

# IF YOU DON'T STAND-UP AND DEMAND, THEN THEY WILL NOT LISTEN:

## SEXUAL OFFENCES LAW AND COMMUNITY JUSTICE



**Hayley Galgut and Lillian Artz**

With contributions from: Samantha Waterhouse and Lisa Vetten

**Gender, Health and Justice Research Unit  
University of Cape Town  
South Africa**

Research Report Based on the Findings of the Civil Society-led Summit, Held in Delft, South Africa, 2015

“A summit like this needs to be brought to every community, especially the rural communities” **(IPID)**



# **IF YOU DON'T STAND-UP AND DEMAND, THEN THEY WILL NOT LISTEN: SEXUAL OFFENCES LAW AND COMMUNITY JUSTICE**

RESEARCH REPORT BASED ON THE FINDINGS OF THE  
CIVIL SOCIETY-LED SUMMIT ON THE SEXUAL OFFENCES ACT (32 of 2007)  
HELD IN DELFT, SOUTH AFRICA, 2015

**Hayley Galgut and Lillian Artz**

With contributions from:

Samantha Waterhouse and Lisa Vetten



Gender, Health and Justice Research Unit  
Division of Forensic Medicine, Department of Pathology  
Faculty of Health Sciences  
University of Cape Town  
Private Bag  
Rondebosch  
7701  
South Africa

© 2016 Gender, Health and Justice Research Unit  
All rights reserved.

# ACKNOWLEDGMENTS

---

The Summit could not have taken place without the support of the Open Society Foundation - South Africa and the generosity of spirit and active participation of all presenters, those who submitted oral and written submissions and attendees. In addition we would like to thank our project partners for their various contributions towards the design, planning and participation in the Summit.

Special thanks is due to Nolusindiso Dyantyi, Aisling Heath, Dalit Anstey, Kate McAuliff, Rebecca Smith, Swantje Tiedemann and Valérié Grand Maison.

We are also grateful to Sanja Bornman for offering the legal services of the Women's Legal Centre throughout the Summit.

---

# TABLE OF CONTENTS

<b>Acknowledgments</b> .....	<b>2</b>
<b>List of Abbreviations</b> .....	<b>4</b>
<b>CHAPTER 1: Introduction to the Sexual Offences Summit 2015</b> .....	<b>7</b>
1.1 Objectives of the Summit.....	7
1.2 Methodology.....	8
1.3 The Structure of the Summit .....	10
1.4 The Summit Programme: .....	11
<b>CHAPTER 2: Civil Society and the History of South African Sexual Offences Legislation</b> .....	<b>14</b>
<b>CHAPTER 3: Public Submissions on the Sexual Offences Act (32 of 2007)</b> .....	<b>34</b>
3.1 The Legal Framework Relating to Sexual and Gender-based Violence in South Africa.....	34
3.2 Gender Responsive Budgeting .....	38
3.3 Children and the Implementation of Sexual Offences Legislation.....	43
3.4 Sexual Offences and Forensic Medicine.....	49
3.5 The Victim Impact of Gender-Based Violence .....	51
3.6 Marginalised Voices and the Implementation of Sexual Offences Legislation .....	53
3.7 The Media and Gender-based Violence Reporting.....	58
3.8 Government Perspectives Regarding Service Provision and Access to Justice for Sexual Offences Survivors as well as Working with Civil Society to Ensure Meaningful Implementation of Sexual Offences Legislation .....	59
3.9 Persistent Themes and Strategies for Addressing Enhanced Service Delivery, Access to Justice, State Accountability and the Improved Implementation of Sexual Offences-Related Legislation .....	60
<b>CHAPTER 4: The Illusion of Control: National Co-ordinating Structures and Strategies         Addressing Sexual and Gender-based Violence in South Africa</b> .....	<b>61</b>
<b>CHAPTER 5: In Their Own Voices: Participants Questions and Recommendations</b> .....	<b>68</b>
5.1 Participant Questions for Government, the South African Police Service, the National Prosecuting Authority or Other Relevant Role Players/Service Providers.....	68
5.2 Participant Recommendations: .....	71
<b>CHAPTER 6: Recommendations</b> .....	<b>74</b>
<b>CHAPTER 7: Concluding Comment</b> .....	<b>81</b>
Annexure A: Summit Brochure .....	82
Annexure B: Public Invitation to the Summit .....	83
Annexure C: Summit Programme with Speaker Biographies.....	84
Annexure D: Template for Submissions.....	87
Annexure E: Participant Questions and Recommendations .....	89
Annexure F: Feedback from Participants on the Summit .....	90
Annexure G: List of Participant Organisations.....	91

