



# Assemblée générale

Distr. générale  
18 novembre 2016  
Français  
Original : anglais

## Conseil des droits de l'homme

### Trente-deuxième session

Point 3 de l'ordre du jour

**Promotion et protection de tous les droits de l'homme,  
civils, politiques, économiques, sociaux et culturels,  
y compris le droit au développement**

## **Rapport de la Rapporteuse spéciale sur la violence contre les femmes, ses causes et ses conséquences, sur sa mission en Afrique du Sud\***

### **Note du secrétariat**

Le Secrétariat a l'honneur de transmettre au Conseil des droits de l'homme le rapport de la Rapporteuse spéciale sur la violence contre les femmes, ses causes et ses conséquences, Dubravka Šimonović, concernant la mission qu'elle a effectuée en Afrique du Sud du 4 au 11 décembre 2015. La Rapporteuse spéciale examine les lacunes et les difficultés auxquelles se heurte l'État pour s'acquitter de l'obligation qui lui incombe d'éliminer la violence contre les femmes, ses causes et ses conséquences, et elle recommande des mesures propres à prévenir et combattre cette violence dans le pays.

\* Le présent rapport a été soumis après la date limite pour que les faits les plus récents puissent y figurer.

GE.16-20459 (F) 251116 151216



\* 1 6 2 0 4 5 9 \*

Merci de recycler



## Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa\*\*

### Contents

	<i>Page</i>
I. Introduction .....	3
II. General context .....	3
III. Manifestations of violence against women, its causes and consequences .....	4
A. Femicides or gender-related killings of women.....	5
B. Domestic violence .....	5
C. Sexual violence, including rape .....	6
D. Harmful practices.....	7
E. Violence against women and girls in informal settlements.....	8
F. Violence against specific groups at risk, including women and girls with disabilities, elderly women and lesbian, gay, bisexual, transgender and intersex persons.....	9
IV. Incorporation of the international and regional framework on violence against women .....	10
A. International and regional framework.....	10
B. Observation of United Nations monitoring mechanisms .....	11
V. State responses and measures to address violence against women .....	11
A. Constitutional, legislative and policy framework .....	11
B. Institutional framework: national machinery and independent institutions .....	13
C. Some intersectoral responses to violence against women.....	14
VI. Gaps and challenges .....	15
A. Prevention .....	15
B. Protection (service providers).....	16
C. Prosecution .....	17
VII. Conclusions and recommendations .....	19

---

\*\* Circulated in the language of submission only

## I. Introduction

1. At the invitation of the Government, the Special Rapporteur on violence against women, its causes and consequences visited South Africa from 4 to 11 December 2015.
2. During her eight-day visit, the Special Rapporteur met in Pretoria with the Minister in the Presidency responsible for women and high-level officials from her Department, who were in charge of organizing the official programme of the visit. She held two sets of consultations with high-level officials of the Ministries of Labour, Social Development, Home Affairs, Health, Rural Development and Land Reform, Education, Human Settlements, Police (including the Deputy Minister), Justice and Correctional Services (including the Minister) and the National Prosecuting Authority, including its Sexual Offences and Community Affairs unit. She visited the women's section of the Pretoria central prison (Kgosi Mampuru II) where she listened to testimonies of detainees. She also travelled to Cape Town and East London, where she met a wide range of province government officials. In Johannesburg, she exchanged views with the Deputy Presidents of the Constitutional Court and the Supreme Court of Appeal.
3. The Special Rapporteur held consultations with a number of institutions, which are referred to as Chapter 9 institutions, since they are constitutionally based in chapter 9 of the Constitution to secure, each within its own sphere of competence, the respect and fulfilment of human rights for all citizens: the Commission for Gender Equality, the South African Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and the Public Protector. She also met representatives of the Financial and Fiscal Commission.
4. She also visited several shelters in Pretoria, Johannesburg and Cape Town, which provided her with the opportunity to meet women survivors. Throughout her visit, she also held consultations with numerous civil society representatives and members of academic institutions. She wishes to acknowledge in particular the role that the Masimanyane Women's Support Centre played in facilitating civil society meetings. She also visited the outskirts of both Khayelitsha and Diepsloot townships. Finally, she exchanged views with representatives of United Nations agencies and programmes in the country.
5. The Special Rapporteur expresses her gratitude to the Government for its excellent cooperation, its frank attitude and openness and to the civil society organizations, academics and other stakeholders for their valuable input. She expresses her heartfelt thanks to all the victims of violence who agreed to relate their personal experiences; their testimony was crucial to gaining a deeper understanding of the situation of women in South Africa.
6. She also would like to thank in particular the Regional Office for Southern Africa of the Office of the United Nations High Commissioner for Human Rights for the assistance extended prior to and during the mission.

## II. General context

7. South Africa is still a young democracy, deeply influenced by its violent past characterized by divisions of race, class and gender. The violence inherited from the apartheid era still resonates profoundly in today's society, dominated by deeply entrenched patriarchal norms and attitudes towards the role of women, which make violence against women and children, especially in rural areas and informal settlements, a way of life and an accepted social phenomenon. At the core of the pandemic of violence against women lie unequal power-gender relations, patriarchy, homophobia, sexism and other harmful

discriminatory beliefs and practices. Additional triggers of violence against women include the widespread use of drugs and alcohol, a high unemployment rate and the continuing stereotypical portrayal of women in the media. Compounding the problem is the high incidence of HIV.<sup>1</sup>

8. The Special Rapporteur welcomes efforts to improve the overall security situation in the country, including the adoption of the National Development Plan 2030, which aims to eliminate poverty and reduce inequality and insecurity by 2030, and which spells out that: “By 2030, people living in South Africa should have no fear of crime. Women, children and those who are vulnerable should feel protected.”

9. All the different interlocutors the Special Rapporteur met repeatedly stated that in spite of a progressive and inclusive Constitution and laws such as the Domestic Violence Act and the Sexual Offences and Related Matters Act, violence against women and girls is widespread, at a high level and normalized. Those stakeholders all recognized a huge gap between the proclaimed constitutional principles of gender equality and non-discrimination and their practical realization. Section 9 of the Constitution proclaims the rights of all persons to the equal protection and benefit of the law and to freedom from unfair discrimination on the basis of gender, sex, pregnancy and marital status, but those rights are not protected in everyday life. In order for an individual woman who is the victim of violence to enjoy in practice the realization of the principle of equality between men and women and the respect of her human rights and fundamental freedoms, the political will expressed in the Constitution as well as in international and regional instruments on women’s rights must be supported by a set of comprehensive legislative measures. They must include the elaboration of a gender equality act and/or other laws that efficiently translate those rights into realities, including the possibility of amending the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000. Their implementation must be supported by effective actions by State actors, who adhere to the due diligence obligations of the State. That would not only protect women and girls, but also prevent and combat violence against women, provide adequate services to survivors of such violence, punish perpetrators and prevent that violence by addressing its root causes, its persistence and the toleration of it.

