. The allegations in this paragraph are denied. In line with our criminal jurisprudence, it is imperative that the accused must have acted intentionally, well-knowing that there is no consent.

AD PARAGRAPHS 9 AND 10 THEREOF:

62. Section 31(1) of the Constitution guarantees the cultural rights of every individual; however, section 31(2) stipulates that such rights may not be exercised in a manner that is inconsistent with the Bill of rights. Moreover, consent is a golden thread that runs through all cultural practices. Therefore, any unlawful act will be punishable by law.

AD PARAGRAPH 11 THEREOF:

63. The allegations in this paragraph are denied. The Applicants' reasoning does not take into consideration the basic tenets of our law.
64. The Act does not create a barrier to the conviction of the accused persons. The presumption of innocence, which is a well-established principle in our law, means the accused is presumed innocent until proven guilty. Moreover, the onus is on the state to prove the guilt of the accused beyond a reasonable doubt. The subjective belief of consent goes to the intention of the accused person and is an important element of consent-based crimes in our law.

AD PARAGRAPHS 12 AND 13 THEREOF:

65. As has been articulated above, the government recognises the brutality of rape and its consequences. As a result, the various legislation enacted in order to combat the scourge of rape. Beyond legislative measures, the state has also introduced socio-economic interventions.
66. The stated objective of the impugned legislation bears testimony to this.

67. The foundational principles of our criminal justice system are based on the instruction that when interpreting the Bill of Rights, the courts are enjoined to promote the values that underlie an open and democratic society based on human dignity, equality and freedom.
68. I deny that the Act is unconstitutional, this proposition fails to account for the need for the criminal justice system to enforce the rights of the victim without infringing on the rights of the accused as well, the accused person.
69. The state is fully cognisant of its constitutional imperatives. As a result, the impugned provisions are designed to give effect thereto. I contend that the said provisions pass constitutional muster.

AD PARAGRAPH 14 THEREOF:

70. It is important to highlight that the Applicants complain that South Africa is in breach of its international obligations without specificity as to the international instruments contravened.
71. International law is an integral part of our law and is given prominence in the Constitution. Section 39 (1) (b) of the Constitution enjoins South African courts, to consider international law when interpreting the Bill of Rights.

72. Furthermore, section 231 of the Constitution makes reference to international law in three other material respects:

72.1. customary international law is part of our domestic law insofar as it is not inconsistent with the Constitution or an Act of Parliament;

72.2. international treaties law only become law in the Republic once enacted into domestic legislation.

73. I deny that the state has failed to comply with its international obligations in that the current legislation in many respects, has gone beyond the international instruments in defining sexual consent:

AD PARAGRAPH 15 THEREOF:

74. The First Respondent notes the relief sought by the Applicant but submit that same is not competent to be granted by the above Honourable Court.

AD PARAGRAPHS 16 and 17 THEREOF:

75. The First Respondent notes the allegations contained in these paragraphs.

AD PARAGRAPH 18 THEREOF:

76. The allegations in this paragraph are noted.

AD PARAGRAPH 19 THEREOF:

77. The allegations in this paragraph are noted.

AD PARAGRAPH 20 THEREOF:

78. The allegations in these paragraphs are noted

AD PARAGRAPHS 21-24 THEREOF:

79. The allegations in these paragraphs are admitted.

AD PARAGRAPH 25 THEREOF:

80. The First Respondent is in full agreement with the observations of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences. These sentiments are expressed over and over in all the different fora dealing with GBV.⁴⁰

81. Pertinently, South Africa is working tirelessly to improve the functioning of its criminal justice system in order to fight the scourge of gender-based

⁴⁰ Also quoted with approval from S v Chapman in Tshabalala v S; Ntuli v S 2020(2) SACR 38 (CC)

violence.

AD PARAGRAPH 26 THEREOF:

82. The United Nations Committee on the Elimination of Discrimination against Women ("Committee ") in 2021 under article 8 of the Optional Protocol to the Convention on the Elimination of All forms of Discrimination against Women ("CEDAW") found the state to be liable for the high rate of violence because it is the duty of the state to address the GBV and not because the state itself is the progenitor of GBV.
83. The applicants fail to mention that South Africa responded in writing to each of the findings made by CEDAW, see Annexure "AA1" annexed hereto. The responses detailed the endeavors taken by South Africa to address the issues raised by the Committee. In what follows I mention a few of the rejoinders.
84. South Africa has implemented and reviewed several pieces of legislation to date to ensure sustained measures to prevent domestic violence and eliminate harmful practices. To this end, on 10 September 2021, the Parliament of the Republic of South Africa passed the amendments of a package of three important interrelated Bills aimed at fighting the scourge

of violence against women and children and address a number of issues addressed in the Committee findings. The three Bills are:

84.1. Domestic Violence Amendment Bill, B 20-2020;

84.2. Criminal and Related Matters Bill, B 16-2020;

84.3. Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill B 17-2020

85. CEDAW complained that South Africa does not provide adequate access to justice and of measures to support and facilitate reporting by victims.

86. South Africa responded that she has put in place measures to create a supportive environment for women to report incidences of domestic violence. Accordingly, members of the South African Police Service who are at the coalface are trained to create a supportive environment for victims to report incidences of domestic and sexual violence. In order to avoid secondary victimisation, police stations are equipped with Victim Friendly Rooms to ensure the privacy of victims reporting all forms of sexual offences ensuring in confidentiality, respect and dignity.

87. CEDAW complained that the Respondents have also failed to adequately inform victims of their rights and explain judicial procedures. On the other hand, members of the SAPS are not held accountable protecting and assisting victims.

88. South Africa responded that the Department of Justice engaged in public awareness campaigns (in the form of imbizo's and community gatherings) annually about the services available for survivors of GBV in particular sexual offences. Moreover, in order to improve access to justice, she has introduced new services in the sexual offences court including –

- 88.1. court preparation services;
- 88.2. pre-and post-trial trauma debriefing services;
- 88.3. private testifying room;
- 88.4. a waiting room for adults and child victims; and
- 88.5. witness services.

89. CEDAW complained that the state has failed to remove financial barriers to promote access to justice by ensuring that the poor are able to get legal representation. In addition, South Africa has failed to reimburse victims who cannot afford to commute to court for trials.

90. South Africa responded as follows:

- 90.1. Clause 19(1) of the Domestic Violence Act amendment Bill empowers the Minister of Justice and Correctional Services to make regulations regarding, inter alia, the granting of legal aid at State expense in appropriate cases in consultation with the Legal Aid South Africa to the complainant, respondent or a child to assist

them with an application for a protection order in terms of this Act.

The provision of legal aid is no longer confined to a child but is extended to the complainant and respondent.

90.2. In line with sexual offences court model, the Department of Justice provides witness fees to cover return travelling costs and food while in court. In terms of section 191 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) any person who attends criminal proceedings as a witness for the State shall be entitled to such allowance as may be prescribed by the Minister of Justice in consultation with the Minister of Finance.

91. CEDAW complained about the lengthy delays in finalising matters and suggested that South Africa should consider mediation. South Africa responded-

91.1. The National Prosecuting Authority is implementing a 100-day rapid results approach to speed up case turnaround times.

91.2. South Africa has introduced a national and provincial 24-hour call centres to deal with complaints against police officials, prosecutors and magistrates on gender-based violence and femicide cases.

91.3. The country is working to reduce the GBV case backlogs at forensic laboratories. As part of interventions to address the DNA case backlog, an additional R250 million was allocated to the

operational baseline budget to address challenges in forensic laboratory services in 2021.

91.4. The South Africa Police Services trains recruits on basic training to the Family Violence, Child Protection and Sexual Offences Units. Rape evidence collection kits have been distributed to police stations across the country.

91.5. Government employees who work with children and mentally disabled persons are being vetted against the National Register of Sex Offenders. To date, 1,222 officials have been vetted, including prosecutors and members of the SAPS.

92. CEDAW commended South Africa for creating shelters and safe houses for women and children, known as Thuthuzela Care Centres (“TCC”). Nevertheless, the Committee expressed concern about the under funding for the TCCs. South Africa explained that the president had undertaken to allocate a substantial budget towards GBV.

93. To this end, the Government of South Africa showed commitment to ensure the budgetary allocations for victim empowerment services in October 2019 when President Ramaphosa announced the introduction of the GBVF Emergency Response Action Plan (ERAP) – funded by a reprioritized budget of R1.6 billion. Over a period of 6 months, i.e. from 1 November 2019 to 31 March 2020, different government stakeholders and civil society

organisations were tasked to implement robust interventions to significantly reduce the levels of violence against women and children.

94. In February 2021, President Cyril Ramaphosa launched a private sector-led, multi-sectorial Gender-Based Violence and Femicide (GBVF) Response Fund aimed at supporting the implementation of the National Strategic Plan (NSP), and the wider response in the country. Similarly, funding for the NPA and other stakeholders in the fight against GBVF were substantially increased.
95. South Africa expressed concern that the findings of CEDAW were based only on the input of the NGO's to the exclusion of the South African Government.

AD PARAGRAPH 27 THEREOF:

96. South Africa subscribes to the summary of Guidelines by the African Commission on Human and Peoples' Rights and People's rights as quoted in this paragraph. South Africa is committed to working with different government stakeholders and civil society organisations to implement robust interventions to significantly reduce the levels of violence against women and children. As a result, in February 2021, President Cyril Ramaphosa launched a private sector-led, multi-sectorial Gender-Based

Violence and Femicide (GBVF) Response Fund aimed at supporting the implementation of the National Strategic Plan (NSP), and the wider response in the country.

AD PARAGRAPHS 28 TO 30 THEREOF:

97. There is no doubt that South Africa has one of the highest rates of GBV in the world. A daunting picture for a country whose foundational principles are rooted in healing the divisions of the past and establishing a society based on democratic human dignity, the achievement of equality and the advancement of human rights and freedom values, social justice and fundamental human rights.
98. Numerous studies have found that, due to our apartheid past, South Africa is a violent society. GBV is a by-product of that legacy. Other factors which contribute to the scourge of GBV are socio-economic, cultural, patriarchy and religion. During her visit in December 2015, the UN special rapporteur on violence against women, Dubravka Simonović, accepted this. She asserted that ⁴¹

⁴¹ "South Africa's Still Long Walk to Free Women from the Shackles of Violence" – UN Expert Calls for Change, 15 December 2015, <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=16885&LangID=E>

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"The violence inherited from the apartheid state still resonates profoundly in today's South African society dominated by deeply entrenched patriarchal attitudes towards the role of women in society which makes violence against women and children an almost accepted social phenomenon"

99. The State parties concede that a holistic approach needs to be adopted to ending the scourge of GBV. Legislation alone cannot solve the problem. All stakeholders should be engaged in the implementation and application of measures to isolation combat GBV. Simonović made the following observation-⁴²

"Despite an arsenal of progressive laws and policies to deal with gender-based violence put very ably in place, there has been little implementation, hence impact and gender-based violence continue to be pervasive and at the level of systematic women's human rights violation,"
(my emphasis)

AD PARAGRAPH 31 THEREOF:

⁴². "South Africa's Still Long Walk to Free Women from the Shackles of Violence" – UN Expert Calls for Change, 15 December 2015, <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=16885&LangID=E>

100. I reiterate that government is gravely concerned by the rape statistics published by the Minister of Police. The fact that most rapes are committed at the home the victim or the perpetrator points deeper societal issues, which cannot be remedied by the amendment the applicants seek.

AD PARAGRAPH 32 THEREOF:

101. I admit that the South African Law Reform Commission ("Law Commission"), commenced a Project 107, reforming South Africa's sexual offences laws.

AD PARAGRAPH 33 THEREOF:

102. The First Respondent note the discussion paper released by the Law Commission on sexual offences and has nothing to add on it.

AD PARAGRAPH 34 THEREOF:

103. The arguments made by the law commission in favor of the objective test are noted.

AD PARAGRAPH 35 THEREOF:

104. It seems the Applicants omitted to act on the invitation by the Law Commission to on the proposed legislation. There is no evidence of the Applicants' engagement with the Law Commission.

105. Consequently, the subjective test remains.

AD PARAGRAPH 36 THEREOF:

106. There was no issue that was ignored by the Law Commission, if the Applicants had commented as they were invited to, the law commission could and should have considered their concerns and may be they may have been persuaded by the submissions that the Applicant is currently making.

AD PARAGRAPH 37 THEREOF:

107. The Law Commission performed its mandate accordingly and the rest was left to the Legislature.

AD PARAGRAPH 38 THEREOF:

108. There was no need for the law commission to revisit the question of mens rea for rape (and other sexual offences defined by lack of consent) as there is nothing wrong with it.

AD PARAGRAPH 39 THEREOF:

109. First Respondent has no knowledge of the allegations in this paragraph, therefore, cannot admit or deny same and put the Applicants to the proof thereof.

AD PARAGRAPH 40 THEREOF:

110. The allegations in these paragraphs are admitted.

AD PARAGRAPH 41 THEREOF:

111. The allegations in this paragraph are noted.
112. I might add that the amendments cited by the Applicants demonstrate the ongoing endeavors by the Respondents to accommodate and improve the legislation.