# LIST OF ABBREVIATIONS

<b>ANC</b>	African National Congress
<b>APCOF</b>	African Policing Civilian Oversight Forum
<b>CBO</b>	Community Based Organisation
<b>CC</b>	Constitutional Court
<b>CFM</b>	Clinical Forensic Medicine
<b>CFU</b>	Clinical Forensic Units
<b>CGE</b>	Commission for Gender Equality
<b>CHC</b>	Cape High Court
<b>CJCP</b>	Centre for Justice and Crime Prevention
<b>CJS</b>	Criminal Justice System
<b>CMH</b>	Cape Mental Health
<b>CO</b>	Correctional Official
<b>CSO</b>	Civil Society Organisation
<b>CSP</b>	Civilian Secretariat for Police
<b>CSVR</b>	Centre for the Study of Violence and Reconciliation
<b>DfID</b>	Department for International Development (United Kingdom)
<b>DG</b>	Director General
<b>DHS</b>	District Health System
<b>DCS</b>	Department of Correctional Services
<b>DOE</b>	Department of Education
<b>DOH</b>	Department of Health
<b>DOJ&amp;CD</b>	Department of Justice and Constitutional Development
<b>DPME</b>	Department of Performance Monitoring and Evaluation
<b>DSD</b>	Department of Social Development
<b>DVA</b>	Domestic Violence Act
<b>DWCPD</b>	Department of Women, Children and People with Disabilities
<b>EELC</b>	Equal Education Law Centre
<b>FAMSA</b>	Family and Marriage Society of South Africa
<b>FCS Units</b>	Family Violence, Child Protection and Sexual Offences Unit
<b>GHJRU</b>	Gender Health and Justice Research Unit
<b>HSRC</b>	Human Sciences Research Council
<b>IDMT</b>	Inter-departmental Management Team
<b>IMC</b>	Inter-Ministerial Committee on Violence against Women and Children
<b>IO</b>	Investigating officer
<b>IPID</b>	Independent Police Investigative Directorate
<b>IPoA</b>	Integrated Programme of Action
<b>ISCSO</b>	Inter-Sectoral Committee for the Management of Sexual Offence Matters
<b>JMAB</b>	Judicial Matters Amendment Bill 2015



<b>JMSAA</b>	Judicial Matters Second Amendment Act of 2013
<b>LGBTI</b>	Lesbian Gay Bisexual Transgender and Intersex
<b>LRC</b>	Legal Resources Centre
<b>MATTSO</b>	Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters
<b>NAP</b>	365 Day National Action Plan to End Gender Violence
<b>NCPR</b>	National Child Protection Register (NCPR)
<b>NGO</b>	Non-Governmental Organisation
<b>NPA</b>	National Prosecuting Authority
<b>NPF</b>	National Policy Framework
<b>NSRO</b>	National Register for Sexual Offences
<b>NWG</b>	National Working Group on the Criminal Law (Sexual Offences) Amendment Bill (2003) and Criminal Law (Sexual Offences and Related Matters) Amendment Bill (2006)
<b>PASSOP</b>	People Against Oppression and Poverty
<b>PEP</b>	Post-exposure prophylaxis
<b>PWIDs</b>	People with intellectual disabilities
<b>RAPCAN</b>	Resources Aimed at the Prevention of Child Abuse and Neglect
<b>SACE</b>	South African Council of Educators
<b>SALRC</b>	South African Law Reform Commission
<b>SAPS</b>	South African Police Services
<b>SC-Justice</b>	National Council of Provinces Select Committee on Security and Justice
<b>SCA</b>	Supreme Court of Appeal
<b>SGBV</b>	Sexual and gender-based violence
<b>2007 SOA</b>	Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007
<b>SOC</b>	Sexual Offences Courts
<b>SOCA Unit</b>	Sexual Offences and Community Affairs Unit
<b>SORMA</b>	Criminal Law (Sexual Offences and Related Matters) Amendment Bill (2006)
<b>SWEAT</b>	Sex Workers Education and Advocacy Taskforce
<b>TCC</b>	Thuthuzela Care Centres
<b>UCT</b>	University of Cape Town
<b>CEDAW</b>	UN Convention on the Elimination of All Forms of Discrimination Against Women
<b>UNICEF</b>	United Nations Children’s Fund
<b>UWC</b>	University of the Western Cape
<b>VAW</b>	Violence against women
<b>VFRs</b>	Victim Friendly Rooms
<b>WCED</b>	Western Cape Education Department
<b>WiSER</b>	Wits Institute for Social and Economic Research
<b>WLC</b>	Women’s Legal Centre
<b>WRDC</b>	Witzenberg Rural Development Centre





## CHAPTER 1

# INTRODUCTION TO THE SEXUAL OFFENCES SUMMIT 2015

The Gender Health and Justice Research Unit (University of Cape Town) (“GHJRU”) together with the Centre for Disability Law and Policy (University of the Western Cape) and additional project partners, all specialists in the gender-based violence (“GBV”) and human rights sectors, convened a civil society-led summit on the implementation of Sexual Offences Legislation in South Africa (“the Summit”), which took place in 2015.

The Summit called for submissions on the implementation of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007* (“the 2007 SOA”) from civil society organisations and was convened in response to findings that previous civil society-based attempts to bring to light the sluggish and inconsistent implementation of the 2007 SOA through research, national monitoring and public awareness campaigns had largely gone unnoticed. The South African Government had either failed to respond or had taken a defensive position with respect to the perceived complexity of implementing the legislation. Furthermore, requests to present research findings at Parliamentary Portfolio Committees since the passing of the 2007 SOA had been either ignored or postponed.

This impasse in relation to the Government’s lack of implementation of the 2007 SOA resulted in two choices: (i) to acquiesce with the status quo and continue a slow and iterate process of research and advocacy; or (ii) to engage in a process that authoritatively positioned civil society to ask critical questions and provide experience-based recommendations regarding the implementation of the 2007 SOA in an organised, public and participatory manner.