### **III. Manifestations of violence against women, its causes and consequences**

10. Data on the reported prevalence and manifestations of violence against women reveal high levels and a persistent presence of different forms of such violence, which amount to systematic violations of women’s human rights. There are no centralized statistics on incidents and types of violence against women beyond the mere recording of sexual offences under the Sexual Offences Act by the South African Police Service, which are released annually. In addition, statistics are in no way conclusive as to the real prevalence of violence against women, as it is an unchallenged fact that there is massive underreporting of all forms of gender-based violence. In order to shed light on the magnitude of each of the manifestations of violence against women encountered, the Special Rapporteur cites, where available, relevant data emanating from recent smaller-scale national and international research.

11. The preliminary findings of a 2011 prevalence study in Gauteng province conducted by Gender Links and the Medical Research Council found that more than three quarters of

<sup>1</sup> According to the Joint United Nations Programme on HIV/AIDS, in 2014 South Africa had a prevalence rate of 18.9 per cent of adults aged 15 to 49.

men have perpetrated violence against women in their lifetime and more than half of all women have experienced gender-based violence.<sup>2</sup> Certain groups of women, such as women irregular migrants, trafficked or refugee women, women belonging to sexual minorities, women living with disabilities, orphans and other vulnerable girls, faced increased risks.

12. The Special Rapporteur sets out below her analysis of some of the most prevalent manifestations of violence that were discussed during her visit, without aiming to provide an exhaustive account of all the different existing forms of violence against women in South Africa.

## **A. Femicides or gender-related killings of women**

13. Studies have shown that in some countries between 40 and 70 per cent of female murder victims are killed by an intimate partner.<sup>3</sup> South Africa is among those countries, making it one of the countries with the highest femicide rate. A 2009 national study showed that homicide was declining, that there was a reduction in female homicide, but that the reduction was lesser among intimate partner femicides while “rape homicides” had proportionately increased.<sup>4</sup> The study concluded that intimate partner violence was the leading cause of death of women homicide victims with 56 per cent of female homicides committed by an intimate partner. As with all forms of intimate partner violence, intimate partner femicide is likely to be significantly underreported.

14. The Special Rapporteur reiterates the call she directed to all States Members of the United Nations in November 2015, to establish a femicide or gender-related killings “watch”. States should collect and release every year data on the number of such killings, disaggregated by the age and sex of the perpetrators, and provide information on the relationship between perpetrator/s and victim/s and the prosecution and punishment of the former. Most importantly, each case should be carefully analysed to identify any failure of protection, with a view to improving and developing further preventive measures.

## **B. Domestic violence**

15. Domestic violence is not recorded by the South African Police Service as a specific crime category and there are therefore no national statistics available. When cases of domestic violence are reported to the police, they are recorded under a range of different categories, such as assault, malicious damage to property, pointing a firearm, murder, etc.

16. Some studies have been conducted on the prevalence and forms of domestic violence, mostly on intimate partner violence, which is said to be the most common form of violence experienced by women. The most recent research in Gauteng found that just under one in five women (18.13 per cent) reported an incident of violence by an intimate partner, while 42.3 per cent of a sample of 1,378 men working in the Cape Town municipalities admitted to having used physical violence against a partner in the past 10 years.<sup>5</sup> Patterns of co-occurrence of child abuse with intimate partner violence have also increasingly been reported.

<sup>2</sup> Available from [www.mrc.ac.za/gender/gbvthewar.pdf](http://www.mrc.ac.za/gender/gbvthewar.pdf).

<sup>3</sup> See United Nations Office on Drugs and Crime, *Global Study on Homicide*, 2011 page 58.

<sup>4</sup> See South African Medical Research Council research brief, August 2012.

<sup>5</sup> See Institute for Security Studies, policy brief No. 71, “Domestic violence in South Africa”, November 2014.

### C. Sexual violence, including rape

17. The Medical Research Council has estimated that only one in nine rapes are reported to the police<sup>6</sup> and a study carried out in Gauteng province in 2010 found that while 1 in 13 women raped by a non-partner reported the matter to the police, only 1 in 25 women raped by their partners reported the offence.<sup>7</sup>

18. In 2011, 55 per cent of the rape survivors counselled by Rape Crisis Cape Town Trust had been raped by more than one offender. Of those rapes, 25 per cent had been perpetrated by known gangs. In multiple perpetrator rapes, the number of offenders ranged from 2 to 30 in respect of any one victim.<sup>8</sup> Another study offering an analysis of 1,886 rape dockets opened at 70 police stations in Gauteng province in 2003 found that multiple perpetrator rapes (“gang rapes”) constituted 16 per cent of all cases. Most of those incidents started when the victim was outdoors, either alone or accompanied, and occurred in the open or in a public space. In contrast, single perpetrator rape mostly occurs in a home.<sup>9</sup>

19. There is a high level of sexual violence against girls in schools, perpetrated by both teachers and classmates. In addition, girls also suffer sexual violence on the way to and from school. In 2006, the South African Human Rights Commission stated that sexual violence against female students, including violence perpetrated by educators, was one of the most prevalent forms of violence identified through its hearings on violence in schools.<sup>10</sup> A 2014 report, which examined the gaps in accountability that permit the continued abuse of learners by educators in Gauteng province, concluded that there were such gaps throughout the system. Those gaps are reportedly accounted for by the lack of implementation of national laws and procedures for disciplining perpetrators and a lack of coordination between the Department of Basic Education and the South African Council of Educators, which have both been delegated to launch disciplinary procedures against perpetrators. That has created a tedious, duplicative and overlapping system. Among the fundamental obstacles to holding teachers accountable are the culture of silence which pervades the school community and the lack of knowledge of reporting mechanisms, including section 54 (1) of the Sexual Offences Act, which makes it a crime for anyone who knows about the commission of a sexual offence against a child not to report it.<sup>11</sup> The cost of sexual violence in school is high, in particular for girls who often drop out, including because of unwanted pregnancies.

20. Research has shown that in the mining industry, sexual violence and other forms of gender-based violence, such as sexual harassment, are rife and not a one-off phenomenon.<sup>12</sup> While the lifting of the ban on women in the mining sector in 2002, coupled with the

<sup>6</sup> See Rachel Jewkes and Naeema Abrahams, “The epidemiology of rape and sexual coercion in South Africa: an overview”, *Social Science and Medicine*, vol. 55, No. 7 (October 2002).

<sup>7</sup> See Mercilene Machisa and others, “The war at home” (Gender Links and South African Medical Research Council, 2011).

<sup>8</sup> See [rapecrisis.org.za/rape-in-south-africa/#prevalence](http://rapecrisis.org.za/rape-in-south-africa/#prevalence).

<sup>9</sup> See Rachel Jewkes and others, “What we know and what we don’t”, *South African Crime Quarterly*, vol. 41 (September 2012).

<sup>10</sup> See Centre for Applied Legal Studies, University of the Witwatersrand, Johannesburg, submission to the Special Rapporteur, available from [www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/Submisison%20Rapporteur%20on%20violence%20against%20women%20CALS%20submission.pdf](http://www.wits.ac.za/media/wits-university/faculties-and-schools/commerce-law-and-management/research-entities/cals/documents/Submisison%20Rapporteur%20on%20violence%20against%20women%20CALS%20submission.pdf).

<sup>11</sup> See Centre for Applied Legal Studies, “Sexual violence by educators in South African schools: gaps in accountability”, May 2014.