AD PARAGRAPH 42 THEREOF:

113. The proposition here by the Applicant seems to suggest that the accused should be the one bearing the onus to prove his case beyond reasonable

doubt. I reiterate that an unreasonable belief that the victim amounts to *dolus eventualis*.

114. The Applicant's assertion that in instances where the parties knew each other discharging the onus by the state is insurmountable is exaggerated. The duty of the courts to interpret legislation in terms of section 39(1) and 39(2) remains. Any decision that goes against the spirit, purport and objectives of the Bill of Rights will not pass constitutional muster.

AD PARAGRAPH 43 THEREOF:

115. The allegations in this paragraph are noted.

AD PARAGRAPHS 44-51 THEREOF:

116. The State has filed an application for leave to appeal the decision of State v Coko. The First Respondent avers that the matter is currently on appeal by the State before the Supreme Court of Appeals. It is therefore premature for the applicants to cite the case.

AD PARAGRAPHS 52-55 THEREOF:

117. We also note Ms. Holztrager's case and also sympathise with the ordeal she went through, unfortunately.

AD PARAGRAPH 55 THEREOF:

118. I deny that the Magistrate's reasoning was sound. In determining *dolus eventualis* he misdirected himself by concluding that:

"The fact that the complainant did not signify her opposition the Court could not be satisfied that he accused subjectively knew that he did not have consent to proceed with the acts."

119. The facts were clear, the accused had lured the complainant to his home under false pretences', aside from kissing the accused back, there was no evidence of the complainant having actively participating in the sexual act. The accused, grabbed her breast, he undressed her partly, the sexual act took place while she was half dressed. He lifted her legs. Evidently, *dolus eventualis* was proved as he proceeded to penetrate the complainant careless of whether she consented or not.

120. There is no evidence of her being an active participant. The Magistrate misdirected himself by blaming the subjective test. He failed to consider the full spectrum of the evidence. He failed to give effect to the constitutional

imperative to the Bill of Rights, in particular, the Second Applicants right to dignity and freedom of person.

AD PARAGRAPH 56 THEREOF:

121. The allegations in this paragraph are denied. The Act, in and of itself does not violate anyone's rights as proposed by the Applicant. The criminal justice system seeks to protect both the rights of the victim as well as those of the accused persons.

AD PARAGRAPH 57 THEREOF:

122. Save to admit the comments made by the Constitutional Court in relation to the crime of rape, it is vehemently denied that by giving primacy to the subjective intention of an accused, the impugned provisions infringe the Constitutional rights of a victim in an unjustifiable and impermissible manner. It is the conduct of the accused accompanied by his or her intention that is under scrutiny. The basic tenets of our criminal law- the presumption of innocence and the onus of proof beyond a reasonable doubt remain.

AD PARAGRAPH 58 THEREOF:

123. The allegations in this paragraph are denied and we have already stated our position in paragraph 57 supra and the Court is requested to incorporate our submission as such.
124. I don't deny that there are certain myths in South Africa that affect consent. However, the interpretation and application of the law by the judicial officers should not be confused.
125. An accused person who has an unreasonable⁴³ belief that the complainant consented when she had not, would have been at least reckless as to the existence of consent and the requirements for dolus eventualis would have been met. ⁴⁴ Especially where it was proven that the accused had no reasonable objective belief in consent. Unreasonable beliefs are held by our Courts as not 'reasonably possibly true' and rejected as false. ⁴⁵

AD PARAGRAPHS 59 and 60 THEREOF:

126. The First Respondent notes the comments made by the Applicants in this paragraph however does not agree with same as it finds no substance in this case and is irrelevant.

⁴³ R v Whiley 1935 CPD 466

⁴⁴ R v Z 1960 (1) SA 739 (A)

⁴⁵ Ngoyelo v S (A40/2021) [2021] ZAFSHC 258 (26 October 2021)

AD PARAGRAPH 61 THEREOF:

127. I admit that, since the enactment of SORMA, in 2007 there have been several amendments designed to advance and develop the criminal law to ensure the protection of women and men from the scourge of sexual violence.

128. I assert that the law as it stands is sufficient to secure a conviction. The Separation of powers requires that the Legislature should guard against interfering or encroaching on the sphere of the judiciary. Judicial discretion will be restricted if any more amendments are made with regard to the definition of consent. There are numerous cases where the interpretation and application of the law consent has been correctly applied finding the myths to be unreasonable.

129. Legal argument in this regard will be discussed at the appropriate time.

AD PARAGRAPH 62 THEREOF:

130. I deny that these stereotypes of victim blaming are still being employed in our courts. I contend that such decisions would be unconstitutional. The appeal system is in place precisely to ensure that the criminal justice is

effective and convictions are fact based. Consequently, the allegations in this paragraph have no merits whatsoever.

131. The Act does not perpetuate rape culture as suggested but protects the victim of crime as well, the victim must comply with the provisions of the Act if she wants the Act to come to her aid, no one is above the law.

AD PARAGRAPH 63 THEREOF:

132. I contend that the views of the Courts are wrong and would have to be set aside on appeal. Where a victim expressly states that she has no desire to have sexual relations with an accused, and he proceeds nonetheless under a misguided belief that 'no' means 'yes' such explanation is unreasonable and should be treated accordingly.

133. Male sexual entitlement as suggested by the Applicant is punishable and does not accord with the Bill of Rights.

134. I reiterate that an unreasonable belief is not accepted as a defence to rape.

AD PARAGRAPH 64 THEREOF:

135. The Act does not compel the Court to rule mechanically. The Court is required to examine the full conspectus of the evidence and make a decision based thereon. Therefore, an accused who proceeds to penetrate a complainant who is passive without considering her cannot honestly believe in her consent.

AD PARAGRAPH 65 THEREOF:

136. It is the state duty to prove that the accused is guilty of the offence charged and not the other way round. This proposition suggest that the accused must prove his own case which then violates his rights as an accused person.

137. The applicants' suggestion that the law permits an accused with 'less progressive views about women, the more likely he is to be acquitted is incorrect. Again, such views should be tested against the Bill of Rights and could never pass muster.

AD PARAGRAPH 66 THEREOF:

138. The law does not endorse any misogynistic or cultural views, the interpretation and application of the Bill of Rights would be inconsonant with the Constitution.

139. The law requires the state to present a prima facie case that there was no consent and then only must the accused on a balance of probabilities plead that he believed there was consent. The trier of fact must then interrogate the two versions and determine whether the accused's belief was unreasonable.

140. A court cannot disregard the facts and the evidence presented to it merely to support the subjective belief. The Court's obligation to the constitutional principles in the interpretation and application of the law remains.

141. The accused for his part, has a legal duty to ensure that he does not engage in conduct that is harmful to another person.

AD PARAGRAPH 67 THEREOF:

142. The applicants are deliberately obfuscating issues. It is not the victims but the state that must prove the lack of consent beyond a reasonable doubt. The burden of proof is not placed on the victims for obvious reasons.

AD PARAGRAPH 68 THEREOF:

143. This statement in this paragraph is derogatory and does not take this matter any further.

144. I submit the Act is not perfect, it is not fullproof, no legislation is. However, the arguments that the Act encourages women and children to avoid rape rather than admonishing men, not to rape is spurious.

AD PARAGRAPH 69 THEREOF:

145. The onus and the approach to the facts is as follows.

146. It is trite that the onus rests on the estate to prove beyond a reasonable doubt that the accused committed the crime accused off. Equally trite is the principle that an accused should be acquitted if his or her exculpatory testimony can be reasonably probably true. The trier of fact should not consider the evidence piecemeal but should evaluate the evidence before eight in its totality and judge the probability is in the light of all the evidence.

AD PARAGRAPH 70 THEREOF:

147. The provision of the Act does not infringe the constitutional rights of anyone but protects both the accused person and the victim, therefore there is no merits in the allegations made by the Applicants.

148. The objective test espoused by the applicant will not exclude scrutiny of the conduct of the victim as the question will be whether a reasonable man in the position of the accused would have believed that the victim had consented to sexual intercourse.

149. South Africa is a heterogenous nation and this factor on its own will make the objective test difficult for the courts to adjudge consistently.

AD PARAGRAPH 71 THEREOF:

150. We note what the Constitutional Court pronounced in the early constitutional dispensation.

AD PARAGRAPH 72 THEREOF:

151. The allegations in this paragraph are noted.

AD PARAGRAPH 73 THEREOF:

152. The allegations in these paragraphs are noted.

AD PARAGRAPH 74 THEREOF:

153. The First Respondent appreciates fully the effect of rape on the victims. The First Respondent is also weary of sending out the wrong message through the criminal justice system and in the process of addressing an injustice, creating another injustice. To this end, the state has set up multi-disciplinary measures to avoid secondary victimization of rape.

154. Consequently, the allegation that there is nothing in criminal law to prevent or deter men from committing these serious crimes, the Applicant is an exaggeration.

AD PARAGRAPH 75 THEREOF:

155. The state has always taken into cognizance the duties it holds to protect the victims of violent crimes and all other people who are affected under the constitution and has always acted in the best interest of all people who are affected.

AD PARAGRAPH 76 THEREOF:

156. The Applicants need to be more measured in their arguments, a determination of a reasonable belief in consent is based on the facts. The

court is enjoined to have regard to the full spectrum of the evidence presented. It is not limited by the subjective test.

157. The submission in this paragraph has no merits, there is nothing wrong with the defence of purely subjective belief, the limitation of the rights of the victims is justiciable under the constitution of the Republic of South Africa.

AD PARAGRAPHS 77 AND 78 THEREOF:

158. Criminalising negligent conduct has its own problems and is counter to the efforts of building a new society striving to move away from injustice to one based on the rule of law and the elimination of prejudice and discrimination.

159. The new order seeks to promote respect vertically between the state and the citizens as well as horizontally as between the citizens.

160. Legal argument will be advanced at an appropriate time on this point.

AD PARAGRAPH 79 THEREOF:

161. I admit that the victim feels the effects of the sexual violation regardless of the accused's state of mind.

162. I admit the quotation from the Irish Law Commission in so far as it is accurately reflected.

AD PARAGRAPHS 80 AND 81 THEREOF:

163. The allegations in these paragraphs are denied. The lesser offences such as negligent driving and failure to report corruption, to which the applicants refer attract a conviction accordingly of negligent conduct. To the contrary, the relief sought by the Applicants is to criminalise negligent conduct in sexual offences and convict the accused person of the full-blown offence crime of rape. Whereas a conviction for negligent murder if proven, will result in conviction of culpable homicide.

AD PARAGRAPH 82 THEREOF:

164. The Constitution commands the state must respect, protect, promote and fulfil the rights in the Bill of Rights. ⁴⁶ The state has continuously conducted drives to increase awareness on women equality. In this regard I refer this Honourable Court to my averments herein.

⁴⁶ Section 7(2) of the bill of Rights.

AD PARAGRAPH 83 THEREOF:

165. I admit that the Constitution does not countenance a law that entrenches rape, culture and patriarchy. The applicants have focused on one aspect of the law and disregarded the other elements of the crime. Despite the version of the accused, the courts are also able to infer consent or the lack thereof from the proven facts.

AD PARAGRAPH 84 THEREOF:

166. I reiterate that the basis upon which the applicants argue for the criminalisation of negligence is misconceived. Negligent murder is regarded as culpable homicide, lesser offence. There is also reckless and negligent driving which in and of themselves are lesser offences. I aver that to criminalise negligent conduct in the impugned provisions would be unfair to the accused.

AD PARAGRAPH 85 THEREOF:

167. I admit the provisions made of section 56(2) of SORMA

AD PARAGRAPH 86 THEREOF:

168. I admit the provisions made of section 56(6) of SORMA

AD PARAGRAPH 87 THEREOF:

169. The allegations in this paragraph are denied.

170. The Legislature saw fit to protect vulnerable groups who legally cannot consent to sexual acts due to the lack of mental capacity to consent and /or lack the appreciation of the consequences of being engaged in sexual activity. A distinction was made between women who can consent to sex in terms of the common law and the legislation and those who may not have the capacity or maturity to discern the consequences of their actions.

171. Another distinction is that with regard to the impugned provisions at issue is whether or not there was consent. On the other hand, sections 15 and 16 of the Principal Act are consent based offences, and the prohibited acts were committed with the victim's 'consent'. At issue is whether the person who gave the consent had the capacity to do so.

172. Section 56, insofar as sections 15 and 16 are concerned, introduced the deception defense, which is a well-accepted principle in criminal law and there is an evidentiary burden on the accused to persuade the court that he or she was deceived by the complainant that he or she was older than 16 years, as such does not amount to a reverse onus on the accused.

AD PARAGRAPH 88 THEREOF:

173. The First Respondent accepts that they have an obligation under international law to prohibit all gender-based discrimination that infringes upon the fundamental rights and freedoms of women. As result, since the advent of democracy, South Africa has taken serious strides towards the promotion of the rights of women. South Africa has, amongst others ratified and acceded to the Convention on the Elimination of all forms of Discrimination Against Women as directed in clause 4 of the Convention.