While national coalitions had been effective in raising public awareness about the challenges set out above, they had not been successful in engaging Government in a way that was direct and consequential. The organisers of the Summit believed that Government’s response to civil society was reflective of a State that is increasingly resistant to scrutiny and recalcitrant when it fails to comply with its constitutional and statutory obligations. December 2014 marked seven years since the passing of the 2007 SOA. Accordingly, it was felt that it was time for the hard questions to be asked and, more importantly, answered with a view to constructive problem solving in respect of improving access to justice and service delivery for sexual offence survivors.

## 1.1 OBJECTIVES OF THE SUMMIT

### **The objectives of the Summit were to:**

- (i) promote accountability of Government, particularly where it has committed itself through law to ensuring fair, equitable and speedy access to justice;
- (ii) develop a process that recognised civil society as transformative and relevant to the process of ensuring access to justice;
- (iii) provide a safe space for survivors of sexual offences – as well as non-governmental and community-based organisations working with or concerned about sexual offences – to share their experiences, concerns, needs and recommendations; and
- (iv) ensure that conversations about what is or is *not happening*, what is *meant to be happening* and

what has been *committed to happen* are open and transparent. Presenting challenges experienced by the State, civil society, practitioners and individuals with the implementation of South African sexual offences legislation and related services rendered by Government in an “open society” forum is, in the GHJRUs’ opinion, critical to ensuring the advancement of justice for sexual assault survivors.

The convening of the Summit also coincided with an ongoing Court mandated parliamentary law reform process in respect of specific provisions of the 2007 SOA, with which process the GHJRU was critically engaged, both individually and as part of a larger coalition of civil society organisations.

## 1.2 METHODOLOGY

*[This Summit is] about bringing people together after seven years with a sexual offences law that aimed to protect survivors of sexual violence. This is an open dialogue about whether this Act has done what it intended to do. This space, and the discussions within it, is meant to be safe, constructive, tolerant and respectful. We have to have this conversation in a constructive way in order to assess where we are and how to move forward. NGOs and CSOs have worked tirelessly to reform the Sexual Offences Act to strengthen implementation in government departments. The Government has had the responsibility of implementing it. So far, conversations about the implementation of the Act have been had separately – separately from the community. It is time to have these conversations together and that is the objective of this Summit. Lillian Artz (Opening Address).*

### **The Summit comprised the following:**

- (i) *the hosting of a 3-day community-based summit in a peri-urban area in one province; one that would make government aware of the issues faced by survivors, their communities and the organisations that support them and hold Government accountable for the implementation of the 2007 SOA;*
- (ii) *the dissemination of information sheets provided by participating civil society-based organisations as well as government departments and statutory oversight bodies regarding key issues in respect of the implementation of the 2007 SOA;*
- (iii) *the submission of oral, written and other forms of submissions (including fact sheets, information posters, poetry, protest song, research reports and own voice narratives) by individuals, groups of individuals or organisations that have been affected by or that work with survivors of sexual offences);*
- (iv) *the collection of questions and recommendations from Summit participants for Government and other service providers to respond to; and*
- (v) *engagement with both mainstream and youth-centered media to raise awareness of the issues, ensure transparency and extend an open invitation to all stakeholders (including individual members of the public) to participate.*

This report is also a product of the conclusion of the Summit. It brings together the submissions, discussions and questions raised prior to and during the Summit and provides recommendations for Government throughout. These recommendations are derived directly from written or oral submissions made at the Summit as well as through the transcription of the discussions and debates that took place.

### **Format of the Summit**

The Summit was held in 2015 at the Delft Central Sports Hall (an easily accessible, peri-urban and community-based location) which encouraged local community, peri-urban and rural participation by Government stakeholders, individual members of the public and organisations alike. The ethos of the Summit was inclusive, participatory and needs-responsive. It also emphasised a non-antagonistic climate throughout its proceedings. In seeking to ensure meaningful, broad-based participation, a widely-distributed public invitation to participate emphasised that submissions could have the person or organisation's name on them or they could be anonymous and submitted on behalf of individuals, groups and/or organisations.

A template for submissions was created to assist participants with written submissions (See Annexure D). In addition to this, the GHJRU and its partners offered assistance to any person or organisation that required assistance with the drafting of a written submission. Oral submissions, presentations and panel discussions further encouraged those present to enter the discussion throughout. This resulted in participants taking the opportunity to ask questions, make comments and recommendations, share from their personal and professional experiences, seek advice and appropriate referrals as well as enrich inter-sectoral engagement.

### **Programmatic Inclusivity**

In preparation for the Summit, all relevant Provincial Government and criminal justice system stakeholders, local Delft and other community-based organisations, social justice activists, gender sector and social justice coalition coordinators, relevant peri-urban and rural organisations, sexual offences experts, academics and the media were approached and consulted with regard to the Summit programming and participation. The significance of these consultations is reflected positively in the contextual relevance and scope of the Summit programme (see Annexure C), the number and diversity of the participants, the depth of engagement both prior to the Summit (in the form of written submissions), and during the three days of the Summit itself (in the form of oral submissions, questions to presenters from the floor, inter-sectoral debates, the submission of written questions for Government as well as participant recommendations for enhanced implementation and service provision). The debates were highly informed, based on the actual experiences of the participants, whether they worked within 'the system' or were being assisted by it. The narratives were also moving, troubling and sometimes polemical.