<sup>12</sup> See Asanda Benya, “Women in mining: a challenge to occupational culture in mines”, dissertation submitted to the Faculty of Social Science and Humanities, University of the Witwatersrand, 2009.

introduction of a 10 per cent quota for women in the Mining Charter, are commendable from the point of view of equal working opportunities, women miners constitute a minority group underground and are routinely victims of sexual violence, harassment and abuse. In addition to the dangers that are inherent in mining irrespective of gender, women miners experience additional hardships largely unaddressed by mining companies, such as a lack of separate sanitation facilities, insufficient lighting and the confined locations where women miners find themselves at times alone with a large number of male co-workers. So far, the response of the mining private sector has been that gender-based violence underground is a criminal justice matter and not an issue for which mining companies should take responsibility. However, under both the principle of vicarious liability under the law of delict (which establishes the strict liability of one person for the delict of another) and the health and safety standards under labour law, successful litigation could trigger the development of legislative provisions binding on multinational corporations to prevent sexual violence underground.

## D. Harmful practices

21. Contradictions and tensions between constitutional rights with respect to cultural rights and the rights that aim to protect women and girls from discrimination and violence were brought to the Special Rapporteur's attention. She wishes to recall that South Africa has an obligation to ensure that all marriages, including customary marriages, are entered into with the free, full and informed consent of both parties and that its legislation is in full compliance with the relevant obligations outlined in article 16 of the Convention on the Elimination of All Forms of Discrimination against Women and in the Convention on the Rights of the Child and other international human rights standards that prohibit harmful practices.

22. The practice of *ukuthwala*, although recently addressed by the Government, was reportedly continuing in rural areas throughout the country, with higher prevalence in the Eastern Cape and KwaZulu-Natal. In the way it is practised nowadays, *ukuthwala* often involves the abduction, assault and rape of girls and women to coerce them into child or forced marriages with older men and the payment of *lobola* (bride price) to the girls' families. When victims of this harmful practice or their families report it to law enforcement officials or traditional leaders, often no action is taken on the wrongful assumption that *ukuthwala* is a cultural practice and a customary law issue that should be settled between families. The Special Rapporteur welcomes the decision and subsequent decision on appeal in the case of *Jezile v. S and others*, in which the perpetrator was sentenced to 22 years' imprisonment. During the meeting with the Chapter 9 institutions, it was confirmed that culture and tradition cannot justify such a practice, which clearly violates the constitutional rights to dignity, freedom of choice, security of the person and education. In the case of a victim aged between 12 and 16 years old, it constitutes statutory rape.

23. In the light of a recent public outcry, the South African Law Reform Commission was requested to carry out an investigation into the practice of *ukuthwala* to consider its impact on the girl child, the appropriateness and adequacy of the current laws and whether or not they uphold the human rights of the girl child. At the time of the Special Rapporteur's visit, the Commission had recently published a revised discussion paper, which positioned itself in favour of a draft bill on the prohibition of forced and child marriages.<sup>13</sup>

<sup>13</sup> South African Law Reform Commission, "The practice of *ukuthwala*", revised discussion paper No. 138, October 2015.

24. The Special Rapporteur observes that section 31 (2) of the Constitution outlaws all discriminatory practices through a qualification that stipulates that no person or institution exercising cultural rights may do so in a manner that is inconsistent with any provision in the Bill of Rights. She further observes that cases of *ukuthwala* could be prosecuted under different offences, such as kidnapping, or statutory rape when the victim is a girl child between 12 and 16, both being crimes but bearing different sanctions. She is of the view that a new consolidated criminal offence and a consolidated prosecution practice would be beneficial, as it would not only send a strong message but also clarify existing legislation, including in relation to the definition of the child and forced marriage in particular, as it relates to the age of consent and criminalization of such acts in penal (statute) law.

25. The practice of forced virginity testing was reportedly still happening in various situations as a strategy to reduce HIV/AIDS and teenage pregnancy. The Children's Act of 2005 prohibits virginity testing of children under the age of 16. For girls above that age, it can only be carried out if the girl has given her consent, after proper counselling and in the manner prescribed. The Special Rapporteur concurs with the concerns raised by the Committee on the Elimination of Discrimination against Women on the issue (see CEDAW/C/ZAF/CO/4, para. 22).

26. The practice of female genital mutilation among migrant and refugee women was also reported to take place but its extent was largely unknown.<sup>14</sup>

## **E. Violence against women and girls in informal settlements**

27. The Rapporteur had the opportunity to observe the situation in some informal settlements. Besides Khayelitsha, she visited the outskirts of Diepsloot, a mixture of formal and informal settlement with approximately 200,000 inhabitants, of whom the poorest live in highly congested shacks, without electricity, running water, sewage, rubbish removal, street lights, tar roads, schools or police stations. It is estimated that half of the population of Diepsloot is unemployed. Owing to the high density of the settlement and security concerns, the Special Rapporteur was advised not to enter it. She did, however, receive various accounts of cases where young children and even babies had been raped and in some cases murdered, often by neighbours or relatives.

28. Perpetrators of such crimes were said often to be unemployed, be drug or alcohol users and, most importantly, to have themselves experienced abuse at a young age.<sup>15</sup> Most of such cases go unreported, rape being considered acutely a family matter in informal settlements. When cases were reported, the police were said to be unable to intervene. Reasons given ranged from the mere impossibility of entering the settlements owing to the level of congestion and lack of staff (Diepsloot, for example, being policed by less than a dozen police officers, who had recently taken up their functions in a brand new police station), to lack of vehicles and volatile security. Women victims of violence are left unprotected and unable to access any service providers within the settlement beyond a single counsellor, who runs a "Green Door" facility helping abused women and children to report crimes against them to the police and to access health care.

<sup>14</sup> Discussions with the Minister in the Presidency responsible for women confirmed that female genital mutilation is not a general problem, but is happening in some cases among migrant and refugee communities.

<sup>15</sup> See Amelia Ann Kleijn, "The demographic profile and psychosocial history of a group of convicted perpetrators of the rape of children under the age of three years", doctoral thesis submitted to the School of Human and Community Development, University of the Witwatersrand, 2010.

29. One study has shown that one out of five children report being sexually abused by the age of 17 — a proportion that is probably an underestimate.<sup>16</sup> Additionally, when the abusers were asked about the reason for committing such acts, the majority answered that they did it out of boredom, or in order to have fun, and they believed that it was their right to do so.

## **F. Violence against specific groups at risk, including women and girls with disabilities, elderly women and lesbian, gay, bisexual, transgender and intersex persons**

30. Women and children with disabilities are at heightened risk of experiencing sexual or domestic violence for various reasons, including their low status in communities, their social isolation, their dependence on others and a lack of knowledge about their rights. There is little information available about the violence they experience and its extent.

31. Children with disabilities are three to four times more likely to be abused than children without disabilities. In townships in particular, many mothers of such children view such abuse as a tragic inevitability. In a joint submission to the Committee on the Rights of Persons with Disabilities, the Centre for Applied Legal Studies and Afrika Tikkun illustrated how the sexual abuse of children with disabilities is underreported owing to the incapacity of the children to correctly recall and relay the details of such abuse as complainants and witnesses.<sup>17</sup> The few cases that did get reported were said to have led to no convictions. As a result, there is a lack of jurisprudence on sexual abuse cases of children with disabilities, on specific issues faced by complainants and witnesses and the sentencing of perpetrators. The few children with disabilities who manage to access the judicial system remain intimidated by the family members of the accused, together with the fear of the accused being released on bail and returning to their community. As a whole, police, health, social development and justice services are not sensitive to disability. In its initial report to the Committee on the Rights of Persons with Disabilities, the Government acknowledged most of these challenges (see CRPD/C/ZAF/1).