AD PARAGRAPH 89 THEREOF:

174. The allegations in this paragraph are noted.

AD PARAGRAPH 90 THEREOF:

175. The allegations in this paragraph are denied.

AD PARAGRAPH 90.1 THEREOF:

176. South Africa has adopted appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women these include:

176.1. The Domestic Violence Act 116 of 1998 which provides for the issuing of protection orders in cases where domestic violence has taken place;

176.2. The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 provides for offences such as rape and expanded definition of consent in SORMA ;

176.3. The United Nations (UN) instruments that provide for the protection of the human rights of women are:

176.3.1. the Universal Declaration of Human Rights (UDHR), 1948;

176.3.2. the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), 1979; and

176.3.3. the Sustainable Development Goals (SDGs), 2015, specifically goal 5 and goal 5.2. South Africa ratified the UDHR on 7 November 1945 and CEDAW on 15 December 1995.

176.4. At a regional level, the following instruments provide for the protection and promotion of the human rights of women:

- 176.4.1. the African Charter on Human and People's Rights (ACHPR), 1981; and
- 176.4.2. the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol), 2003.
- 176.4.3. South Africa ratified the ACHPR in 1996; in the concurring judgment.

AD PARAGRAPH 90.2 THEREOF:

177. South Africa has established the legal protection of the rights of women on an equal basis with men and ensured, through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.

177.1. The Commission for Gender Equality (CGE) is mandated in terms of the Constitution of the Republic of South Africa, 1996 (Constitution) "to promote respect for gender equality and the protection, development and attainment of gender equality".

177.2. The Department of Women, which is now situated in the Presidency, has been mandated to champion the advancement of women's socio-economic empowerment and the promotion of gender equality.

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177.3. The Presidency of the Republic of South Africa: National Planning Commission National Development Plan 2030: Our future - make it work (2012) 43. Which provides for the Sustainable Development Goals (SDGs) includes particularly SDG five, speak to the achievement of gender equality –

“A target achieving SDG5 includes ending all forms of violence against all women and girls in the public and private spheres South Africa’s national development plan further and visions that, by 2030 people in south Africa should have no fear of crime, and especially women children and those who are vulnerable should feel protected”.

177.4. National Human Rights Institution (NHRI), the SAHRC⁴⁷ monitors the state’s progress toward combating GBV in all of its forms, including state compliance with international and regional instruments; domestic legislation and national programmes; and achieving the objectives articulated in the SDGs and NDP.

177.5. The Equality Courts⁴⁸

177.6. The Sexual Offences Courts ⁴⁹

AD PARAGRAPH 90.3 THEREOF

⁴⁷ Established in terms of South African Human Rights Commission Act, 40 of 2013.

⁴⁸ Established in terms of section 30 of the promotion of equality and prevention of Unfair Discrimination Act 4 of 2000.

⁴⁹ Designated in terms of section 55A of SORMA.

178. South Africa has taken appropriate measures to eliminate discrimination against women by any person, organization or enterprise.

AD PARAGRAPH 90.4 THEREOF

179. South Africa has taken all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.

180. In particular, since 1994, South Africa has endeavored to introduce gendered legislative reforms and measures. The Constitution directs the state to enact legislation that would ensure that the principle of equality is advanced, especially the end of discrimination of women. Purposely, various pieces of legislation have been enacted which give effect to the equality provisions of the Constitution. These include-

180.1. the Promotion of Equality and Prevention of Unfair Discrimination Act;⁵⁰ and

180.2. the Domestic Violence Act;⁵¹

180.3. the Criminal Law (Sexual Offences and Related Matters) Amendment Act.⁵²

⁵⁰ Act No 4 of 2000

⁵¹ Act No 116 of 1998

⁵² Act No 32 of 2007

180.4. Moreover, various institutions⁵³ were established to implement and reinforce the legislation.

AD PARAGRAPH 90.5 THEREOF

181. South Africa has repealed all national penal provisions which constitute discrimination against women. In this regard, I refer this Honourable Court to my averments herein.

182. Furthermore, South Africa has established at different levels organisations, committees and strata to advance women equality. This includes the three arms of government; the Executive, the Judiciary as well as the Legislature.

AD PARAGRAPH 91 THEREOF:

183. South Africa has taken measures including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedom is on the basis of equality with men.

184. South Africa has devised means for women empowerment in all socio-economic factors. In addition, South Africa has made a conscious effort to

⁵³ The institutions are mentioned above at ad paragraph 90.2.

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ensure that women to participate actively and meaningfully in all levels of government.

AD PARAGRAPH 92 THEREOF:

185. It cannot be gainsaid that post-apartheid South Africa began its journey to the transformation of society from a very low point. The society was polarized, with the majority institutionally marginalized from all sectors. It is therefore, no surprise that a change in social and cultural patterns will take time to achieve.

186. Be that as it may, South Africa has vigorously worked to improve the position of women through legislative amendments and policy reforms. The Courts as well have played a major role in ensuring that South Africa complies with both its constitutional and international obligations.

187. As a result, South Africa has been lauded for its endeavours in all spheres of government.⁵⁴

AD PARAGRAPH 93 THEREOF:

⁵⁴ See response under ad paragraph 26 above

188. The declaration on the elimination of violence against women and its provision is noted.

AD PARAGRAPH 93.1 THEREOF:

189. South Africa has complied with its obligations in terms of article 4(c) of CEDAW, through the enactment of legislation and strengthening of penal laws for perpetrators of violence against women.⁵⁵

AD PARAGRAPH 93.2 THEREOF:

190. South Africa has developed penal,⁵⁶ civil,⁵⁷ labour⁵⁸ and administrative sanctions⁵⁹ in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence.

191. Additionally, South Africa has devised means for women to access justice and has provided legislation for just and effective remedies for the harm that women have suffered.

⁵⁵ Paragraph 28 above

⁵⁶ Domestic Violence Act

⁵⁷ Promotion of Equality and Prevention of Unfair Discrimination Act (Act 2 of 2000) (Equality Act)

⁵⁸ Labour Relations Act, Employment Equality Act

⁵⁹ Promotion of Administrative Justice Act

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AD PARAGRAPH 93.3 THEREOF:

192. South Africa has developed in a comprehensive way, preventative approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence.
193. Also, South Africa has ensured that the re- victimization of women does not occur because of laws insensitive to gender considerations enforcement practices or other interventions.⁶⁰

AD PARAGRAPH 94 THEREOF:

194. South Africa uses a similar definition of violence against women in most of its documents:

*"Violence against women takes many forms - physical, sexual, economic, psychological - but all of these represent a violation of human dignity and human rights and have lasting consequences both for women themselves and for their communities."*⁶¹

195. By way of illustration, in a booklet designed to inform individuals (especially victims of GBV) and the community at police stations adopted

⁶⁰ Thuthuzela Centres

⁶¹ <https://www.gov.za/issues/violence-against-women-and-children-0>

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the definition from the United Nations Declaration on the Elimination of Violence against Women which describes gender-based violence as follows:

“Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”

AD PARAGRAPH 95 THEREOF:

196. South Africa has complied with Article 2 and 5(a) of CEDAW General Recommendation No 35 issued on 26 July 2017 (“the Recommendations”) and accordingly took steps to harmonise the domestic law with the Convention. The legislation-

196.1. duly considers women victims/ survivors as the right holders;

196.2. includes age and gender-sensitive provisions;

196.3. effective legal protection including sanctions and reparations in cases of such violence;

196.4. The harmonization of the any existing religious, customary, indigenous and community justice system norms with its standards; and

196.5. The repeal of all laws that constitute discrimination against women, including those which cause, promote or justify gender-based violence or perpetuate impunity for these acts.

AD PARAGRAPH 96.1 THEREOF:

197. South Africa has ensured that all forms of gender-based violence against women in all spheres, which amount to a violation of the physical, sexual or psychological integrity, criminalized and introduced, without delay, or strengthen legal sanctions commensurate with the gravity of the offence as well as civil remedies.

AD PARAGRAPH 96.2 THEREOF:

198. South Africa has repealed all legal provisions that discriminate against women, and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence against women.

AD PARAGRAPH 96.3 THEREOF:

199. South Africa has repealed provisions that allow, tolerate or condone forms of gender-based violence against women and all laws that prevent women from reporting gender-based violence.

AD PARAGRAPH 96.4 THEREOF:

200. South Africa is ensured that the definition of sexual crimes, including marital an acquaintance or date rape is based on lack of freely given consent, and takes account of coercive circumstances.

AD PARAGRAPH 96.5 THEREOF:

201. South Africa has opted and implemented effective legislative and other appropriate preventative measures to address the underlying causes of gender-based violence against women, including patriarchal attitudes and stereotypes.

AD PARAGRAPH 97 THEREOF:

202. South Africa has repealed all legislation that infringes on the rights of women and promotes sexual violence against women. In addition, South Africa will continue to ensure that its Courts comply with constitutional obligation in terms of section 39(1) and (2) of the Bill of Rights.

203. It is important to point out that, although the South African Constitution guarantees the right to freedom, belief and opinion (s 15), the individual right to language and culture (s 30) as well as the collective right pertaining

to cultural, religious and linguistic communities (s 31). However, these rights in are subject only to the Constitution.

204. Therefore, sexual violence against women cannot be ignored in a court of law in the name of culture and patriarchal attitudes as alleged.

AD PARAGRAPHS 98 and 99 THEREOF:

205. The case of *Vertjolo v Phillipines* is totally irrelevant to the South African criminal justice system. There is no evidence of our courts having made such a ruling. I aver that an acquittal due to gender-based myths and misconceptions, would be unconstitutional. As demonstrated above, our courts have played a very huge role in the fight against sexual violence.
206. By way of illustration, in the case of *S and another v Acting Regional Magistrate-Boksburg; Venter and Another* ⁶², "*a court may depart from a clear language of a statute where it would lead to absurdity so glaring that it could never have been contemplated by the legislature, or where it would lead to a result contrary to the intention of the legislature, as shown by the context*

⁶² 2012(1)BCLR 5 (CC), at paragraph 22

or by such other consideration as the court is justified in taking into account."

AD PARAGRAPH 100 THEREOF:

207. I'm not certain which "latter recommendation" the deponent refers to. In any event, I have already explained in great detail above the measures South Africa has taken to improve the fight against the scourge of gender-based violence.

AD PARAGRAPH 101 THEREOF:

208. I admit the articles cited in so far as they have been correctly quoted.

209. I reiterate that South Africa has not failed to comply with its international obligations. I should point out that Article 2 on what constitutes consent, clearly stipulates that '*...(consent) should be assessed in the context of the surrounding circumstances*'.

AD PARAGRAPH 102 THEREOF:

210. I note that the applicants concede that the UN Model Rape Law does not make reference to the accused state of mind. This is evidence that the UN believes that the current legislation framework is sufficient to convict criminals and is in line with international law.

AD PARAGRAPHS 103 TO 104 THEREOF:

211. I note the reference to war crimes cases. However, I submit that the circumstances arising from rape in war crimes has no relevance to the impugned provisions.

AD PARAGRAPH 105 THEREOF:

For reasons advanced above, I assert that the current standard of proof and elements of the crime of rape are consonant with both the Constitutional and international law.

AD PARAGRAPH 106 THEREOF:

212. I note the rights enshrined in the African Charter for Human Rights, ratified by South Africa in July 1995.

213. It is trite that the rights to equality, dignity, security of the person and physical and mental health are enshrined in the Constitution.

AD PARAGRAPH 107 THEREOF:

214. I assert that South Africa has complied with the Maputo Protocol to the African Charter on the Rights of Women in Africa.

215. The provisions of the international instruments cited are in many respects similar to those of the United Nations conventions.

216. In this regard, I refer this Honourable Court to my responses hereinabove.

AD PARAGRAPHS 108 to 115 THEREOF:

217. The content of these paragraphs makes reference various provisions relating to gender-based violence and sexual violence to the following international instruments:

217.1. Maputo Protocol;

217.2. The African Commission on Human and People's Rights; and

217.3. African Commission: Guidelines on combating Sexual Violence.

217.4. SADC: Declaration on Gender Development; and

217.5. DSADC Protocol on Gender and Development.

218. South Africa has complied with the provisions cited in these paragraphs and provided a detailed explanation in the preceding paragraphs of the measures taken towards compliance with the international obligations.

AD PARAGRAPH 116 THEREOF:

219. I deny that a survivor centered approach can only be achieved by means of consent being determined objectively. The rest of the allegations in these paragraphs are admitted.

AD PARAGRAPH 117 THEREOF:

220. The allegations in this paragraph are denied.

221. None of the research conducted on the root cause of gender-based violence in South Africa referenced lack of legislation or policy as a causative factor.⁶³ Children who experience physical violence are more likely to abuse their own children and intimate partners as adults.⁶⁴

⁶³

⁶⁴ 'Child Death Reviews in the context of Child Abuse Fatalities Learning from International Practice' (2013) by

Shanaaz Mathews, Naeemah Abrahams & Lorna Martin; and Children's Institute, University of Cape Town Research

Brief 'Every child counts: Lessons from the SA Child Death Review pilot' (2015)

12 Around 28% of child abuse cases related to physical abuse, and victims of abuse showed increased suicide

attempts, substance and alcohol abuse, delinquent behaviour, mental health problems and conduct problems.