The Summit programme also specifically responded to a need that was highlighted in our pre-Summit consultations: for marginalised voices to be represented and heard. In this

regard, the particular challenges experienced in accessing sexual offences-related justice and services by people with disabilities, lesbian, gay, bisexual, transgender and intersex (“LGBTI”) persons, sex workers, farm workers, (un) documented asylum seekers, the elderly, male survivors and children/learners were represented both through own voice testimony and submissions made on their behalf by non-governmental (“NGO”) or community-based (“CBO”) organisation representatives. Inclusivity was thus encouraged through programming in which diverse participants could find the lived reality of their experiences and intersectional harms represented within sensitively facilitated sessions whose facilitators were drawn from participant and project partner organisations to further foster a sense of inclusivity, valued participation and meaningful engagement.

### Education and Information Sharing

In the pre-Summit consultations, local community members and community-based organisations expressed the need for greater sexual offences-related information sharing, especially as it relates to access to justice and medico-legal service provision. Accordingly, relevant service provider information pamphlets, sexual offences-related fact sheets and key stakeholder contact details were provided at the Summit. Furthermore, the Summit methodology consciously brought together and facilitated networking and strategic introductions aimed at bridging the gap between Government and other justice sector stakeholders, civil society and local communities. For example, the Women’s Legal Centre (“WLC”) hosted a pro bono legal advice desk and provided their contact details to participants should services be required after the conclusion of the Summit.

### Participants

In addition to 28 oral presentations and 29 written submissions, approximately 165 participants attended and engaged actively during each of the three days (for a list of participants see Annexure G). Participants and presenters represented urban, peri-urban and rural experiences from across the Western Cape and included representatives of the Departments of Justice and Constitutional Development (“DOJ&CD”), Health (“DOH”), Education (“DOE”), Social Development (“DSD”) and Correctional Services (“DCS”) as well as parliamentary researchers, Local Government representatives and advocates from the Sexual Offences and Community Affairs (“SOCA”) Unit of the National Prosecuting Authority (“NPA”). The South African Police Service (“SAPS”) was also represented with local Delft Police Station officers; Family Violence, Child Protection and Sexual Offences (“FCS”) Unit officers as well as representatives of the Independent Police Investigative Directorate (“IPID”) participating throughout the Summit. Further participants included statutory oversight bodies, academics, civil society and community-based

organisations, local community members, sexual offences survivors, medico-legal practitioners, social justice activists, students, visiting judiciary, the media, researchers, experts in the field and individual members of the public.

### Media Coverage

Both print and broadcast media attended. They also took part in a panel discussion regarding media reporting of sexual and gender-based violence (“SGBV”) as well as covered the Summit to raise awareness about implementation challenges and ensure that the open invitation to participate was widely disseminated (see Annexure B). In addition to mainstream media, youth radio broadcasters attended and reported on Summit proceedings.

A Summit website was created by the GHJRU at: <http://www.sexualoffencesummit.co.za/>. The website ran for three months and explained the rationale for the Summit, listed partner organisations and contained written submissions as well as links to relevant legislation, law reform submissions, policy briefs, research briefs, articles, reports and Summit contact details. It was also updated with a gallery of photographs from the Summit proceedings.

### Fact Sheets and Materials

A Summit brochure was prepared and disseminated to all participants at the Summit upon registration. It explained the motivation for and aims of the Summit, listed partner organisations and provided Summit contact details (see Annexure A). In addition to the information provided through the Summit website, the GHJRU asked both attendees and those who presented oral submissions to disseminate fact sheets and relevant organisational materials, including sexual offences information booklets, educational and/or advocacy posters and service provision details. The GHJRU also collected such materials from partner organisations prior to the Summit, which were then displayed at the Summit and the taking thereof by participants encouraged. The opportunity to disseminate such information was also specifically offered to and taken up by the various participating government departments and criminal justice stakeholders.

### Key Questions

Key questions were collated by the GHJRU throughout the three days of Summit proceedings as part of session facilitation. Forms entitled “Questions for Government, SAPS, the NPA and/or any other relevant role-player or service provider” and “Recommendations for Enhanced Service Delivery” were given to participants to complete on an anonymous basis during the Summit itself in the hope of encouraging engagement from those who may not have felt comfortable speaking publically (see Annexure E).

Over and above the many public statements and questions voiced by participants over the three days, twenty-six such forms were submitted.

### The Need for Ongoing Community Engagement

The need for and importance of ongoing community engagement was highlighted poignantly when participants expressed their appreciation of the GHJRU for not holding the Summit “in a fancy hotel in the city centre – away from the community where the problems happen”, but rather bringing it to local, disadvantaged communities in such a way as to encourage local community participation. It was also requested by a community member that the Summit project not stop its work after hosting a community-based event, but ensure that there is an ongoing engagement (including through the facilitation of avenues for persistent socio-political participation, collaboration and dialogue with the stakeholders present). The Summit project was mindful of this in creating opportunities for networking and bringing interested parties together to establish connections at local, provincial and national levels – both generally and more specifically in relation to enhanced access to justice and service provision for sexual offence survivors.