32. Across the country, a pattern of rape of older women, resulting at times in death, has emerged. The Special Rapporteur welcomes the recent life sentence handed down to the rapist of an elderly woman and notes that such decisions can have a powerful deterrent effect.

33. Despite an explicit prohibition of discrimination based on sexual orientation in the Constitution, lesbian women and other sexual minorities are very vulnerable to extreme forms of violence purportedly aimed at “correcting” their bodies, including the so-called “corrective rape” often accompanied by a particularly heinous murder. This type of extreme violence was reported to be on the rise, despite the difficulty of detecting it, since victims are unlikely to spontaneously report their sexual orientation and the police do not record such information.

34. The Special Rapporteur welcomes the establishment of a national task team on gender- and sexual orientation-based violence formed by government departments, Chapter 9 institutions and civil society organizations, which has designed a national intervention strategy for lesbian, gay, bisexual, transgender and intersex issues (2014-2017), with the aim of addressing so-called “corrective rape” and other forms of violence against such

<sup>16</sup> Centre for Justice and Crime Prevention and the University of Cape Town, “The Optimus study on child abuse, violence and neglect in South Africa”, 2015.

<sup>17</sup> Available from [www.pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/120725afrikapres\\_0.pdf](http://www.pmg-assets.s3-website-eu-west-1.amazonaws.com/docs/120725afrikapres_0.pdf).

persons. In addition, a rapid response team was established to attend to the pending cases in the criminal justice system. While there is no specific crime against specific persons or groups, the Special Rapporteur welcomes recent case law, which shows that the courts have started to address such crimes as hate crimes even in the absence of specific hate crime legislation. The Special Rapporteur welcomes the ongoing discussions in relation to the possibility of drafting legislation on hate crimes.

35. The buying and selling of sex are criminalized. There are no data available on the number of people being arrested and prosecuted under the relevant provisions of the Sexual Offences Act, but the law is reportedly applied to women in prostitution only. The criminalization of prostitution has driven women in prostitution underground, increased stigma and discrimination, created obstacles to them accessing services and made them very vulnerable to violence, human rights violations and corruption. There has been evidence of the police using the law against women in prostitution to commit abuses. As a result, women in prostitution, who are often ignorant of their rights, do not have access to justice. When they are arrested, they are often denied access to their medication (HIV/AIDS prevalence is particularly high among prostitutes). There is also the stereotypical view taken by the police that they cannot be raped. In terms of the process of law reform, the Commission for Gender Equality has issued a position paper setting out the reasons for and the evidence behind its recommendation that women in prostitution should be decriminalized.<sup>18</sup>

## **IV. Incorporation of the international and regional framework on violence against women**

### **A. International and regional framework**

36. South Africa is party to a number of core international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women, ratified without reservations, and its Optional Protocol, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. It has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the International Convention for the Protection of all Persons from Enforced Disappearance or the Optional Protocol to the Convention against Torture. At the regional level, South Africa is party to the African Charter on Human and People's Rights, the African Charter on the Rights and Welfare of the Child and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

37. South Africa follows a dualist approach when it comes to the incorporation of international treaties into domestic law, requiring a domestic legislative act for such incorporation.<sup>19</sup> Section 39 (b) of the Constitution states that when interpreting the Bill of Rights, a court "must consider international law" and "may consider foreign law". That clause has ensured that the development of South African jurisprudence is consistent with emerging international human rights norms.

<sup>18</sup> Commission for Gender Equality, "Decriminalizing sex work in South Africa", 2013, available from [www.gov.za/sites/www.gov.za/files/Commission%20for%20gender%20equality%20on%20sex%20work\\_a.pdf](http://www.gov.za/sites/www.gov.za/files/Commission%20for%20gender%20equality%20on%20sex%20work_a.pdf).

<sup>19</sup> See G. Ferreira and A. Ferreira-Snyman, "The incorporation of public international law into municipal law and regional law against the background of the dichotomy between monism and dualism", *Potchefstroom Electronic Law Journal*, vol. 17, No. 4 (November 2014).

## **B. Observation of United Nations monitoring mechanisms**

38. In terms of its reporting obligation under the Convention on the Elimination of All Forms of Discrimination against Women, at the time of the Special Rapporteur's visit the draft fifth periodic report was pending approval before parliament and had been published for comments. The Special Rapporteur welcomes the fact that since 2011, South Africa has acted on a number of the recommendations made by the Committee on the Elimination of Discrimination against Women. She notes, however, that, as it explained in its follow-up report (CEDAW/C/ZAF/CO/4/Add.1), the Government does not intend to implement the recommendations on the two issues on which the Committee asked for a follow-up within two years: clear legislation on gender equality and a unified family code. As a result, there is no legislation embodying the principle of substantive equality between women and men, or prohibiting and sanctioning direct and indirect discrimination against women in accordance with articles 1 and 2 of the Convention, which constitutes a lack of full incorporation of those provisions (see CEDAW/C/ZAF/CO/4, para. 14).

39. The Special Rapporteur believes that the Committee's recommendations to consider elaborating a gender equality law and to have a unified family code deserve further discussion. Both would have the potential to establish a proper legal framework for the implementation of the principle of gender equality that is in both the Constitution and the Convention, and remove any remaining discrimination against women in matters relating to marriage and family relations, including the practice of polygamy, in full compliance with article 16 of the Convention.

40. The Rapporteur notes that despite the early accession of South Africa to the Optional Protocol to the Convention in 2005, there are no individual cases which have been submitted under the procedure. She further notes overall insufficient knowledge of all stakeholders in relation to the jurisprudence on violence against women in the Convention and in particular on individual cases and decisions on inquiries into grave or systematic violations of women's rights.

41. Most recently, South Africa was reviewed for the first time by the Human Rights Committee, which expressed its concerns that gender-based and domestic violence remained a serious problem in the State party, that the conviction rate for such acts was low and that there was a lack of disaggregated data on the phenomenon. It was also concerned about the persistence of stigma against persons based on their real or perceived sexual or gender orientation, gender identity or bodily diversity, and that such persons were subject to harassment, acts of discrimination and sexual and physical violence (CCPR/C/ZAF/CO/1, para. 20).

## **V. State responses and measures to address violence against women**

### **A. Constitutional, legislative and policy framework**

#### **1. Constitutional framework**

42. Chapter 2 (sects. 7-39) of the Constitution, which is regarded as one the most progressive in the world, contains the Bill of Rights. While women's rights are protected by the Bill, including the rights to life, human dignity, freedom and security (including being free from all forms of violence from public or private sources) and bodily and psychological integrity, they receive specific protection in section 9, entitled "Equality". Section 9 (3) states that "The state may not unfairly discriminate directly or indirectly

against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.” All those human rights must be respected, protected, promoted and fulfilled by the State with respect to the individuals under its jurisdiction. The Constitution being the supreme law, any law that is inconsistent with it is invalid.