Childhood exposure to violence increase the acceptance of violence, either as victim or as perpetrator. In addition

to the impact of exposure to violence on the individuals themselves, violence has considerable consequences for

society at large. And exposure to aggression and violence socialises children into lifestyles that perpetuate violence

in society. Violence also results in lowered social cohesion and impacts on the country's social and economic

development

13 'Child Homicide Patterns in SA: Is there a link to child abuse' (2012) by Shanaaz Matthews, Naeemah Abrahams,

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222. A cost study found notable reductions to mental health and physical health outcomes in the population if children were prevented from experiencing violence, neglect and/or witnessing of family violence. The research further indicates that gender attitudes, childhood exposure to violence and growing up in toxic environments are the key factors underlying gender-based violence in South Africa.
223. Therefore, nurturing and emotionally supportive relationships during childhood are likely protective factors against later GBV perpetuation and victimization. Should these relationship dynamics become more normative they would significantly contribute to the primary prevention of GBV in South Africa.
224. Therefore, GBV should be understood within a societal and economic context, and the adverse consequences of experiencing violence during childhood on later behavioral problems.
225. As such, the impugned legislation is not the cause of crime in this country, however functions as a balance in protecting both the rights of victims and accused and accordingly the conclusion that the Act perpetuates rape and/or sexual violence culture is a flawed narrative.

AD PARAGRAPHS 118-135 THEREOF:

226. In these paragraphs the Applicants refer to comparative law jurisprudence.

The Constitution grant the courts the discretion to consider foreign law in section 39(1)(c), our courts have been circumspect in importing foreign jurisprudence in our shores. From Makwanyane , the Constitutional Court has recognized the limitations of the wholesale importation of foreign law in that stating that “it is important to appreciate that this will not necessarily offer a safe guide to the interpretation of [the Bill of Rights in] our Constitution”.

229. Therefore, the consideration of foreign law should be done with due regard to our legal system, our history and circumstances, and the structure and language of our own Constitution. The allegations in these paragraphs are noted.

AD PARAGRAPH 136 THEREOF:

227. The allegations in this paragraph are noted.

AD PARAGRAPH 137 THEREOF:

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228. I reiterate that the legislative framework which governs sexual violence and the criminal justice system, as it currently stands does not require any amendment as it covers both the accused and the victims.

AD PARAGRAPH 138-144 THEREOF:

229. For the reasons stated above, I deny that the Applicants are entitled to the relief sort. I further deny that the impugned provisions are unconstitutional and aver that the Applicants have proved no grounds for a just and equitable order in terms of section 172(1) of the Constitution.

230. In the event that the Applicants' claim is successful, I aver that suspension of the order of invalidity for 12 months will be insufficient for the completion of the legislative process for the following reason:

230.1. Next year(2024) is an election year and past experience has shown that there is vast reduction in the number of Bills being promoted by the executive overall, as Parliament will not be able to process Bills before the end of term for the current administration.

231. The Applicants have been ill-advised, in terms of what the Act provides and the relief the Applicants seeks is incompetent and not the one to be granted by the Courts. It is therefore our submission that the Court should not come to the Applicants aid.

232. The provisions of the Act are in line with the Act and nothing should be declared unconstitutional.
233. The Court is requested not to suspend anything as the Act does not have any irregularities and it must be left as is, the Applicants are only driven by their ego towards men and they are using their emotions to persuade the Court to declare unconstitutional an Act which is in line with the Constitution.
234. We submit with respect that the Applicant's relief is incompetent, whether interim or final and that same must not be granted.
235. The allegations in this paragraph are noted
236. The Applicants have been ill-advised and it is our submission that the order they seek is incompetent before this Honourable Court.
237. The allegations in in this paragraph are noted.
238. The advice and submissions made by the Applicants are ill-conceived and the Court is requested not to come to the Applicant's aid.

239. The order as prayed for by the Applicant is incompetent and cannot be granted, the Court is therefore requested to dismiss the Applicants application with costs.

WHEREFORE I pray that the Applicants Application for be dismissed with costs.



DEPONENT

I certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at on the 16 day of MARCH 2023, the Regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, having been complied with.



COMMISSIONER OF OATHS

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**Convention on the Elimination
of All Forms of Discrimination
against Women**

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**Committee on the Elimination of Discrimination
against Women**

**Inquiry concerning South Africa conducted under article 8
of the Optional Protocol to the Convention**

Observations of South Africa*

[Date received: 11 November 2021]

* The present document is being issued without formal editing.



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I. Introduction

1. In 2019, the UN CEDAW Committee conducted a Confidential Inquiry Visit with the Government of South Africa, under Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

2. South Africa received the report of the Inquiry Visit from the CEDAW Committee in November 2020. Due to a number of challenges, the country was unable to respond within the allocated 6 months period to the findings contained in the Report. One of the major reasons for this is the impact of the COVID-19 pandemic and resultant lockdown levels in the country which resulted in major disruptions to the world of work. This impacted on the ability to share the report with the key role-players in Government as well as coordinating a process to obtain the necessary responses to the findings. This resulted in a delay in South Africa responding to the findings of the Inquiry Report.

3. Notwithstanding this, the country has now been able to develop its responses to the CEDAW Committee which is contained in the section below.

II. Responses

Findings

Responses

102. The Committee finds the State party in violation of the following articles of the Convention:

(a) 1, 2(f), 3, 5(a), 10(c) and (h) and 16, for failing to take sustained measures to prevent domestic violence and eliminate harmful practices by eradicating the discriminatory stereotypes and practices that are the root causes of domestic violence;

(b) 2(b), (e) and (f), read with 5(a), 15 and 16, for failing to specifically criminalize all forms of domestic violence and femicide and repeal provisions that allow, tolerate or condone child and forced marriage and other harmful practices giving rise to such violence;

(c) 2(b), (c) and (e), read with 5(a) and 15, by failing to effectively enforce and monitor protection orders against alleged perpetrators and impose adequate sanctions for non-compliance;

(d) 1 and 2(b), (c), (e) and (f), read with articles 3, 5(a), 12 and 15, for failing to systematically prosecute cases of rape and domestic violence ex officio and ensure that questioning and evidence collection in domestic violence cases are not influenced by discriminatory stereotypes and that women's and girls' testimonies as parties or witnesses are given due weight;

(e) 1 and 2(c), (d) and (e), read with articles 5(a), 12 and 15, for failing to comply with its due diligence obligation to effectively investigate, prosecute and punish cases of domestic including sexual violence and

South Africa has implemented and reviewed several pieces of legislation to date to ensure sustained measures to prevent domestic violence and eliminate harmful practices. On 10 September 2021, the Parliament of the Republic of South Africa passed the amendments of a package of three important interrelated Bills aimed at fighting the scourge of violence against women and children and address a number of issues addressed in the Committee findings. The three Bills are:

(a) Domestic Violence Amendment Bill, B 20-2020;

(b) Criminal and Related Matters Bill, B 16-2020;

(c) Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill B 17-2020

Domestic Violence Amendment Bill

The DVA Bill seeks to amend the provisions of the Domestic Violence Act, 1998 (Act No. 116 of 1998) (the Act), to address practical challenges, gaps and anomalies which have manifested themselves since the Act was put into operation in 1999 and which render women and children helpless to the violence they experience, often in the confines of their homes.

Key intervention 1: Strengthen leadership and accountability

Findings

to provide effective reparation to victims; provide mandatory, systematic and effective capacity-building for the judiciary and law enforcement bodies on the strict application of legislation prohibiting such violence and on gender sensitive methods of investigation, cross-examination, case management and evidence collection; and raise their awareness to eliminate gender bias and discriminatory stereotypes.

Responses

a) Functionary's obligation to report domestic violence

Clause 2A of the Bill puts a positive obligation on a functionary, who in the course of the performance of their duties or the exercise of their functions obtains information which, after evaluation by them, causes them to believe or suspect on reasonable grounds, that a child, a person with a disability or an older person is a victim of domestic violence to without delay report such belief or suspicion to a social worker or a member of the South African Police Service.

b) Adult obligation to report domestic violence

Clause 2B of the Bill places an obligation on an adult person who knows, or believes or suspects on reasonable grounds, that an act of domestic violence has been committed against a child, a person with a disability or an older person, to report such knowledge, belief or suspicion as soon as possible, to a social worker or the South African Police Service.

c) Domestic Violence Safety Monitoring Notice

Clause 4 A (6) of the Bill empowers the court to order the station commander to direct a member of the South African Police Service under their command to contact the complainant at regular intervals by means of an electronic service at an electronic address as specified in an Annexure to the notice, and to enquire about the complainant's wellbeing; and at regular intervals, to visit the joint residence and to see and to communicate in private with the complainant.

d) Electronic Communications Service Providers to assist courts

Clause 5B(1) of the Bill provides that if an application for a protection order is made and it is necessary to determine whether an electronic communication, which was used to commit an act of domestic violence, was disclosed by the respondent, the court may direct an electronic communications service provider, that is believed to be able to furnish particulars, to furnish the court by means of an affidavit with, inter alia, any information that is available to an electronic communications service provider that may be of assistance to the court to identify the person who disclosed the electronic communication or the electronic communications service provider, that provides a service to that person.

Clause 5B(6) of the Bill provides that if the court issues a protection order, it must at the same time issue an order to the electronic communications

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Findings

Responses

2. Right to access to justice and victim support services

(a) Lack of legal aid and of measures to support and facilitate reporting by victims

103. The Committee considers that the State party has failed to create a supportive environment for women to report incidents of domestic violence by failing to destigmatize victims, dismantling commonly held victim-blaming beliefs, judicial bias and gender stereotypes, and protect women complainants from retaliation by perpetrators.

service provider whose electronic communications service is used to host or disclose the electronic communication which was used to commit an act of domestic violence, to immediately remove or disable access to the electronic communication.

e) Director-General to develop an electronic repository of domestic violence protection orders

Clause 6A(1) of the Bill obliges the Director-General to develop, establish and maintain the integrated electronic repository for domestic violence protection orders. This repository will store all domestic violence related documents for easy access and retrieval by authorised personnel in case where the original document is lost, destroyed or misplaced.

f) Directives for clerks of the court

Clause 18A of the Bill obliges the Director-General: Justice and Constitutional Development to issue directives with which clerks of the court must comply in the execution of their functions in terms of the Domestic Violence Act, which directives must be published in the Gazette. The directives will set out the duties and responsibilities of the clerks of the court in relation to applications for domestic violence protection orders, and must ensure that adequate disciplinary steps will be taken against a clerk of the court who fails to comply with any directive.

South Africa has put in places measures to create a supportive environment for women to report incidences of domestic violence.

The South African Police Services has always worked to provide Victim Friendly Rooms and that Victim Friendly Facilities at police stations and at (FCS) Family Violence, Child Protection and Sexual Offences Units. These facilities provide a private place where victims can be interviewed and statements can be taken assuring that victims' rights are protected. A Victim Friendly Room is a dedicated refurbished room within the premises of police station, established to ensure that victims can report all forms of sexual offences in an environment that assures confidentiality and respect and also upholds their dignity. These services work towards reducing secondary victimisation and enabling victims to

Findings	Responses
<p>104. The State party has also failed to adequately inform victims of their rights and explain judicial procedures, including the importance of showing imminent harm for obtaining an eviction order, or appearing at the hearing on return date for obtaining a final protection order, and to capacitate, adequately equip and hold SAPS accountable for protecting and assisting victims. Requiring victims to meet the</p>	<p>provide details that not only assist them as part of a cathartic experience, but also assist in investigation.</p> <p>The provision of training of the Police members is a crucial element for ensuring that SAPS improves on the services rendered to victims of domestic violence and abuse. First Responder to Sexual Offences course for members of visible policing and client services centre is also provided. Sexual Offences course for investigating officers are also provided.</p> <p>A number of education and awareness raising campaigns on reporting incidences of abuse and sexual violence are held annually by the SAPS.</p> <p>In addition, the Member state has implemented a number of programmes and dialogues to destigmatize victims and gender stereotypes.</p> <p>South Africa conducted National Dialogues across the country and provided platforms for discourse with local communities on their lived experiences on Violence against Women and Children. The National Dialogues were aimed to understand the root causes and manifestations of gender-based violence, to strengthen and enhance community participation and to find solutions.</p> <p>The programme of national dialogues is also aimed at unravelling reasons why violence against women is not abating despite the unprecedented body of laws and world class institutional mechanisms.</p> <p>For example, the Western Cape DSD funds court support services at 10 courts in the Cape Town Metropolitan areas and rural areas, to assist victims of gender-based violence to access protection orders and offer psychosocial support.</p> <p>Parliament is also in the process of finalising the Criminal Procedure Amendment Bill, B 12-2021. The Bill is intended to amend the Criminal Procedure Act, 1977, so as to further regulate the publication of information which reveals or may reveal the identity of, amongst others, a witness or person against whom an offence has allegedly been committed who is under the age of 18 years.</p> <p>In line with Pillar 2 of the GBVF NSP, the Department of Justice and Constitutional Development implement public education and communication interventions to educate people on their rights to access justice. Information is released through multi-lingual media platforms and in different formats so as to ensure accessibility to diverse court users and the general public.</p>