### Participant feedback (see Annexure F) suggests that the Summit was successful in:

- (i) ensuring that the content was accessible and relevant to the diverse participants;
- (ii) opening safe spaces for marginalised voices, combined with a commitment to a well facilitated process that did not permit a ‘blaming’ or ‘hostile’ environment;
- (iii) facilitating constructive engagement among multi-sectoral stakeholders, service providers, legal, healthcare and social development practitioners as well as academics, individual community members and the media; and
- (iv) ensuring a balance between oral submissions, expert presentations and inclusive engagement/discussion in which all attendees could participate.

### The Summit Report

**In drafting this report, the GHJRU conducted a systematic content analysis of the following:**

- (i) The written and oral submissions;
- (ii) the transcripts of proceedings; and
- (iii) evidence found in the literature and other reports as it pertains to sexual offences and the implementation of the 2007 SOA

## 1.3 THE STRUCTURE OF THE SUMMIT

The Summit comprised themed sessions in which both written and oral submissions were presented and panel discussions held. All sessions were opened up for questions and comments to facilitate meaningful participation for all attendees. Provision was also made for small group, breakaway discussions, which were held in tandem with those specified in the programme.

### The Summit Themes

**The themes of the individual Summit sessions were as follows:**

- (i) The legal framework relating to SGBV in South Africa;
- (ii) Gender responsive budgeting and the implementation of sexual offences legislation;
- (iii) The responsiveness of South Africa’s housing policy framework to SGBV;
- (iv) Children and the implementation of sexual offences legislation;
- (v) Sexual offences and rape homicide;
- (vi) Thuthuzela Care Centres and service delivery to sexual offence survivors;
- (vii) The victim impact of SGBV and the deficient implementation of sexual offences legislation;
- (viii) Marginalised voices and the implementation of sexual offences legislation. Included within this theme were submissions relating to the experiences of:
  - ▶ People with disabilities;
  - ▶ Men and male prisoner sexual offence survivors;
  - ▶ Sex Workers;
  - ▶ LGBTI persons;
  - ▶ Women on farms;
  - ▶ Refugees, asylum seekers and (un)documented (im)migrants.
- (ix) Community perspectives regarding service provision and access to justice for sexual offence survivors;
- (x) The media and gender-based violence reporting;
- (xi) Government perspectives regarding the implementation of sexual offences legislation and related service delivery; and
- (xii) Strategies for enhanced service delivery, access to justice, State accountability and the improved implementation of sexual offences legislation.



## 1.4 THE SUMMIT PROGRAMME

### DAY 1

<b>8:30-9:00</b>	<b>Registration</b>
9:00-10:00	<b>Hayley Galgut</b> (GHJRU, UCT), <b>Prof Lillian Artz</b> (GHJRU, UCT) and <b>Prof Helene Combrink</b> (Disability Law Project, UWC) <i>Welcome and Summit Opening</i>
10:00-10:30	<b>Lisa Vetten</b> (The Shukumisa Campaign) <i>Contradictions, Expectations and Awaiting Finalisation(s): The Status of the Sexual Offences Act</i>
10:30- 11:10	<b>Sanja Bornman</b> (The Women’s Legal Centre) <i>Legal Accountability: Existing Case Law, Gaps and Future Challenges</i>
11:10-11:30	OPEN DISCUSSION
<b>11:30-11:50</b>	<b>Tea Break</b>
11:50-12:10	<b>Thoko Madonko</b> (Alternative Information and Development Centre) and <b>Lorenzo Wakefield</b> Consortium on Crime and Violence Prevention (APCOF/CJCP) <i>Gender Responsive Budgeting and its Linkages with Gender-Based Violence and the Deficient Implementation of Sexual Offences Legislation</i>
12:10-12:30	OPEN DISCUSSION
<b>12:30-13:30</b>	<b>Lunch Break</b>
13:30-13:50	<b>Naomi Thomas</b> (Witzenberg Rural Development Centre) <i>Case Study Elucidating the Linkages between the Implementation of Gender Based Violence-Related Legislation and Housing Subsidy Policies</i>
13:50 -14:10	OPEN DISCUSSION (led by <b>Sanja Bornman</b> , Women’s Legal Centre and <b>Charlene May</b> , the Legal Resources Centre)
14:10-14:30	<b>Solminic Joseph</b> (Equal Education Law Centre) <i>Implementation of Sexual Offences Legislation in Respect of Gender-Based Violence in Schools</i>
14:30-15:30	<i>Children and the Implementation of Sexual Offences Legislation:</i> ▶ <b>Christina Nomdo</b> – RAPCAN ▶ <b>Prof Shanaaz Mathews</b> – Children’s Institute (UCT)
15:30-16:00	OPEN DISCUSSION
16:00	Closure

## DAY 2

### 8:30-9:00 Registration and Opening

9:00-9:30 **Prof. Lorna Martin** (Department of Forensic Medicine, University of Cape Town)

*Sexual Offences and Rape Homicide: Experiences of a Forensic Pathologist in Cape Town*

9:30-10:20 **Dr Genine Josias** (Khayelitsha Thuthuzela Care Centre)

*Gender, Health & Justice: Thuthuzela Care Centres and Service Delivery to Victims/ Survivors of Sexual Offences*