## **2. Most relevant legislation on violence against women**

43. The Domestic Violence Act of 1998 replaced the Prevention of Family Violence Act and was meant to address high levels of domestic violence by, among other things, broadening the definition of domestic violence and recognizing that abuse may take many different forms, including physical, sexual, emotional, psychological, verbal, or economic abuse, as well as intimidation, harassment, stalking and damage to property. Furthermore, the Act applies to people in a wide range of “domestic relationships” and includes same-sex relationships and extended families. The Act sets out what police must do when they arrive at a scene of domestic violence and provides for victims of domestic violence, and also other persons on behalf of the victim, to go to court and apply for protection orders. It allows for the seizing of any arms or dangerous weapons; having a police officer accompany the complainant to a specified place to retrieve personal property; payment of emergency monetary relief; and restrictions on a respondent’s contact with a child. Being gender-neutral and insufficiently gender-sensitive, the Act disregards the structural inequality between men and women and focuses on women and men equally as victims of domestic violence, at the expense of women, who are predominantly the victims of such violence. Being a civil law, it does not typify domestic violence as a criminal offence.

44. The Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007 criminalizes all non-consensual sexual activity, including marital rape, and expands the definition of rape to include all forms of non-consensual sexual penetration. The definition of rape, albeit very short, does not require the use of force and puts consent at the centre of it, which is in line with the internationally agreed definition of rape. The act provides for various services to be made available to the victims of sexual offences, including free post-exposure prophylaxis for HIV and the ability to obtain a court order to compel HIV testing of the alleged offender. It also created a number of new crimes, particularly with respect to children and people with disabilities, and set up the national register for sex offenders, which records the details of those convicted of sexual offences against children or people who are mentally disabled and prevents those listed from working with either group. In 2013, the Constitutional Court struck down sections 15 and 16 of the Act, which made consensual sexual acts between children aged 12 and 15 a crime and which had been applied to prosecute pregnant girls, thus exposing children to the criminal justice system, causing them serious trauma.

45. The Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 seeks to advance equality in public and private life, provides a framework to tackle unfair discrimination, harassment and hate speech and prohibits unfair discrimination on any grounds. It explicitly prohibits violence against women, female genital mutilation, the prevention of women from inheriting property and any traditional, customary or religious practice that impairs the dignity of women and undermines equality. It also prohibits policies that limit women’s access to land rights, finance or other resources and provides for the establishment of equality courts.

46. The Protection from Harassment Act of 2011 provides for the issuing of protection orders against harassment committed outside a domestic relationship. It defines sexual harassment widely and even includes electronic harassment.

47. Other relevant legislation includes the Employment Equity Amendment Act of 2013 and the Prevention and Combating of Trafficking in Persons Act of 2013, but analysis of them goes beyond the scope of the present report.

### **3. Policy framework**

48. A Cabinet-level interministerial committee, chaired by the Minister of Social Development, initiated the South African integrated programme of action for 2013-2018, addressing violence against women and children, elderly women, lesbians and people with albinism. The Special Rapporteur regrets that the programme of action, which was endorsed by the Cabinet, has never been disseminated at the provincial or district level, does not have the visibility it deserves and is not the result of a participatory process, since civil society organizations were not consulted. Additionally, no information was available as to the budget for its implementation. The Minister of Social Development reported that the committee would be rolled out to provincial and local levels and that the programme of action was due for review in 2017.

## **B. Institutional framework: national machinery and independent institutions**

49. The Special Rapporteur notes that the Department of Women, established in May 2014 and headed by the Minister in the Presidency responsible for women is, as reported by itself, still in a transitional period. Its mission is to accelerate socioeconomic transformation for women's empowerment and the advancement of gender equality. The Special Rapporteur welcomes the stated intention of the Department to review, as part of its strategy, the national machinery and assess its effectiveness. She notes that gender-based violence is not part of the mandate of the new Department, but falls within the responsibility of the Department of Social Development, which is responsible for the coordination of national programmes and strategies on gender-based violence and has a mandate for a victim empowerment programme and for partnerships with civil society organizations. The Department of Women only has an operational budget and, facing some financial constraints, has had to decide on priorities. While appreciating the leading role of the Department of Women on women's economic empowerment as a way to reduce their economic vulnerabilities and hence their vulnerability to gender-based violence, there is a lack of clarity on coordination and the division of labour between the two departments on the issue of violence against women.

50. The Special Rapporteur was told that the pandemic levels of violence against women could not be the sole responsibility of one government department. An integrated, coordinated, multi-departmental approach is required and in May 2012, the Cabinet-level interministerial committee was established to look at the root causes of violence against women and children, as was a technical committee. It was reported that the committee was not working efficiently and had only met a few times since its inception.

51. The parliamentary Portfolio Committees exercise oversight functions by requesting government departments to account for measures undertaken in relevant fields, including by requesting a report on the implementation of legislation, conducting monitoring visits and holding public hearings. The most relevant Committees in this case are those on Women and on Justice.

52. At the meetings the Special Rapporteur held with the Chapter 9 institutions, they all recognized the need for more cooperation between them on different issues related to the protection of women's rights and the prevention of harmful practices and other forms of violence against women.

53. The South African Gender Equality Commission was established under section 187 of the Constitution in order to promote respect for gender equality and the protection, development and attainment of gender equality. The Commission produced a very important baseline report on measuring progress under the Convention on the Elimination of All Forms of Discrimination against Women, providing information on the implementation of the recommendations of the Committee on the Elimination of Discrimination against Women, assessing government compliance with and implementation of the Convention and highlighting some of the shortcomings of the report the Government presented to the Committee in 2011.<sup>20</sup> Equally, following the visit of a previous Special Rapporteur on violence against women in 1997, the Commission assessed government compliance with her recommendations (see E/CN.4/1997/47/Add.3). The Special Rapporteur very much appreciates the intention of the Commission to monitor the follow-up to the recommendations in the present report.

### C. Some intersectoral responses to violence against women

54. The government strategy to reduce the high level of violence against women is focused on economic development, education and the empowerment of women. Government officials have pointed out that the roots of many forms of violence against women lie in poverty, in which a majority of the population lives, and that education is a vital social vaccine to alleviate poverty and inequality and ultimately violence against women.

55. The sexual offences courts were re-established in 2013 by the Department of Justice and Correctional Services. The courts provide specialized victim support services to reduce the chance of secondary trauma for victims and the case-handling time, and improve conviction rates. They have specially trained officials and equipment, a special room for victims in which to testify and private waiting rooms for adult and child witnesses. At the time of the visit, there were 43 sexual offences courts. The Special Rapporteur was informed that the courts had been a game changer: before their establishment there was a 48 per cent conviction rate for sexual offence cases, whereas in 2015, the rate had reached 71 per cent.<sup>21</sup> The Department of Justice informed the Special Rapporteur that the courts would be rolled out as quickly as possible throughout the country in light of their huge potential. Draft regulations to improve their efficiency should soon be adopted, aimed at providing for protective measures for victims to be available at designated courts and focusing on the needs of persons with disabilities.