<i>Findings</i>	<i>Responses</i>
perpetrator on return date is incompatible with the obligation to provide gender-sensitive court procedures that protect the safety of complainants.	<p>Every year the Department of Justice holds exhibitions and service fairs to raise awareness about justice services, particularly services available to survivors of GBVF-related crimes, including sexual offences.</p> <p>In line with the 365 Days Campaign, the Department conducted a number of Imbizo and community gatherings to educate people on court-based support services available to survivors of sexual offences.</p> <p>South Africa is implementing the new model for Sexual Offences Courts which provides the following services to remove the barriers to access justice:</p> <p>Court preparation services: The programme familiarises the victim with court processes, procedures, services and benefits. It aims to help victims to be an effective witness in court. On the date of trial, you will be welcomed in court by the Court Preparation Officer (CPO).</p> <p>Pre- and post-trial trauma debriefing services: The CPO will take you through trial trauma debriefing sessions before the trial commences and once it is concluded to help you deal with the trauma of the incident.</p> <p>Intermediary services: If you are a child victim or a person with mental disability, the prosecutor will apply to court to allow you to testify in a private testifying room with the assistance of an intermediary. The role of the intermediary is to convey questions from court to you in an understandable manner.</p> <p>Private testifying room/closed court services: If you are an adult witness, the law allows you to testify from a private testifying room via the closed-circuit TV system if you feel more comfortable to do so. This will ensure that you do not need to be in the physical presence of the accused when testifying.</p> <p>Private waiting rooms for adult and child victims: The child witness room has standard furniture specifically designed to meet the needs of traumatised children. It also provides a play area, reading centre, and a child's bed-sofa for resting. The adult waiting room is also furnished to make the court experience more comfortable for victims. Information services are available at the private waiting rooms for victims, mainly to inform you of your rights and the available court services. The information is offered in the form of educational booklets, DVDs, and in braille.</p> <p>Witness fee services: The department provides witness fees to cover return travelling costs and food while in court.</p>

*Findings**Responses*

105. The State party has not removed the economic barriers to access to justice faced by victims of domestic violence. The lack of institutionalized affordable or, if necessary, free legal aid (CEDAW/C/ZAF/CO/4, para. 17 (a)) and of reimbursement of transportation costs deprives many victims without sufficient means of their right to bring their case to court.

106. The frequent delays in court proceedings in cases of domestic violence and failure by SAPS and the courts to ensure that such cases are not referred to mediation, constitute further obstacles to women's access to justice.

Provision of legal aid at State expense

Clause 19(1) of the Domestic Violence Act amendment Bill empowers the Minister of Justice and Correctional Services to make regulations regarding, inter alia, the granting of legal aid at State expense in appropriate cases in consultation with the Legal Aid South Africa to the complainant, respondent or a child to assist them with an application for a protection order in terms of this Act. The provision of legal aid is no longer confined to a child but is extended to the complainant and respondent.

In line with sexual offences court model, the Department of Justice provides witness fees to cover return travelling costs and food while in court. In terms of section 191 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) any person who attends criminal proceedings as a witness for the State shall be entitled to such allowance as may be prescribed by the Minister of Justice in consultation with the Minister of Finance.

The National Prosecuting Authority is implementing a 100-day rapid results approach to speed up case turnaround times.

South Africa has introduced a national and provincial 24-hour call centres to deal with complaints against police officials, prosecutors and magistrates on gender-based violence and femicide cases. The country is working to reduce the GBV case backlogs at forensic laboratories. As part of interventions to address the DNA case backlog, an additional R250 million was allocated to the operational baseline budget to address challenges in forensic laboratory services in 2021.

The South Africa Police Services trains recruits on basic training to the Family Violence, Child Protection and Sexual Offences Units. Rape evidence collection kits have been distributed to police stations across the country.

Government employees who work with children and mentally disabled persons are being vetted against the National Register of Sex Offenders. To date, 1,222 officials have been vetted, including prosecutors and members of the SAPS.

(b) Limited access to victim support services

107. The Committee acknowledges that the State party enhanced accessibility to the justice system by establishing TCCs that provide legal and social services to victims of sexual violence. However, TCCs are

The Sexual Offences and Community Affairs (SOCA) within the National Prosecuting Authority provide assistance to GBV survivors to access efficient and

Findings

underfunded, inaccessible for many women in rural areas, and not all of them operate 24/7. The national machinery for the advancement of women lacks sufficient authority and resources to provide the oversight necessary for setting accountability standards for departments providing victim support services. The failure by the State party to ensure the necessary budgetary allocations for victim support services (CEDAW/C/ZAF/CO/4, para. 25 (d)), such as psychiatric and long-term psychosocial services, professional training and affordable housing, undermines victims' right to an effective remedy.

Responses

sensitive criminal justice that is quick, accessible, and responsive and gender inclusive.

The SOCA unit deliver crucial training sessions nationally on virtual platforms, focusing on sexual offences, domestic violence, maintenance, child justice, trafficking in persons and integrated stakeholder training at TCC sites. Together with experts from various academic institutions, SOCA designed and developed a Court Report Training Manual encompassing all forms of expert assessment reports required in court and the submission of reports and viva voce evidence by experts in court.

The use of court preparation officers by the NPA to prepare witnesses for court is an initiative aimed at empowering witnesses and victims and reducing secondary trauma. In the 2020/21 reporting period, 55 579 witnesses were assisted by the court preparation officers and 4 189 victim impact statements were facilitated. Witnesses appearing in all criminal courts are assisted, however, the bulk of the witnesses are in respect of regional courts cases (83.6%) with a particular focus on witnesses in sexual offences cases (53%).

The Western Cape DSD funds psychosocial services at all Thuthuzela Care Centres (TCC) in the province. Services funded include funding of lay counsellors or social auxiliary workers to provide emotional containment of rape victims when presented at the TCC, as well as funding of social workers to provide long term psychosocial support. The Department has furthermore appointed 30 GBV social workers in 2020 that assist with long-term psychosocial support of victims. Lay counsellors and Social auxiliary workers work under supervision of a social worker.

GBV Command Centre

The Gender Based Violence (GBV) Command Centre is implemented as an initiative of the Department of Social Development. The GBV Command Centre provides immediate care and counselling and offers help, hope and the chance of a better life to the many thousands of victims of gender-based abuse, even in the remotest and most underdeveloped corners of South Africa.

The GBV Command Centre is a comprehensive, integrated system that provides immediate, consistent, coordinated and timely support to victims of GBV. Its services are linked to the services of the SAPS and the Department of Health. The GBV Command Centre uses mobile technology to estimate the location of a

Findings

108. The Committee notes the inadequate protection and support services for victims of domestic violence before, during and after legal proceedings, and in particular the absence of State-run shelters for women and their children. It observes that the limited capacity of NGO run shelters and safe houses providing medical, psychological and legal services to victims and the lack of professional training opportunities are direct consequences of the limited financial support they receive from DSD. It recalls that the State party cannot absolve itself of its obligation to ensure protection and assistance to victims of domestic violence by delegating the provision of such services to NGO-run shelters without adequately funding them and ensuring that their services are accessible to all victims of domestic violence, including LGBTI women.

Responses

victim, assign the closest social worker in the field to the case, record and receive continuous feedback on the case. The GBV Command Centre employs trained social workers/command centre agents who provide immediate counselling to victims and help them to avoid or minimise further exposure to GBV.

The Department of Social Development carries the responsibility to establish Shelters for victims of crime and violence particularly abused women and their children. These include the White Doors (safe places of hope) and Khuseleka One Stop Centres. The Sheltering services are provincial located and managed.

For example, currently 19 shelters in the Western Cape are funded by the Provincial Department of Social Development and is in the process of activating a further 6 shelters in the rural areas. The Department opted for a holistic funding model of shelters that include unit cost, contribution towards security of shelters, funding of three house mother posts per shelter, skills development for women and the funding of a social worker and social auxiliary worker per shelter (pending on the size of the shelter). The Department has also rolled out a training programme for social workers, house mothers and social auxiliary workers in trauma support.

The National Department of Social Development has embarked on the development of an Intersectoral Policy on Sheltering service to address various issues on the provision of sheltering service such as capacity building of victims in terms of skills development, accessibility of the service to victims, funding of the shelters and role clarification of other stakeholders including the Department of Human Settlement and other.

Khuseleka One Stop Centres

The Department of Social Development has state owned Khuseleka One-Stop Centres. It is a good model because of its multi-sectoral approach and its aim is to provide integrated services that represent a unique partnership between all the departments in the government of South Africa, development agencies and civil society Organizations in the country. Khuseleka One Stop Centre provides a “place of refuge” where victims of crime and violence are offered a continuum of services from one central point within a multidisciplinary approach model with different relevant stakeholders under one roof. It renders a full basket of services including reintegration of survivors into the community and self-reliance.

Findings

109. The Committee considers that women's insufficient economic protection upon divorce, inadequate consideration of domestic violence in court proceedings to determine custody or visitation rights, long delays in divorce and child custody proceedings, limited enforcement of maintenance obligations, and the State party's failure to introduce free secondary education perpetuate women's dependence on abusive partners.

Responses

South Africa began with the 'no-fee' school policy (NFSP) implementation on 01 January 2007. The policy abolished mandatory school fees in public ordinary schools to make basic education available to poor learners in the country. Parents of children in a school that is declared a 'no-fee' school, do not have to pay school fees for their child (ren), this includes registration or activity fees.

The National School Nutrition Programme is the government programme that provides one nutritious meal to all learners in poorer primary and secondary schools. The objective is to provide nutritious meals to learners so as to improve their ability to learn. National School Nutrition Programme (NSNP) that feeds around nine million learners, is a foundation of social assistance and poverty mitigation and contributed greatly to ensuring that learners in our country have access to quality education.

Government of South Africa approved the national learner transport policy in 2015. Currently, the policy is in the implementation mode. These and many other social protection measures are introduced to support the implementation of free basic education in South Africa,

(c) Findings

110. The Committee finds that the State party is in violation of the following articles of the Convention:

(a) 2 (c), 5 (a) and 15, for failing to remove economic and social barriers to access to justice faced by victims of domestic violence, by not providing affordable or, if necessary, free legal aid and reimbursement of costs for travel to courts, and by failing to create a supportive environment for women to report incidents of domestic violence and ensure gender-sensitive court procedures;

Provision of legal aid at State expense

Clause 19(1) of the Domestic Violence Act Amendment Bill empowers the Minister of Justice and Correctional Services to make regulations regarding, inter alia, the granting of legal aid at State expense in appropriate cases in consultation with the Legal Aid South Africa to the complainant, respondent or a child to assist them with an application for a protection order in terms of this Act. The provision of legal aid is no longer confined to a child but is extended to the complainant and respondent.

The new model for Sexual Offences Courts provides the following services to remove the barriers to access justice:

Court preparation services: The programme familiarises the victim with court processes, procedures, services and benefits. It aims to help victims to be an effective witness in court. On the date of trial, you will be welcomed in court by the Court Preparation Officer (CPO).

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(b) 2 (c) and (e), 11 (c), 12 and 15, for failing to ensure the necessary budgetary allocations for victim empowerment services and provide appropriate protection and support services, including a sufficient number of adequately funded TCCs, shelters and safe houses, to women and their children;

Pre- and post- trial trauma debriefing services: The CPO will take you through trial trauma debriefing sessions before the trial commences and once it is concluded to help you deal with the trauma of the incident.

Intermediary services: If you are a child victim or a person with mental disability, the prosecutor will apply to court to allow you to testify in a private testifying room with the assistance of an intermediary. The role of the intermediary is to convey questions from court to you in an understandable manner.

Private testifying room/closed court services: If you are an adult witness, the law allows you to testify from a private testifying room via the closed-circuit TV system if you feel more comfortable to do so. This will ensure that you do not need to be in the physical presence of the accused when testifying.

Private waiting rooms for adult and child victims: The child witness room has standard furniture specifically designed to meet the needs of traumatised children. It also provides a play area, reading centre, and a child's bed-sofa for resting. The adult waiting room is also furnished to make the court experience more comfortable for victims. Information services are available at the private waiting rooms for victims, mainly to inform you of your rights and the available court services. The information is offered in the form of educational booklets, DVDs, and in braille.

Witness fee services: The department provides witness fees to cover return travelling costs and food while in court.

Government of South Africa showed commitment to ensure the Budgetary allocations for victim empowerment services in October 2019 when President Ramaphosa announced the introduction of the GBVF Emergency Response Action Plan (ERAP) – funded by a reprioritized budget of R1.6 billion. Over a period of 6 months, i.e. from 1 November 2019 to 31 March 2020, different government stakeholders and civil society organisations were tasked to implement robust interventions to significantly reduce the levels of violence against women and children.