10:20-10:40 OPEN DISCUSSION

10:40-11:10 **Kathleen Dey** (Rape Crisis Cape Town Trust)

*Victim Impact of Gender-Based Violence and the Deficient Implementation of Sexual Offences Legislation*

11:10-11:40 OPEN DISCUSSION

### 11:40-12:00 Tea Break

12:00-12:30 **Carol Bosch** (Sexual Assault Victim Empowerment Programme, Cape Mental Health)

*The Implementation of Sexual Offences Legislation from the Perspective of People with Intellectual Disabilities*

12:30-13:00 OPEN DISCUSSION

### 13:00-14:00 Lunch Break

14:00-14:20 **Dr Marlise Richter** (Sonke Gender Justice)

*The Deficient Implementation of Sexual Offences Legislation in Respect of Men and Male Prisoner Sexual Assault Survivors*

14:20-14:40 **Ishtar Lakhani** and **Ayanda Denge** (SWEAT with Sisonke)

*Sex Workers' Experiences and Ability to Access Sexual Offences-related Services and Justice*

14:40-15:00 **Sharon Cox** (Triangle Project with Gender Dynamix)

*LGBTI Blind Spots and the Implementation of the Sexual Offences Act*

15:00-15:45 OPEN DISCUSSION

15:45 -16:00 Closure

## DAY 3

### 9:00-9:30 Registration and Opening

9:30-10:00 **Sharon Messina** together with two Women on Farms Health Team Members (Women on Farms Project)  
*Women on Farms' Experiences and Ability to Access Sexual Offences-related Services and Justice*

10:00-10:30 **Tendai Bhiza** (PASSOP)  
*Refugees', Asylum Seekers' and Undocumented (Im) migrants' Experiences of Accessing Sexual Offences-related Services and Justice*

10:30-11:00 OPEN DISCUSSION

### 11:00-11:20 Tea Break

11:20-11:40 **Nolusindiso Dyantyi** (Afrika Tikkun, Delft)  
*Community Perspectives Regarding Service Provision and Access to Justice for Sexual Offence Survivors*

11:40-12:00 OPEN DISCUSSION

12:00-12:20 **Rebecca Davis** (Journalist, Daily Maverick) and **Janine Cameron** (Assignments Editor, ETV News)  
*The Media and Gender-Based Violence Reporting*

12:20-12:40 OPEN DISCUSSION

### 12:40-13:30 Lunch Break

13:30-14:30 Government perspectives  
Guest speakers: **Ms Samaai**, Western Cape Department of Justice and Constitutional Development, **Dr Roy Chunga** (Department of Health) and a representative from the Independent Police Investigative Directorate (IPID)

14:30-15:00 **Samantha Waterhouse** (The Parliamentary Programme, Dullah Omar Institute, UWC):  
*Identifying Gaps in Practice and Strategies for Enhanced Implementation of the Sexual Offences Act*

15:00-16:00 OPEN DISCUSSION on practical recommendations for enhanced service delivery, access to justice, State accountability and the improved implementation of sexual offences legislation

16:00 **Summation and Closure**

*(See annexure C for presenter biographies)*

## CHAPTER 2

# CIVIL SOCIETY AND THE HISTORY OF SOUTH AFRICAN SEXUAL OFFENCES LEGISLATION

By Samantha Waterhouse  
Women and Democracy Initiative  
Dullah Omar Institute, University of the Western Cape

## CIVIL SOCIETY'S ENGAGEMENT AND THE HISTORY OF THE SEXUAL OFFENCES LEGISLATION

The law and criminal justice process relating to sexual violence are contested ground. The common law is embedded in patriarchal values including the belief that women are frequently responsible for the sexual violence they experience and that women are inherently unreliable. In addition to the common law, South African statutory law, developed in the first half of the 20th century, strongly reflected these social beliefs. The significant reforms contained in the 2007 SOA, represent attempts to shift the letter of the law. However, realising these changes requires processes that go beyond amending the law to ensuring that change takes effect across and throughout the criminal justice system.

The 2007 SOA evolved through nearly 15 years of dedicated public participation and involvement in the law reform process. This evolution brought forth a wider and more specific range of sexual offences and increased protections in the law to sexual offences survivors in the court process. Somewhat unusually, the 2007 SOA also includes a range of measures aimed at its implementation.

The reforms were initiated and driven by an active civil society and a receptive ANC government in the 1990s. Throughout, public participation spurred on the requisite changes that could respond to the realities of sexual offences in South Africa.

Despite decades of feminist lobbying for 'the reform of rape law',<sup>1</sup> and over a decade of active law reform, from the initiation of the South African Law Reform Commission<sup>2</sup> ("SALRC") Project 108 in 1996 to the

eventual promulgation of the 2007 SOA in December 2007, problematic aspects remain. Moreover, the progressive reforms have not led to uniform transformation of the criminal justice process in respect of sexual offences. Many survivors do not experience these changes in the law reflected in their experiences of the system; the needs of survivors still go largely unmet, and, for most, access to justice remains elusive. Thus, although the 2007 reforms are the consequence of struggle, the promulgation of the 2007 SOA does not signal the end of that struggle; rather it is a tool for women and activists to continue to make claims for a reformed system.