56. The Thuthuzela Care Centres are a one-stop, integrated response for victims of sexual violence, led at the time of the visit by the Sexual Offences and Community Affairs unit of the National Prosecution Authority, in partnership with various donors and non-profit organizations. They are a critical part of the anti-rape strategy, aimed at reducing secondary trauma, increasing conviction rates and reducing the length of time taken to finalize cases. They operate out of public hospitals in communities where the incidence of rape is particularly high and are also linked to sexual offences courts, where they exist. They enable rape victims to lodge a case with the police and receive counselling and medical care in one place and have been hailed as a blueprint for responses to sexual violence. By the end of 2015, 55 centres were operational.<sup>22</sup> The quality of care delivered at

<sup>20</sup> “Are we there yet? Measuring South Africa’s Progress in the implementation of the Convention on the Elimination of All Forms of Discrimination against Women”, 2015.

<sup>21</sup> The Rapporteur cautions against the misleading practice of reporting convictions based only on cases that went to trial, a practice that she experienced from State officials during her visit.

<sup>22</sup> Lisa Vetten, “It sucks/It’s a wonderful service: post-rape care and the micro-politics of institutions”, Shukumisa Campaign and ActionAid South Africa, 2015.

the centres was, however, said to be uneven and they often lack psychosociological services. The Special Rapporteur notes that most of their funding comes from private donors.

57. The *khuseleka*, or one-stop crisis centres, offer a continuum of services to victims of all crimes and violence. It was reported that there were currently eight such centres operating under the Department of Social Development.

58. In December 2011, the Minister of Police announced the reintroduction of the Family Violence, Child Protection and Sexual Offences units, which provide a specialized police response to family and sexual violence. There were 176 units nationwide in mid-2015. However, some of the units perform poorly for reasons such as bad management, understaffing, low morale and burnout.<sup>23</sup>

59. The Rapporteur regrets the uneven geographic availability and distribution of the intersectoral responses to violence against women, as well as their uneven quality and range of services provided. In particular, most of the centres are not available to women and girls living in informal settlements and rural areas. When victims are able to access and benefit from Thuthuzela Care Centres, Family Violence, Child Protection and Sexual Offences units and sexual offences courts throughout the justice chain, conviction rates have significantly improved.

## VI. Gaps and challenges

### A. Prevention

#### 1. Collection of data and statistics on violence against women

60. There are no official data on femicides and other forms of violence against women and massive underreporting of violence against women. The figure of one out of nine cases of rape being reported was accepted by all stakeholders, including State officials. There are also serious flaws in the recording of crimes under the Sexual Offences Act by the police. The most recent crime statistics released by the police in September 2015 only listed “sexual offences” and were not disaggregated in terms of types of sexual offences under the Act, such as rape or sexual assault.<sup>24</sup> While the statistics showed a decrease in the number of sexual offences from 56,680 in 2014 to 53,615 in 2015, it is difficult to draw any conclusions in relation to specific offences. It cannot therefore be established that incidences of rape have decreased.

61. An additional and serious impediment to good data collection is the performance management system of the Police Service, which has set a reduction in violent crime by between 4 and 7 per cent as a target, creating a contra-effect and a disincentive for the police to record all violent crimes reported to them.

62. Domestic violence is not recorded by the police as a specific crime category and there are therefore no statistics available. When cases of domestic violence are reported to the police, they are recorded under a range of different categories, such as assault, malicious damage to property, pointing a firearm, murder etc. The Domestic Violence Act makes it a legal requirement for police stations to keep a register of all reported cases of domestic violence. However, the implementation of that requirement across stations is erratic at best and non-existent at worst. An audit conducted in 2014 by the Civilian

<sup>23</sup> See Khayelitsha Commission of Inquiry, “Towards a safer Khayelitsha”, August 2014.

<sup>24</sup> Available from [www.saps.gov.za/resource\\_centre/publications/statistics/crimestats/2015/crime\\_stats.php](http://www.saps.gov.za/resource_centre/publications/statistics/crimestats/2015/crime_stats.php).

Secretariat for Police Service found that only 2 out of 145 police stations were fully compliant with the Act.<sup>25</sup>

## **2. Underreporting of cases of violence against women**

63. There are significant societal and institutional barriers to reporting gender-based violence. Such violence is still considered a private matter and victims often have to coexist with perpetrators because of a link to the family or the community. Victims blame themselves and fear reprisals from a perpetrator whom they might know (intimate partner, family member, friend, neighbour, teacher or other community leader), or fear stigmatization by family, friends or community. They may not have easy access to a police station or medical facility, lack trust in the police and justice system and fear mistreatment or secondary victimization by the police. That all creates powerful disincentives for victims to report acts of violence to the police. Cases of police members perpetrating the very same gender-based violence they are mandated to fight are also a strong dissuading factor, which have led women victims to distrust the police and even to be afraid of them, causing further underreporting.<sup>26</sup>

## **3. Lack of a national strategic plan on violence against women**

64. Several interlocutors compared the country's experience with HIV and the adoption in 2011 of a national strategic plan on HIV, sexually transmitted infections and tuberculosis as the way forward to gain both political and funding commitment at the highest level. The following features would be prerequisites for any national strategic plan on gender-based violence: full funding, with adequate resources committed; developed through an open, inclusive and consultative process, which would belong to all segments of the population and all sectors; and with an independent multisectoral oversight and accountability mechanism to monitor its implementation. The Special Rapporteur believes that such a plan would demonstrate a serious commitment to eliminating gender-based violence and supports the call for its establishment as the road map needed to combat this pandemic effectively. Such a plan should integrate the implementation of commitments based on international instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women, the Declaration on the Elimination of Violence against Women and general recommendation No. 19 (1992) on violence against women of the Committee on the Elimination of Discrimination against Women, as well as the relevant parts of the Beijing Declaration and Platform for Action and obligations based on the Constitution, the Domestic Violence Act and other relevant legislation.

# **B. Protection (service providers)**

## **1. Quality of health care and forensic examination**

65. The existing policy and guidelines for the treatment and care of victims of sexual offences are crucial, as they guide health providers on the type of health care needed and how to conduct forensic examinations. However, they date back to 2003, before the introduction of the Sexual Offences Act. They do not reflect the latest developments in the medical treatment and psychological care of victims of sexual crimes.

<sup>25</sup> See paper on Police Service compliance with the Domestic Violence Act by the research unit of the Parliament, November 2014, available from [www.pmg-assets.s3-website-eu-west-1.amazonaws.com/141105research\\_unit\\_dva\\_compliance.pdf](http://www.pmg-assets.s3-website-eu-west-1.amazonaws.com/141105research_unit_dva_compliance.pdf).

<sup>26</sup> See Institute of Race Relations and AfriForum, "Broken blue line 2: the involvement of the South African Police Service in serious and violent crime in South Africa", 2015.

66. The quality of treatment provided in health facilities varies. Some health-care workers do not have the appropriate post-rape care knowledge and are inadequately trained to collect forensic evidence. One study found that in 41.5 per cent of cases, the concluding statement related to the gynaecological examination was missing from the form describing the forensic examination of the victim.<sup>27</sup>

## **2. Funding of civil society organizations**

67. The Special Rapporteur notes that civil society organizations have not only been working in close cooperation with the Government but have also provided the majority of services without receiving appropriate compensation from the Government. For example, most post-rape care is provided by civil society organizations, which support victims in the immediate aftermath of rape, assist with adhering to post-exposure prophylaxis to prevent HIV infection, provide counselling and preparation for testifying in court and accompany victims to court.<sup>28</sup>

68. The funding of civil society organizations, including those running shelters, is provided by the Department of Social Development, which covers only a small percentage of their operational costs. They reported that the Government had been prioritizing prevention over service delivery and that Department funding had been decreasing.