In February 2021, President Cyril Ramaphosa launched a private sector-led, multi-sectoral Gender-Based Violence and Femicide (GBVF) Response Fund aimed at supporting the implementation of the National Strategic Plan (NSP), and the wider response in the country. The fund allocates financial support to

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(c) 2 (c) and (e), 10, 13 and 16, for failing to ensure women's adequate protection in divorce, child custody and maintenance proceedings, social protection as well as free education for their children to empower victims of domestic violence to leave abusive relationships.	<p data-bbox="831 344 1437 409">programmes that are based on the National Strategic Plan's six pillars.</p> <p data-bbox="831 427 1469 584">In the 2020/21 financial year, the NPA received R16 Million from the CARRA funding for the TCC project for the next three (03) years. Amongst others, it will be used for establishment, maintenance and upgrade of existing sites, training, etc.</p> <p data-bbox="831 607 1442 925">Section 11 of the Matrimonial Property Act of 1984 (Act No. 88 of 1984) repealed the common law rule by which a husband obtained the marital power over the person and property of his wife, thus providing protection in divorce. Spouses can choose the matrimonial regime they prefer: community of property; out of community of property; or "accrual" system. In the absence of an explicit choice, community of property applies whereby spouses equally own and administer common property.</p> <p data-bbox="831 943 1437 1099">The implementation of the Children's Act, Act 38 of 2005 defined the parental rights and responsibilities that parents or other parties may have, and confers equal and joint guardianship status on parents of children born from marriage.</p> <p data-bbox="831 1117 1458 1464">The child's best interest is a constitutional right of every child. In all matters concerning a child, the best interests of the child are paramount. The Act provides a list of factors that have to be considered when determining a child's best interest. Historically, child custody was usually granted to the mother, with the father having access or visitation rights. The system was based on the traditional view of the mother as the primary caregiver, and the language reflected the power that was so often at the heart of family conflicts.</p> <p data-bbox="831 1482 1461 1800">The intention of the Children's Act was to put an end to custody battles that could do more harm to a child than the divorce itself. By putting the interests of the child first, parents have to put their own egos aside and focus on their mutual responsibility to care for the child. The Act also recognises the importance of fathers in a child's upbringing. There is far more emphasis on shared care and an agreed approach to parenting than the historical convention of maternal custody and paternal visitation conceded.</p> <p data-bbox="831 1818 1458 2004">Section 33(2) of the Act does require parents to agree on a parenting plan before seeking the intervention of the court if they are unable to agree on the discharge of their responsibilities and rights. They can seek help from a family advocate, social worker or psychologist in drawing up the plan.</p>

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In 2021, The Department of Justice and Constitutional Development announced an introduction of a system to trace maintenance defaulters to accelerate the finalisation of maintenance applications.

The new tracking system will be use various online databases and “information hubs” to trace maintenance defaulters. These will enable the courts to finalise more cases and assess the finances of parents who should be paying child support. The Department will use Companies and Intellectual Property Commission (CIPC) registrations, cellular phone numbers registered with network service providers, information from credit bureau, vehicle registrations, as well as other paper trails to find maintenance defaulters.

The new system will be able to link defaulters to their businesses and track their assets among other things. This will assist the court to determine the financial positions of defaulters and oblige them to take care of their children accordingly. The Department has thus used the provisions of the Maintenance Amendment Act of 2015, Section 6 of the Maintenance Act of 1998 and Section 28 (2) of the Constitution of the Republic of South Africa to create the system”.

Government of South Africa has introduced the following policies and programmes to ensure access to free basic education:

No-fee School Policy

South Africa began with the ‘no-fee’ school policy (NFSP) implementation on 01 January 2007. The policy abolished mandatory school fees in public ordinary schools to make basic education available to poor learners in the country. In 2019, 87% of schools were no-fee schools that accommodated 79% of learners. These no-fee schools provide much-needed relief for households, as government funding removes the need for parents to pay fees at such schools.

National School Nutrition Programme

The National School Nutrition Programme is the government programme that provides one nutritious meal to all learners in poorer primary and secondary schools. The objective is to provide nutritious meals to learners so as to improve their ability to learn. National School Nutrition Programme (NSNP) that feeds around nine million learners, is a foundation of social assistance and poverty mitigation and contributed greatly to ensuring that learners in our country have access to quality education.

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C. Principal findings of violations under the Convention

111. In the light of the aforementioned, the Committee finds that South Africa has violated the following articles of the Convention: 1, 2 (f), 3, 5 (a), 10 (c) and (h) and 16; 2 (b), (e) and (f), read with 5 (a), 15 and 16; 2(b), (c) and (e), read with 5 (a) and 15; 1 and 2 (b), (c), (e) and (f), read with articles 5 (a), 12 and 15; 1 and 2 (c), (d) and (e), read with articles 3, 5 (a), 12 and 15; 2 (c), 5 (a) and 15; 2 (c) and (e), 11 (c), 12 and 15; and 2 (c) and (e), 10, 13 and 16. These content of these articles is further developed in the Committee's general recommendations Nos. 18; 19; 21; 29; 31; 33; and 35.

D. Grave or systematic nature of the violations

115. The Committee assesses the gravity of violations in the State party in light of the suffering experienced by women and girls subjected to domestic violence. It notes the physical and psychological harm caused by domestic and sexual violence especially in child and forced marriages, as well as the adverse impact such violence may have on women's and girl's right to education, economic empowerment, sexual and reproductive health and rights, and equal rights in marriage and family relations. The situation gives women and girls who are victims of domestic violence two options: (a) to remain in the abusive domestic

National Learner Transport Policy

Government of South Africa approved the national learner transport policy in 2015. Currently, the policy is in the implementation mode.

These and many other social protection measures are introduced to support the implementation of free basic education in South Africa,

South Africa has enacted legislation to promote equality. The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) ("PEPUDA") was passed into law in 2000 to give effect to section 9 of the South African Constitution. It is enacted to prevent and prohibits unfair discrimination and harassment, to promote equality and eliminate unfair discrimination as well as to prevent and prohibit hate speech on a wide range of categories. PEPUDA prohibits the state and private parties from unfairly discriminating against anyone and from subjecting individuals to hate speech. The Act also imposes obligations on the state and on private parties to promote the achievement of equality.

The object of PEPUDA Act is also to facilitate further compliance with international law obligations including treaty obligations in terms of amongst others the CEDAW convention.

The introduction of the Hate Crime bill in South Africa is one of the legislative interventions introduced to address the increasing number of incidents motivated by prejudices, in the form of hate crimes and hate speech, and to assist persons who are victims thereof; and creates the offences of hate crimes and hate speech and puts in place measures to prevent and combat these offences.

The Government of South Africa is implementing the National Strategic Plan on Gender Based Violence and Femicide (2020-2030). The NSP GBVF is implemented in six Pillars broken down into five years pillars. Pillar five of the National Strategic Plan on Gender Based Violence and Femicide focuses on Economic Power. Over the next 5 years, the implementation will focus on the following strategic interventions:

Accelerated initiatives that address women's unequal economic and social position, through access to

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relationship; or (b) to leave the relationship, at the risk of retaliation, separation from their children, poverty, stigmatization, and with limited access to justice, protection and support services. In either case, victims often find themselves without effective protection from further violence. Victims of domestic violence must thus make a choice between staying in the abusive relationship and enduring the social, economic and safety consequences of leaving it. In both cases, they are at risk of violations of their rights.	<p>government and private sector procurement, employment, housing, access to land, financial resources and income other generating initiatives;</p> <p>Safe workplaces that are free of violence against women and LGBTQIA+ persons, including but not limited to sexual harassment;</p> <p>Demonstrated commitment through policy interventions, by the South African state, private sector and other key stakeholders to eliminate the impact of economic drivers of GBV;</p> <p>Strengthened child maintenance and related support systems to address the economic vulnerability of women.</p>
116. The Committee finds that the State party is responsible for:	
(a) Grave violations of rights under the Convention, considering that the State party has failed to protect a significant number of women and girls from domestic violence and to provide adequate access to justice, protection and support to enable women to leave abusive domestic relationships, thereby exposing them to or unnecessarily prolonging their severe physical and mental suffering;	The finding of grave violation is contestable as South Africa's criminal justice system provides for a number of measures aimed at protecting women and girls from domestic violence. The committee's over reliance on the inputs by the NGO's and stakeholders without subjecting these inputs to scrutiny based on legislative and programmatic interventions that are being implemented is a course for concern.
(b) Systematic violations of rights under the Convention, considering that the State party has knowingly omitted to take effective measures:	As previously stated the three key GBV Bills have been passed by Parliament as part of government's promise to GBV activists and women. The three amendment Bills are designed to fill the gaps that allow some perpetrators of these crimes to evade justice and to give full effect to the rights of our country's women and children. The sad reality is that many survivors of gender-based violence have lost faith in the criminal justice system.
(i) To address patriarchal attitudes and social norms that legitimize domestic violence and to destigmatize victims;	The Criminal Law (Sexual Offences and Related Matters) Amendment Act, will create a new offence of sexual intimidation, extends the scope of incest, and widens the reporting duty of those who suspect sexual offences committed against children.
(ii) To specifically criminalize domestic violence and femicide, enforce and monitor civil remedies against perpetrators, repeal provisions that tolerate harmful practices giving rise to domestic violence, enforce general criminal law provisions punishing domestic violence, and prosecute ex officio domestic violence and rape;	With the amendment, the National Register for Sex Offenders will include information on all sex offenders and not just the particulars of those convicted of sex crimes committed against children or persons with mental disabilities. Offenders will also remain on the register for a longer period and the register will be publicly available.
(iii) To establish appropriate institutional arrangements, oversight and accountability measures to protect victims of and prevent domestic violence;	The Criminal and Related Matters Amendment Bill will intensify the granting of bail to perpetrators of GBV and femicide. The Bill will also expand the
(iv) To remove the economic and social barriers faced by victims of domestic violence and create a supportive environment that enables victims to obtain access to justice.	

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117. The Committee considers that the State party has knowingly accepted these omissions, which are not a random occurrence, as evidenced by the extremely high levels of domestic violence in the State party. They constitute elements of systematic violations of rights under the Convention.

offences for which minimum sentences must be imposed.

One of the significant amendments to the Domestic Violence Act is that the Act now provides for the imprisonment or fining of persons with knowledge, reasonable belief or suspicion that an act of domestic violence has been committed against a child, a person with disability or an older person and fails to report it to a social worker or police. Members of the South African Police Service can also be reported to the Civilian Secretariat for Police Service for failing to comply with the Act.

On 18 September 2019, His Excellency President Cyril Ramaphosa expressed the country's commitment to address the scourge of gender-based violence and femicide that have reached endemic proportions in South Africa. The President also announced a 5-point emergency plan, which is to be implemented without delay, to tackle gender-based violence. One of the points is enhancing the legal and policy framework in order to strengthen the response of the State to this problem.

When announcing the introduction of the three key GBV Bills in September 2020, the President emphasised that the women of South Africa have had enough of lukewarm actions that do not address one of the most fundamental rights of all – to live in freedom from fear. He further stated that these proposed amendments are an appropriate response to a groundswell of dissatisfaction at the way survivors of gender-based violence have been treated by the criminal justice system in the past. This government and its partners will make good by the women of South Africa. He ensured the country that the government will not let the women down.

The President further acknowledged that people are angry that many perpetrators of such serious crimes are exploiting legal loopholes to avoid imprisonment and are frustrated that sentencing is often not proportionate to the crimes. Therefore the amendments impose new obligations on law-enforcement officials and on our courts to address these loopholes.

VIII. Recommendations

A. Legal and institutional framework

118. The Committee recommends that the State party:

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(a) Specifically criminalize and establish penalties commensurate with the gravity of all forms of domestic violence and femicide and introduce ex officio prosecution with the possibility of issuing a final warning rather than sentencing the perpetrator when a victim withdraws her complaint upon reconciliation;

(b) Harmonize the definition of GBV across all legislation, identify the specific responsibilities of governmental departments to address domestic violence and require them to provide budgetary benchmarks or dedicated resources for gender-responsive budgeting;

(c) Provide dedicated funding for the implementation of the National Strategic Plan on GBV and Femicide and ensure that the GBV and Femicide Council is adequately resourced, independent and has a strong mandate;

(d) Amend section 26(1) of the Marriage Act and section 3 of the Recognition of Customary Marriages Act to raise the minimum age of marriage to 18 years for both women and men without exceptions, empower courts to invalidate child and forced marriages, prohibit 'ukuthwala' involving girls and payment of bride prices, and enforce the prohibition of child and forced marriage, particularly in rural areas and within traditional communities;

This is provided for in the legislative acts and is also carried out by the courts of law in the country.

The Department of Social Development has developed the Victim Support Services Bill that is aimed at providing services that are victims centred. The VSS Bill has identified and outline specific responsibilities of various government departments. The Bill will be costed for implementation.

The current budgeting processes implemented by Provincial Treasury at a Provincial level do not include gender responsive budgeting. The allocation of budgets towards gender mainstreaming programs are performed at an Institutional level.

Gender responsive budgeting, however, is in its initial stages with National Treasury having started the roll-out of budget tagging, with the current focus on Climate tagging with a case study currently being rolled out in a few provinces only.

The lessons learnt from this will in future be used for tagging any expenditure that departments wish to tag, including gender tagging.

Information received from Office of the Premier indicates that two provinces, namely Gauteng and Free State, have started some form of gender budget tagging and Provincial Treasury will engage with these provinces to see if this method is user friendly and could be replicated in KZN. The KZN Office of the Premier has a dedicated funding for the implementation of the National Strategic Plan on GBV and Femicide and ensure that the GBV since a 5-year plan has been made and approved by Cabinet. At the moment, there is a Provincial GBVF Task Team Committee that works on the implementation of the GBV programs in the province, using resources from departments.