This section sets out the milestones in the process of reforming South Africa's sexual offences-related legislation, looking briefly back to the 1957 laws, before focusing on the reform processes of the SALRC, the legislature and the courts to date. It identifies the significant substantive issues relating to sexual offences that were addressed throughout the process, and considers the extent to which these are reflected in the current framework.

This tale of reforms relating to sexual offences is affected by the involvement of all spheres of government. It includes the legislatures, in both their law-making and oversight functions; the executive, as drivers of policy and implementers; and the courts in their role to safeguard the Constitution. Integral to this discussion is an understanding of the civil society lobby. This includes understanding the core messages, organising structures, methodologies, processes and actions undertaken by civil society.

This Summit forms part of the trajectory of civil society action for a transformed criminal justice system that delivers justice, causes minimal secondary victimisation and is effectively grounded in feminist jurisprudence.

<sup>1</sup> Artz, *Criminal Law (Sexual Offences) Amendment Act (32 Of 2007): Reforms, Risks and Revelations*, Open Society Foundation 2010, P2

<sup>2</sup> The SALRC was at that stage referred to as the South African Law Commission, for the purpose of this chapter it will be referred to by its current title.



## CIVIL SOCIETY ACTIONS FOR SEXUAL OFFENCES REFORMS – THE STAKEHOLDERS

A strong, diverse and active civil society is integral to achieving transformation and to realise the constitutional goals of women's rights to dignity, equality, freedom from violence and access to justice. Advocacy relating to the reform and implementation of sexual offences legislation has brought actors from both the women and children's sectors together. Activism by feminist organisations to reform rape law, beginning in the early 1990s,<sup>3</sup> met with efforts in the children's sector to reform the laws relating to child sexual abuse later in the decade. Thus, since the early 1990s, various academics and civil society organisations, individually or in alliances, have sustained their engagements with the legislatures and government departments; undertaken research, mobilised among civil society; maintained a presence in the media (including in the new media over the past five to ten years); embarked on public education campaigns; and driven national citizen monitoring efforts amongst other activities.

Activism and advocacy for reforms relating to sexual offences are intrinsically linked to actions that focus on patriarchy and violence against women more broadly. This discussion will highlight those activities and groups that specifically targeted sexual offences. However, this is not to suggest that a much wider range of vibrant, active and dedicated groups and individuals have not also been working to challenge the oppression of women and patriarchy more broadly throughout.

## ALLIANCES

Building strategic alliances for coordinated advocacy in civil society is linked to, and, indeed, considered essential to increased political influence of advocacy efforts.<sup>4</sup> This approach is strongly evident in civil society's range of actions to promote access to justice for sexual offence survivors. The coordinated advocacy efforts include joint

actions undertaken by formal and informal networks, some of which were formed around a once-off event or project, while others were sustained for multiple actions over the long-term. Frequently, a similar range of stakeholders are involved in these different alliances and processes and often there is fluidity as new individuals or organisations enter or leave the stage.

The predominant focus of civil society's advocacy between the mid-1990s and 2007 was to maintain pressure for law reform and to engage with the process in order to influence the substance of the new law. The promulgation of the 2007 SOA did not put an end to civil society efforts. Rather, organisations shifted their focus to monitoring and advocacy to highlight the need for responses to the 'sluggish and inconsistent' implementation thereof.<sup>5</sup>

Among the many initiatives, a number of significant coordinated actions have been established to promote sexual offences-related legislative and service delivery reforms.

### **Western Cape Consortium on VAW (2000 – 2007)**

The beginnings of the Western Cape Consortium on Violence Against Women are evident in an informal collaborative alliance between: Rape Crisis (Cape Town);<sup>6</sup> the Women and Human Rights Project of the Community Law Centre, University of the Western Cape;<sup>7</sup> and the Gender, Law and Development Project of the Institute of Criminology, University of Cape Town in the late 1990s. This group prepared a discussion document in 1999, *The Legal Aspects of Rape*<sup>8</sup>, which ultimately informed the law reform on sexual offences. By 2002 this group had formalised and produced research on the implementation of bail legislation in sexual assault cases<sup>9</sup> and by 2007 it had grown to six organisations.<sup>10</sup> The Consortium produced a number of research reports and submissions relating to the implementation of sexual offences-related law and policy. Since 2008, the Consortium has continued, without the formal title, to collaborate on research and advocacy relating to the implementation and policy framework for the 2007 SOA. It has also seen the participation of new partners in this later work.

<sup>3</sup> Artz L. 2010. *Criminal Law (Sexual Offences) Amendment Act (32 of 2007): Reforms, Risks and Revelations*. Open Society Foundation P2; and evidenced in Kaganas F and Murray C. 1991. *Law reform and the Family, the New South African Rape-in-Marriage Legislation*. Journal of Law and Society vol. 18 number 3. P287-302

<sup>4</sup> Friedman and McKeiser. 2009. Ibid. Pp39-40; and Gavenata, J. 2002. *Exploring Citizenship, Participation and Accountability*. IDS Bulletin Volume 33 issue 2. P10

<sup>5</sup> 'The Shukumisa Campaign, Dossier, 2014

<sup>6</sup> Now officially known as Rape Crisis Cape Town Trust

<sup>7</sup> Later known as the Gender Project at the Community Law Centre, University of the Western Cape

<sup>8</sup> Pithey, B., Artz, L., Combrink, H., & Naylor, N. (1998). *The Legal Aspects of Rape: A Proposed Draft Bill for Sexual Offences: 1-234*. Discussion document written for the Department of Justice on special request by the Deputy Minister of Justice as the basis for the substantive law on sexual offences.