## **3. Lack of shelters and second-stage housing**

69. The Department of Social Development reported that there were 88 shelters in total in the country, mostly run by civil society organizations. As well as a clearly insufficient number of shelters, in particular in rural areas and in and around townships and informal settlements, the existing shelters struggle with funding and can only rely, on average, on the Department covering 10 per cent of their operating costs. There are significant discrepancies in the funding allocated between and within provinces and in the range and quality of service delivery among shelters. For example, most shelters are not equipped to accommodate women with disabilities, boys aged more than six, children with special needs or women drug users.

70. There is also an acute need for longer-term accommodation for abused women once they leave first-stage shelters. Unfortunately, second-stage housing is virtually non-existent, with the exception of a few noteworthy projects, such as a pilot programme run by the Nonceba Family Counselling Centre in Khayelitsha, which had started up at the time of the Special Rapporteur's visit. More permanent housing arrangements are also almost non-existent.

# **C. Prosecution**

## **1. Shortcomings in the response of the criminal justice system**

71. Police officers are the first responders to gender-based violence. They operate in a difficult context and are confronted with many challenges, including the extreme level of everyday violence and the lack of human resources and equipment. While 941 victim-friendly rooms have been established in police stations throughout the country, information received by the Special Rapporteur concurs with the findings of the Civilian Secretariat for Police that not all of them are functional or resourced.

<sup>27</sup> See Shukumisa Campaign, "Sixteen days of discontent. Day 3: the health sector", available from [www.issafrica.org/crimehub/uploads/Shukumisa-health-scorecard.pdf](http://www.issafrica.org/crimehub/uploads/Shukumisa-health-scorecard.pdf).

<sup>28</sup> See Shukumisa Campaign, "Sixteen days of discontent. Day 7: undervaluing care work", available from [www.shukumisa.org.za/2015/11/16-days-of-discontent-day-7-undervaluing-care-work/](http://www.shukumisa.org.za/2015/11/16-days-of-discontent-day-7-undervaluing-care-work/).

72. In relation to the conduct of the police, and while good services do exist within the Police Service, the Special Rapporteur heard repeatedly that women seeking protection had been turned down and told to go back to their abusive partners or communities. Some police officers do not believe rape survivors, especially when they are young, and treat them badly. Treatment of groups of women at heightened risk of gender-based violence, including women and girls with disabilities, lesbian, gay, bisexual, transgender and intersex persons, prostitutes, refugees and undocumented migrants has been reported to be even more discriminatory, causing secondary victimization.

73. Another challenge identified with respect to police actions is the lack of specific training on the issue of gender-based violence, in particular with respect to the rights of victims and the procedures to be followed to bring cases forward. Government officials reported that members of the Family Violence, Child Protection and Sexual Offences units were receiving basic training on the bill of rights, but only five days' training was devoted to the Domestic Violence and Sexual Offences Acts. The poor quality of investigations, owing to the lack of qualified investigators and the insufficient referral of victims to service providers, was also raised.

74. At the level of prosecution, the Special Rapporteur was made aware of a number of obstacles. The pressure to deliver convictions allegedly placed on prosecutors had reportedly led some of them to prioritize cases deemed to have a better chance of reaching a conviction sentence, pushing aside other cases. Difficulties faced by victims whose cases had been repeatedly postponed, placing on them an additional emotional and financial burden, were also reported.

75. At the level of the judiciary, there are additional obstacles that a victim needs to overcome. Among them, the conduct of the hearing, the lack of security of the victim, who has to face the perpetrator, secondary traumatization and the use of gender stereotyping by magistrates, leading to leniency towards perpetrators.

## **2. Specific gaps in the implementation of the Domestic Violence Act and the Sexual Offences Act**

76. State officials have recognized the need to improve the police response to domestic violence and in order to do so, have engaged in a thorough review of its implementation. There has been a chronic lack of funding for implementation of the Domestic Violence Act since its enactment in 1998, which has significantly weakened the protection enshrined in the law and represents a human rights violation by the State.

77. On the other hand, there has been some improvement in the reporting by the police of domestic violence. The Civilian Secretariat for Police Service is in charge of monitoring the compliance of police stations with the Act. Non-compliance can have extremely serious consequences, as shown in an emblematic case where the victim, despite having obtained a protection order prohibiting her abusive husband from entering her home, was raped by him. The victim successfully brought her case to court, which confirmed that the failure to arrest the offender was the factual and legal cause of the rape and that it extended legal liability to police officers who had failed to give effect to a protection order.<sup>29</sup> The case is emblematic of the lack of appropriate follow-up by police to enforce protection orders, something that was reported to the Special Rapporteur throughout her visit.

78. The Special Rapporteur notes that police officers called to the scene of an incident are not required to conduct a risk assessment and undertake risk management measures, whereas that could provide invaluable background information to understanding the circumstances, manage the risk and, if necessary, provide coordinated safety and support.

<sup>29</sup> See case of *White v. Minister of Safety and Security and others*, High Court case No. EL322/03.

79. South African Police Service training on domestic violence has significantly increased but seems to have failed so far to address adequately the psychosociological impact on victims of violence against women. The Special Rapporteur stressed the need for the training programme to be assessed and was pleased to learn of the completion by police officers of the first domestic violence learning programme in 2014/2015, which will provide information about the quality of the training.

80. In 2013/2014, 255,395 protection orders were applied for through the magistrate courts, but only 88,504 were ultimately made final.<sup>30</sup> The Special Rapporteur was apprised of some of the issues faced by applicants for protection orders. When a victim applies for such an order, the court decides whether to grant an interim protection order or merely issue a notice requiring the respondent to appear in court. In many cases, this means that the victim is sent back to a violent home without immediate effective protection. While the Domestic Violence Act encourages the issuance of protection orders with as little delay as possible, it was reported that the speed at which they are issued varies greatly, depending on the courts. Another issue is the false assumption by some police officers that at the time of the serving of the protection order, the applicant has to be present to identify the respondent, while that is not a requirement under the Act. The personal views and beliefs of magistrates were reported to play a negative role in relation to the granting of protection orders, as some view them as tearing families apart. Additionally, the behaviour of some magistrates is not always appropriate, intimidating applicants and questioning their motives. In case of the breach of a protection order, police officers are often not aware that they can arrest the perpetrator on site and that the breach itself constitutes a criminal offence under the Act.

## VII. Conclusions and recommendations

81. South Africa has a progressive Constitution, solid legislation, such as the Domestic Violence Act and the Sexual Offences Act, and policies to deal with gender-based violence. It has also adhered to the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol and regional instruments, such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Despite all this, there have been gaps in incorporation and/or a failure to give full effect to the principle of substantive gender equality and the prohibition of direct and indirect discrimination against women, and a lack of a holistic and comprehensive legal and policy approach to prevent and combat violence against women. Gender-based violence continues to be pervasive and women's human rights systematically violated.

82. Based on the findings set out above and in a spirit of cooperation and dialogue with the Government of South Africa, the Special Rapporteur offers the following recommendations.