This process has been initiated by the Minister for Home Affairs as the custodian of the Marriage Act. There is a process of harmonising the different acts on marriage in the country into one act in which the minimum age of marriage is proposed at 18 years. This is in the policy that is currently consulted on towards the draft Single Marriage Bill

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<p>(e) Repeal provisions of the Recognition of Customary Marriages Act that allow, tolerate or condone harmful practices such as polygamy and ukuthwala and amend the Act to define the criteria for ascertaining the free, full and informed consent of the women concerned;</p>	<p>COGTA would provide necessary capacity building support to run workshops and awareness campaigns on ukuthwala, forced child marriages.</p> <p>KZN Office of the Premier, NPA, CGE, University of KwaZulu Natal supports a community-based project against ukuthwala under uThukela District. Young women developed a community protocol on combating and reporting incidents of ukuthwala. The protocol has been presented to the Executive Council.</p> <p>The CGE in partnership with civil society organizations hosted workshop with Traditional leadership of uThukela engaging on the historic and harmful practice of ukuthwala</p>
<p>(f) Adopt the Gender Equality Bill and ensure that it defines and prohibits all forms of direct and indirect forms of discrimination against women and provides stronger mandates to the national machinery for the advancement of women to regulate service provision and the CGE to oversee and hold the government accountable for the implementation of gender equality legislation.</p>	<p>This Bill is currently redrafted and will be consulted upon in the 2022/23 period.</p>
<p>B. Law enforcement</p>	
<p>119. The Committee recommends that the State party:</p>	
<p>(a) Exercise due diligence to prevent, investigate, punish and provide effective remedies to victims of domestic violence;</p>	<p>Part I of Schedule 2 to the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997) (the “Minimum Sentences Act”), makes provision for minimum sentences for certain serious offences, including murder, rape and compelled rape. In terms of section 51(1) of this Act, a regional court or the High Court must sentence a person convicted of an offence in Part I of Schedule 2 to the Act, to life imprisonment.</p> <p>Clause 15 of the Criminal and Related Matters Amendment Bill substitutes the offence of murder, to include the following offences thereunder in Part I of Schedule 2:</p> <p>(a) The murder of a person under the age of 18 years; and</p> <p>(b) the death of the victim which resulted from physical abuse or sexual abuse as contemplated in paragraphs (a) and (b) of the definition of “domestic violence” in section 1 of the Domestic Violence Act, 1998, by the accused who is or was in a domestic relationship, as defined in section 1 of that Act, with the victim.</p>

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(b) Ensure that perpetrators of domestic violence are not released on bail, are prosecuted and receive penalties commensurate with the gravity of the offence, as well as adequate correctional and rehabilitation services to prevent recidivism;

The Criminal and Related Matters Amendment Bill amends section 59 of the Criminal Procedure Act to provide that an accused may not be released on bail before his or her first appearance in a lower court in respect of an offence against a person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998 (Act No. 116 of 1998).

Section 59A of the Criminal Procedure Act, 1977, provides that a Director of Public Prosecutions or an authorised prosecutor may, in respect of the offences referred to in Schedule 7 to that Act and in consultation with the police official charged with the investigation, authorise the release of an accused on bail. The offences mentioned in Schedule 7, which qualify for release on bail by a prosecutor, include public violence, culpable homicide, assault involving the infliction of grievous bodily harm, arson, robbery, housebreaking, theft involving amounts that do not exceed R20 000, malicious injury to property and the possession of drugs.

However, the Criminal and Related Matters Amendment Bill amends section 59A of the Criminal Procedure Act, 1977, to exclude an offence against a person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or section 18(1)(a) of the Protection from Harassment Act, 2011 from the ambit of the application of section 59A. The accused must be kept in custody until he or she appears in court, whereafter he or she may, in terms of section 60 of the Criminal Procedure Act, 1977, make an application to the court to be released on bail.

(c) Provide mandatory, recurrent and effective capacity-building for the judiciary, law enforcement officers, forensic medical experts, health care personnel and social workers on all forms of domestic and sexual violence, the strict application of the DVA and the SOA, gender-sensitive questioning, proper case management and collection and use of forensic evidence, and their role in protecting, encouraging and assisting victims to report cases of domestic violence;

Section 40(1)(b) of the Criminal Procedure Act, 1977, empowers a police official to arrest, without a warrant of arrest, a person whom he or she reasonably suspects of committing an offence referred to in Schedule 1 of the Act. Section 42(1)(a) contains a similar provision empowering a member of the public to arrest, without a warrant, a person who commits in his or her presence or whom he or she reasonably suspects of committing an offence referred to in Schedule 1 of the Act.

In terms of section 18 of the Domestic Violence Act, the National Director of Public Prosecutions referred to in section 10 of the National Prosecuting Authority Act, 1998, in consultation with the Minister of Justice and after consultation with the Directors of Public Prosecutions, must determine prosecution policy and issue policy directives regarding any offence arising from an incident of domestic violence.

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(d) Prosecute all cases of rape ex officio, including when the victim is 16 years or older or withdraws her complaint against the perpetrator;	<p>Part I of Schedule 2 to the Criminal Procedure Act provides that the offence of rape—</p> <p>(a) when committed—</p> <p>(i) in circumstances where the victim was raped more than once, whether by the accused or by any co-perpetrator or accomplice;</p> <p>(ii) by more than one person, where such persons acted in the execution or furtherance of a common purpose or conspiracy;</p> <p>(iii) by a person who has been convicted of two or more offences of rape or compelled rape, but has not yet been sentenced in respect of such convictions; or</p> <p>(iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus, is punishable by life imprisonment.</p> <p>Clause 15 of the Criminal and Related Matters Amendment Bill also provides for circumstances where the offence of rape is punishable by life imprisonment, where the victim of the offence is a vulnerable person. In terms of this amendment—</p> <p>(a) the age of a vulnerable person is increased from 16 years to 18 years; and</p> <p>(b) a new item is inserted to extend the application of Part I of Schedule 2 to a victim who is or was in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused.</p>
(e) Provide systematic training to ensure that law enforcement officers investigate domestic violence cases swiftly, independently and thoroughly, including when a victim withdraws her complaint upon reconciliation with the perpetrator;	<p>The Employee Health and Wellness for SAPS provides trauma counselling to members exposed to traumatic situations. There is a debriefing programme in place that is being carried out</p>
(f) Provide SAPS with the necessary skills and means, including sufficient vehicles, IT tools and training, to serve, enforce and monitor protection orders, accompany victims to collect personal belongings and confiscate firearms from perpetrators;	<p>SAPS is provided with necessary skills and training, to serve, enforce and monitor protection orders, accompany victims to collect personal belongings and confiscate firearms from perpetrators. This is part of the SAPS training.</p>
(g) Strengthen accountability mechanisms to punish non-compliance by SAPS officers with their duty to investigate and their obligations under the DVA, corruption, or collusion with perpetrators;	<p>Independent Police Investigative Directorate (IPID) has been established to fulfil an oversight role over South African Police Service (SAPS) and Municipal Police Service (MPS). IPID conducts investigations into police criminality, particularly cases of death, rape, and corruption, including crimes against vulnerable groups such as women, children, and persons with disabilities.</p>

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(h) Provide confidential debriefing spaces and psychological support to SAPS officers undergoing trauma, and incentives to register domestic violence cases by including GBV indicators in their performance evaluation plans;

(i) Introduce an electronic case management system and provide training on its use to prevent the loss of dockets

The E-docket is in place. All dockets are scanned and stored electronically. All data captures are trained on E-docket

C. Access to justice

120. The Committee recommends that the State party:

(a) Remove barriers to justice faced by women and girls, including by providing institutionalized affordable or, if necessary, free legal aid for domestic violence victims, irrespective of the perpetrator's legal representation, and reimbursement of transportation costs, and by funding organizations providing legal assistance to victims;

(b) Require court clerks to assist victims to fill out application forms for protection orders, inform them about the need to show imminent harm and to appear on the return date for obtaining an eviction or a final protection order, as well as to report recurring violence;

(c) Train magistrates and clerks to formulate protection orders that effectively protect victims and prohibit further acts of domestic violence, ensure that applicants are received outside court working hours, referred to victim support services and that they can make applications online and in victim-friendly facilities;

Effective capacity-building for the judiciary has been conducted by NPA for law enforcement officers, forensic medical experts, government officials, Health care personnel and social workers on all forms of domestic and sexual violence. There is a structured DVA course that is presented by the SAPS Human Resource Development component. It has been running over 5 years now. Regular inspections are conducted in the dockets to ensure compliance.

(d) Ensure that police officers located in TCCs are available 24/7, increase the number of adequate victim friendly facilities in police stations and ensure that police officers and volunteers undergo training on gender-sensitive protocols;

(e) Ensure that victims of domestic violence have access to effective remedies, including rehabilitation, and that cases are not referred to alternative dispute resolution procedures or traditional courts prioritizing mediation;

Traditional Councils are structures that assist community members for various problems they have. If there is a need for the council to address the matter, it is done. COTGA would provide necessary support on victims of domestic violence to have access to effective remedies, including rehabilitation through working with DSD and DOH and other relevant departments regarding the matter at hand.

<i>Findings</i>	<i>Responses</i>
<p>(f) Create a supportive environment to encourage victims to report incidents of domestic violence by:</p> <p>Destigmatizing victims, dismantling commonly held victim-blaming beliefs, protecting victims from threats and retaliation by perpetrators before, during and after legal proceedings, and imposing strict penalties for breaches of protection orders;</p> <p>Ensuring victims' access to forensic psychiatric evidence, especially in rural areas, and fast-tracking forensic medical examinations at day hospitals;</p> <p>Ensuring that court proceedings are not unduly prolonged, avoiding direct confrontation of victims with perpetrators, eliminating judicial gender bias and raising awareness among the judiciary and police of the need to give due weight to women's and girls' testimonies as parties and witnesses;</p> <p>Ensuring that courts adequately take into account domestic violence when determining child custody or visitation rights;</p>	<p>It is widely recognised that a child witness must be protected from undue mental stress or suffering while giving evidence. Evidence through intermediaries is widely recognised as an effective procedure in criminal proceedings to protect a child witness or complainant. Currently, the intermediary service is available to a child witness or complainant in criminal proceedings. The intermediary service is not available to any other witness or complainant who may be exposed to similar undue mental stress, trauma or suffering. The intermediary service is also not available in respect of any proceedings, other than criminal proceedings.</p> <p>The new sections 51A and 37A inserted in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) and the Superior Courts Act, 2013 (Act No. 10 of 2013) respectively, aim to extend the intermediary service—</p> <p>(a) firstly, to a witness who suffers from a physical, psychological, mental or emotional condition, and to older persons, as defined in the Older Persons Act, 2006 (Act No. 13 of 2006); and</p> <p>(b) secondly, to proceedings other than criminal proceedings.</p> <p>Section 48 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 places an obligation on persons who submit applications for fostering, kinship caregiving, temporary safe caregiving, adoption of children or curatorship to disclose that they have been convicted of sexual offences. Clause 13 of the Criminal Law (Sexual Offences and Related Matters) Amendment Bill, 2020 therefore amends section 48 of the principal Act by introducing an offence in respect of the non-disclosure of previous convictions for sexual offences in cases of child custody.</p>
<p>(g) Establish a centralized electronic case management system in the judiciary to ensure effective and efficient handling of cases of domestic violence.</p>	<p>Section 42 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 provides for the establishment of a National Register for Sex Offenders containing particulars of persons convicted of any sexual offence against a child or a person who is mentally disabled or are alleged to have committed a sexual offence against a child or a person who is mentally disabled and who have been dealt with in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977.</p>

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D. Victim support

121. The Committee calls upon the State party to:

(a) Increase the number of and provide sufficient funding to TTCs to ensure that they can operate 24/7, provide adequate medical and psychosocial support to victims of sexual violence, particularly in rural areas, and train social workers on trauma counselling;

(b) Adopt the Victim Support Services Bill, define VES as mandatory services, adequately fund NGO-run shelters and safe houses, increase the daily benchmark allocation per resident using the same funding model in all provinces, remove bureaucratic obstacles to DSD subsidies and the requirement for NGOs to have infrastructures in at least four provinces, and facilitate the acquisition by NGOs of the land where their shelter premises are based;

The Minister of Justice must designate a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, as the Registrar of the National Register for Sex Offenders.

The GBV Command Centre and KZN DSD call Centre operates for 24 hours a day in seven days per week and has the capacity to receive telephone calls from members of the public in need of counselling, conduct intensive telephone counselling sessions and refer the cases for psycho-social service providers for follow up and continuation with psycho-social support by local service office Social Workers.


DSD also funds the Lifeline Organisation who employs Social Workers who render psychosocial support services to victims at 92 Police stations, all 8 Thuthuzela Care Centres and 13 Crisis Care Centres in all Districts.

The Department is currently refining the VSS Bill after it was gazette in the year 2020 and received public comments were processed and incorporated into the VSS Bill. The VSS Bill will be tabled into Cabinet for approval to table into Parliament. The VSS Bill aimed to regulate the victim support services and putting the victim at the centre of the Criminal Justice System.

The Department has also developed the Sector Funding Policy (SFP) model to strengthen adequate funding for the NGOs, currently the Department is finalising the development of guidelines for implementing the SFP. The Victim Support Services Bill has been consulted. The process has commenced with DSD through the review of the sector funding policy. Stakeholders will also be consulted.

National Consultation on the Intersectoral Shelter Policy for Victims of Crime and Violence was held virtually on 09 March 2021, 33 stakeholders participated.

There has been no progress on the acquisition of land where shelters can be based but the process of establishing two Shelters in Ugu and King Cetshwayo District in partnership with the Department of Public Works has commenced.

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<i>Findings</i>	<i>Responses</i>
(c) Ensure that shelters and safe houses have sufficient capacity to receive victims of domestic violence, including those with psychiatric conditions, LGBTI victims, and their children, provide dedicated allocations for skills development in shelters in all provinces, and fully implement the recommendations in the 2019 CGE report on the 'State of Shelters in South Africa';	The Department of Social Development has developed the Intersectoral shelter policy for victims of crime and violence in order to standardise quality of services rendered at the shelters across the country. The aim of the Intersectoral shelter policy is to ensure that shelters across the country are inclusive in the accommodation of victims, this covers LGBTI victims and children. The policy addresses the recommendations of the 2019 CGE report on the Status of Shelters in South Africa. Furthermore, the same policy advocates for the skills development to be implemented in all shelters for economic empowerment of women.
(d) Ensure that survivors of domestic violence and their children have access to affordable housing, free education, long-term psychosocial support, loans, credit and other basic services and financial support, and are economically empowered to gain economic autonomy to leave and recover from abusive relationships;	<p>The Department of Social Development as lead in the implementation of NSP on GBVF Pillar 4 (Response, Care, Support and Healing) ensure the provision of psychosocial support services to victims of GBV beyond the Shelter. The Intersectoral Sheltering Policy mandates the re-integration of GBV victims to an extent of involving other relevant stakeholders within the Sector to contribute to healing of the victims.</p> <p>The school fee exemption for learners is based on a National Gazette and national policy as per the Department of Basic Education. Each parent applies for a school fee exemption and the KZN Department of Education applies the policy to each case based on the merit of application. The policy takes into consideration the income of both parents who have registered the learner at the school, however each situation is investigated and proper consideration is given by the school and SGB. If the parent is unhappy with the outcome s/he can appeal a reconsideration at the circuit/district office.</p> <p>Lifeline organisations are funded to provide economic empowerment opportunities to women and these include short courses in sewing, baking, hair and nail care and basic computer literacy. These women are recruited from their current caseloads and attend the training on a daily basis. Lifeline also provides taxi fare for the women on a daily basis.</p>
(e) Ensure women's economic protection upon divorce, reduce the length of divorce proceedings, enforce maintenance obligations and provide adequate child support to mothers leaving an abusive relationship.	<p>In South Africa, marriage is governed by different laws:</p> <p>(a) The Marriage Act, 1961 (Act No. 25 of 1961)</p> <p>(b) The Matrimonial Property Act of 1984 (Act No. 88 of 1984)</p> <p>(c) The Recognition of Customary Marriages Act of 1998 (Act No. 120 of 1998)</p> <p>(d) The Civil Union Act, 2006 (Act No. 17 of 2006)</p>

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The Recognition of Customary Marriages Act of 1998 (Act No. 120 of 1998) repealed the Black Administration Act of 1927, which considered customary wives to be minors subject to the guardianship of their husbands. In terms of section 3(1) both prospective spouses must be over 18 years old and must both consent to be married under customary law. Section 6 provides that both spouses are recognized equal status and equal capacity to acquire assets and to dispose of them, to enter into contracts and to litigate. In terms of section 7 customary marriages entered into after the commencement of the Act create a community of property regime, unless the spouses agree differently, while existing marriages remain governed by customary rules. Section 8 provides that divorce may be dissolved by a decree of divorce issued by a court on the ground of the irretrievable breakdown of the marriage, when it has reached such a state of disintegration that there is no reasonable prospect of the restoration of normal marriage relationship. Upon divorce there is equal distribution of the marital property and court orders address issues of child maintenance and spousal support.

Furthermore, the Maintenance of Surviving Spouse Act of 1990 (Act No. 27 of 1990) and the Intestate Succession Act of 1987 (Act No. 81 of 1987) are gender-neutral and both recognise women's inheritance rights (10). Sections 6 and 8(c) of the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 prohibit policies and practices which discriminate against women in the inheritance of family property and any inequitable traditional, customary or religious practice which impairs the dignity of women and undermines equality between women and men.

E. Prevention and awareness-raising

122. The Committee recommends the State party:

(a) Adopt, effectively implement and adequately fund preventive measures to challenge and dismantle the root causes of domestic violence, including patriarchal attitudes and discriminatory stereotypes that perpetuate or legitimize domestic violence and harmful practices giving rise to such violence and confine it to the private sphere, and combat the culture of silence and impunity surrounding domestic and sexual violence;

In KZN, 183 Social Workers are employed as a resource that is dedicated and focused on the response to the scourge of Gender Based Violence. These Social Workers have been placed at 92 Police stations, all 8 Thuthuzela Care Centres and 13 Crisis Care Centres in all Districts to provide psychosocial support to all victims of crime and violence. The Social Workers are engaged in prevention and awareness programmes on social ills and in promoting the involvement of men as active partners for women and girl's human rights and

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(b) Implement and financially support civil society organizations conducting awareness-raising programmes for the general public, political, traditional and religious leaders, initiators, the CNL and the media to promote understanding of the criminal nature of all forms of domestic violence, including psychological and economic violence, rape and harmful practices and the incompatibility of certain cultural practices with women's rights, and address the stigma faced by victims;	<p>as agents of change in the fight against GBV and HIV and AIDS.</p> <p>The Department of Social Development provides financial support to Civil Society Organizations with a focus on education and awareness raising on Gender Based Violence and Femicide (GBVF).</p> <p>In addition, the Department is launching campaigns targeting traditional and religious/Interfaith leaders in the fight against GBVF at local level. The intention of these campaigns is to address harmful practices and norms both from culture and religion.</p> <p>The KZN Department of Social Development funds a total of sixty organisations that conducts awareness raising programmes for the general public. The MEC held a dialogue with traditional leaders and healers on 06 November 2021 in order to gain an understanding of their in social mobilisation campaigns to address community cultural norms, values and social practices pertaining to GBV in the Province and ascertain their understanding and knowledge on GBV in order to develop their capacity on sexual and gender-based violence. There will be ongoing discussions and engagements with Traditional Courts as an important platform for addressing and adjudicating gender-based violence cases in communities and need to be revived or strengthened where they already exist.</p>
(c) Strengthen educational programmes on women's rights and gender equality at all levels of education to eliminate stereotyped gender roles and sensitize girls and boys on the harm caused by GBV;	<p>The Department of Social Development is implementing an integrated campaign at Institution of Higher learning to eliminate stereotyped gender roles and sensitise youth on the harm caused by GBV.</p>
(d) Raise awareness among police officers, social workers, teachers and lecturers of their duty to report child abuse in their communities and sexual violence, including intimate partnership violence, at universities, respectively;	<p>The integrated campaigns at Institutions of Higher learning are also aimed at creating support system for learners and promote/encourage reporting of GBV incidences by both lecturers and learners.</p>
(e) Implement sustained drug abuse and alcoholism treatment and education programmes in communities and schools.	<p>Commemoration of the International Day against Drug Abuse and Illicit Trafficking</p> <p>South Africa as a signatory to the United Convention, annually commemorates the International Day against Drug Abuse and Illicit Trafficking to create awareness on the dangers of alcohol and drug abuse and encourage communities to take action in fighting the scourge of substance abuse.</p> <p>In 2020/21 financial year due to COVID19 pandemic, the department commemorated the International Day against Drug Abuse and Illicit Trafficking through a Substance Abuse webinar under the national theme "Value yourself and make healthy choices against</p>

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alcohol, tobacco and drug abuse to minimize the spread of COVID-19. The highlighted the harmful effects of substance abuse as well as the link between substance abuse and COVID-19.

The department also provided information sessions on the risk associated with alcohol drinking during pregnancy targeting youth and women of childbearing age. The initiative was done to eliminate and minimise the risk of Foetal Alcohol Syndrome. Furthermore, pregnant women who drink alcohol were provided with brief counselling and referred for further intervention.

Education and awareness at Institutions of Higher Learning.

The Department implemented National Anti-Substance Abuse Awareness campaigns to create awareness on the harmful effects of substance abuse, gender-based violence and social crime in institutions of higher learning, schools and communities.

Festive Season Campaign

This campaign serves to remind communities about the dangers of alcohol and substance abuse during festive season because many lives are lost in road accidents caused by drinking and driving. Young people get involved in irresponsible sexual behaviour which could lead to different sexual transmitted infections and unwanted pregnancies because of the abuse of alcohol and drugs. The campaign targets shopping malls, taxi and bus ranks, train stations, toll gates, beaches, and also participating in door-to-door campaigns, fun walks, roadblock blitz in partnership with other relevant stakeholders in the field of substance abuse.

Conference on substance abuse and family related interventions

It was held on 31-02 November 2019 in Gauteng Province (Birchwood Conference Centre). The theme of the conference: "The impact of substance abuse on Families". The main objective was to create a platform for delegates to share information and views regarding substance abuse challenges and dynamics affecting families. The target of the conference was 350 inclusive of Political leaders, Government departments, NGO's, CBO's, FBO's, Research Institutions, Disability Sector, Treatment centres, African Union, SADC Region and International countries. Twelve (12) resolutions were adopted out of

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the conference. These resolutions are implemented through the National Drug Master Plan 2019-2024.

Ke Moja Drug Awareness Programme

The Department of Social Development is continuously implementing the Ke Moja Drug Awareness Programme. Ke Moja is a national programme aimed at raising awareness among South African communities on the dangers of drug abuse and providing alternative healthy lifestyles through education and counselling. The programme has since been evaluated and reviewed in 2011/12 to enhance its content and also accommodate emerging trends in the field of substance abuse. The target for the programme includes children, youth, parents and care givers. To date, five provinces has been capacitated on the reviewed programme and the remaining four provinces will be capacitated in 2021/22 financial year.


Siyalulama Outreach Programme

The purpose of this programme is to take services to people who are affected by the Substance Use Disorders and who cannot take initiative in reaching out for such services. During 2021/22 financial year, the outreach programme was conducted at Hammanskraal,

Bronkhorspruit, Tembisa, Dobsonville, Charlestown and Newcastle. The Department will continue with the outreach programme during 2021/22 financial year

Treatment Programme

The department has adopted the Universal Treatment Curriculum (UTC) since 2019. The aim of the curriculum is to assist countries cadres in the field of substance abuse to increase their skills, knowledge and capacity relating to prevention, treatment, care and support. The curriculum has been Internationally Certified for Addiction Profession (ICAP) cadres in the field of substance abuse. To date, twenty-five (25) Master Trainers have completed ICAP1 training, passed exams and are now certified addiction counsellors. The department has also echo trained more than 260 cadres who will be writing exams before the end of September 2021. The curriculum is implemented in three public treatment centres since 2020 and has been extended to four more additional centres in 2021/22 financial year. Access to treatment services was increased through the building of treatment centres in all provinces. There are 13 public treatment centres in the country. Nine (9) of the public

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treatment centres admit women, men, youth and children in a demarcated ward.

The National Drug Master Plan 2019–2024

The National Drug Master Plan 2019–2024 was approved by Cabinet in October 2019. The plan advocates for the reduction of demand for drugs in communities. Provincial Substance Abuse Forums were capacitated to prevent those who have not started using drugs and treat those who have started using drugs. During capacity building workshops the emphasis under demand reduction were the following:

Individual oriented strategies such as community-based and participatory educational programmes, whereby the participants are trained to counter social pressure;

Environment oriented strategies such as participatory efforts to redress socio-economic deprivation and increase opportunities for non- risky activities;

Specialised and broad-brush clinical services that provide short and long-term therapy as well as other services such as medical treatment, occupational training that are aimed at reducing drug related harms, disability, enhance rehabilitation, prevent relapses and recurrences of drug misuse and Substance Use Disorders, and

Community-based information campaigns that assist the public to detect risky drug use early and access appropriate services.

The National Drug Master Plan 2019–2024 prioritised populations for interventions as follows:

Youth in and out of school/ institutions of higher learning;

Children;

Women;

Persons with disabilities;

Pregnant women;

Families in all their manifestation including child-headed families;

Disadvantaged people in vulnerable communities; Occupational groups at risk (such as artists, athletes and professionals), and

Key populations (such as LGBTIQ, sex workers, migrant workers etc.).

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F. Accountability and data collection

(a) Establish accountability mechanisms and a system to monitor and evaluate the implementation of the NSP and regularly collect, analyse and publish disaggregated statistical data on the number of complaints about all forms of domestic violence, the rates of dismissal and withdrawal of complaints, including upon reconciliation, the rates of prosecution and conviction, the sentences imposed on perpetrators and the reparations provided to victims;

(b) Conduct research and a dedicated survey on GBV to obtain more reliable data on the extent and economic impact of GBV, including domestic violence, in the State party