### Law and policy reform

83. The Special Rapporteur recommends that the Government:

(a) Consider renewing efforts to implement the recommendations made by the Committee on the Elimination of Discrimination against Women on a gender equality law and on a unified family law, which would establish a strong legal

<sup>30</sup> See Shukumisa Campaign, "Sixteen days of discontent. Day 1: Department of Justice and Constitutional Development", available from [www.issafrica.org/crimehub/uploads/Shukumisa-16-Days-fact-sheet-DoJ.pdf](http://www.issafrica.org/crimehub/uploads/Shukumisa-16-Days-fact-sheet-DoJ.pdf).

framework for the implementation of the principles of gender equality and non-discrimination in the Constitution and the Convention on the Elimination of All Forms of Discrimination against Women, and repeal any remaining legal instruments which discriminate against women in matters relating to marriage and family relations, including the practice of polygamy, in full compliance with article 16 of the Convention;

(b) Consider adopting a new consolidated criminal offence to criminalize *ukuthwala* and adopt a consolidated prosecution practice;

(c) Consider enacting hate crime legislation, which would make it possible to capture both the hate dimension of crimes and the sexual orientation of lesbian, gay, bisexual, transgender and intersex victims of gender-based violence;

(d) Review the relevant legislation and regulations in force in order to decriminalize women in prostitution and take a comprehensive approach to addressing the question of prostitution, including exit programmes for women who wish to leave it;

(e) Develop and adopt urgently, in an open, inclusive and consultative process, a national strategic plan on gender-based violence, with a set of clear strategic priorities and core measurable goals, adequately funded and led by an independent, multisectoral oversight and accountability mechanism to monitor progress in implementation; or alternatively, urgently disseminate and implement at the provincial and district levels the integrated programme of action for 2013-2018, in partnership with civil society organizations, consult widely around its upcoming review, which should focus on results-oriented measures, and allocate sufficient funds for its implementation;

(f) Urgently provide an adequate budget for implementation of key measures of the Domestic Violence Act;

(g) Consider examining the feasibility of regulating the availability of alcohol as a means to help reduce gender-based violence;

(h) In light of the extreme levels of violence against women in informal settlements, consider establishing national inquiries into such violence and the general situation of women and girls in the settlements; also adopt a specific national action plan, with appropriate recommendations on the prevention and elimination of violence against women that would take into account the specificities of such informal settlements, including the safety, housing, education and health needs of women and girls specifically.

#### **Investigation, prosecution, support services and protective measures**

84. The Special Rapporteur recommends that the Government:

(a) Continue to increase the number of women police officers;

(b) Study the efficiency of protection orders in order to improve them and make them immediately available to women victims of violence who are at risk of new violence. In particular, police should be instructed to conduct risk assessments, undertake risk management measures to protect victims from immediate threats and issue interim protection orders;

(c) Enforce the requirement in the Domestic Violence Law that a register of all cases of domestic violence reported to the police must be kept in all police stations, make station commanders accountable for any failure to do so and request the police to release detailed crime statistics on domestic violence cases, based on the registers;

(d) Instruct the South African Police Service to encourage the reporting of violence against women and assess its performance on the basis of the quality of services provided to victims, and also remove that element of police performance indicators which penalizes any rise in the reporting of sexual offences;

(e) Improve the training of the police on the response to and management and investigation of domestic violence and sexual offences and ensure that each training programme is followed up by a monitoring and evaluation process;

(f) Ensure that the criminal justice system has the capacity in human resources, skills, expertise and funding to deal efficiently and effectively with gender-based violence and in order to do so:

(i) Make appropriate budget allocations to roll out victim-friendly rooms in police stations, the Thuthuzela Care Centres, Family Violence, Child Protection and Sexual Offences units and sexual offences courts, in particular in rural areas and informal settlements;

(ii) Safeguard and consolidate the collaborative model of care centres and sexual offences court working in tandem, which has led to increased conviction rates;

(iii) Require the National Prosecuting Authority to require prosecutors who abandon prosecution of a case to automatically provide the complainant with the reason for doing so;

(g) With respect to the judiciary:

(i) Provide mandatory training to members of the judiciary, including prosecutors and judges, in particular at the level of the magistrate courts, on the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol and the general recommendations and jurisprudence on violence against women of the Committee on the Elimination of Discrimination against Women, and increase mandatory training on gender-based violence and gender-based stereotypes in general and on key national legislation, in particular the Sexual Offences Act and the Domestic Violence Act and its range of protective measures;

(ii) Ensure wide dissemination of progressive judgments, including from the Court of Appeal and the Constitutional Court, and the jurisprudence of the Committee;

(h) In relation to sexual violence in schools, require the Department of Basic Education and the South African Council for Educators to act jointly in disciplining educators who have perpetrated such acts and to take disciplinary sanctions against teachers or principals who fail to report cases, make the list of teachers who have been convicted of sexual offences available to all public and private schools and design a nationwide programme on sexual violence in schools and comprehensive human rights education;

(i) Improve the quality of the services provided by the police to victims of sexual and domestic violence;

(j) Scale up the delivery and State funding of services for victims and in particular increase the number of social workers who have been trained on gender-based violence and psychotrauma counselling;

(k) Establish more shelters, in particular in rural areas and informal settlements, including shelters that can accommodate women or children with

disabilities, lesbian, gay, bisexual, transgender and intersex persons and mothers with sons aged six and above;

(l) Implement the recommendations of chapter 12 of the National Development Plan addressing community safety and improving the criminal justice system, and report regularly on the status of implementation;

(m) Prioritize the needs of survivors of violence against women in allocating public housing and in access to transitional housing;

(n) Encourage further government and civil society initiatives aimed at engaging men in challenging rigid ideas about masculinity and encouraging them to become agents of change;

(o) Increase the use of social media for educational and awareness-raising purposes through, for example, hubs in communities aimed at both community leaders and the general public, in order to ensure that they understand that all forms of violence against women are unacceptable and allow women and girls to enhance their knowledge of their human rights.

#### **National mechanisms**

85. The Special Rapporteur recommends that the Government:

(a) Strengthen and ensure adequate resources for State institutions to carry out their mandate with respect to gender equality and violence against women, in particular the Department of Women and the Department of Social Development, and clarify roles and responsibilities;

(b) Ensure that State institutions cooperate among themselves and work hand in hand with civil society organizations;

(c) Strengthen the role and efficiency of the interministerial committee so that it can discharge its function of coordination of policies and measures to prevent and combat violence against women effectively, and ensure that it engages meaningfully with civil society organizations or, alternatively, establish an adequate coordinating and monitoring mechanism, inclusive of such organizations, to effectively prevent and eliminate all forms of violence against women.

#### **Collection of data and prevention of violence against women**

86. The Special Rapporteur recommends that the Government:

(a) Expand the collection of data to include all forms of violence against women, including femicides, domestic violence and all types of sexual offences under the Sexual Offences Act. Data should include details on sex, age, sexual orientation and disability, as well as the relationship between perpetrator and victim;

(b) Encourage the establishment of “femicide watches” in each of the nine provinces and one at the national level and analyse each case of femicide in order to identify any failure of protection, with a view to improving and developing further preventive measures. The Gender Equality Commission should be entrusted with the compilation of data at the provincial level and be responsible for the national femicide watch.