<sup>9</sup> Barday and Combrink 2002. *The Implementation of Bail Legislation in Sexual Assault Cases*. Community Law Centre, UWC. The title page indicates that this is based on research by the Consortium on Violence Against Women and lists the three organisations. Accessed on 02 09 2015 at <http://communitylawcentre.org.za/projects/gender-project/Violence/Rape%20Crisis.pdf>

### **National Working Group (“NWG”) on the Sexual Offences Bill (2004 – 2008)**

The NWG was officially formed in 2004. It was established to ensure that the bill<sup>11</sup> ultimately enacted reflected the best interests of both adult and child sexual violence survivors. The NWG officially consisted of seventeen NGOs and academic institutions that delivered counselling, training or research and policy development on sexual offences. Most of the organisations had been involved in advocacy relating to the development of the 2003 Bill<sup>12</sup> during the SALRC process from 1998 to 2002, and during the first round of the parliamentary process in 2003.<sup>13</sup> The NWG undertook and supported a range of activities between 2004 and 2007. These included raising awareness regarding the two Amendment Bills<sup>14</sup> and their content, mobilising other organisations, as well as building the capacity of its members and other organisations to undertake advocacy.<sup>15</sup> It served an important function of facilitating debate to build consensus positions on the Amendment Bills<sup>16</sup>. This was no easy task considering the diversity of the NWG’s members and the wide range of issues on the table, some more controversial than others. The NWG also served as a space for these organisations to develop collective advocacy strategies, including media advocacy, to influence the process and content of the Amendment Bills<sup>17</sup>. In 2007, the NWG broadened its strategic objectives to include promoting the development of policy and secondary legislation that would ensue after the Amendment Bill’s<sup>18</sup> passage and to undertake future activities to monitor implementation subsequent to the amended law being promulgated. In 2008, the NWG re-

formed as the *Shukumisa Campaign* which is discussed in more detail below.

### **One in Nine Campaign (2006 – to date)**

The *One in Nine Campaign*<sup>19</sup> was established in February 2006, spurred by the widespread vilification of the survivor, Khwezi, in the Jacob Zuma rape trial. It was established primarily to demonstrate solidarity with women who speak out about sexual violence.<sup>20</sup> After three years, the campaign had grown from the initial informal grouping of a handful of organisations in 2006,<sup>21</sup> to twenty-six member organisations from around the country.<sup>22</sup> The *One in Nine Campaign* was led by a working group of ten member organisations, and a team of five additional organisations representing five provinces.<sup>23</sup> The *One in Nine Campaign* strongly articulated the (radical) feminist ideology underpinning its range of activities.<sup>24</sup> The Campaign also emphasised from the outset its commitment to feminist principles within its internal processes, noting that “the advancement of women’s leadership is pivotal...” and that the campaign was striving to ensure that its internal spaces were introspective and allowed members to empower themselves in order to “create a new energy within the women’s movement in South Africa”.<sup>25</sup> The *One in Nine Campaign* undertook a wide range of activities, including public demonstrations, art exhibitions, media work and others towards its objectives of shifting social norms; legislative reform; media advocacy; and monitoring and tracking rape cases to express solidarity and illustrate the weaknesses in the system and the need for reform.<sup>26</sup> The

<sup>10</sup> Consortium on Violence Against Women. 2007. Submission to the National Council of Provinces. *This document lists the following organisations among members of the Consortium: Resources Aimed at the Prevention of Child Abuse and Neglect; Law Race and Gender Research Unit, UCT; Rape Crisis Cape Town Trust, Women’s Legal Centre, Gender Project, CLC, UWC; Gender Health and Justice Research Unit, UCT.* <http://www.gjru.uct.ac.za/parl-submissions/Submission-to-NCOP.pdf>

<sup>11</sup> *The Criminal Law (Sexual Offences) Amendment Bill (2003), which was followed by the Criminal Law (Sexual Offences and Related Matters) Amendment Bill (2006)*

<sup>12</sup> *The Criminal Law (Sexual Offences) Amendment Bill (2003), which was followed by the Criminal Law (Sexual Offences and Related Matters) Amendment Bill (2006)*

<sup>13</sup> Authors personal experience

<sup>14</sup> *The Criminal Law (Sexual Offences) Amendment Bill (2003), which was followed by the Criminal Law (Sexual Offences and Related Matters) Amendment Bill (2006)*

<sup>15</sup> Fuller. 2007. *Ibid.* P25

<sup>16</sup> *The Criminal Law (Sexual Offences) Amendment Bill (2003), which was followed by the Criminal Law (Sexual Offences and Related Matters) Amendment Bill (2006)*

<sup>17</sup> *The Criminal Law (Sexual Offences) Amendment Bill (2003), which was followed by the Criminal Law (Sexual Offences and Related Matters) Amendment Bill (2006)*

<sup>18</sup> *Criminal Law (Sexual Offences and Related Matters) Amendment Bill (2006)*

<sup>19</sup> The Medical Research Council (MRC) study on sexual violence (2005) indicated that only one out of every nine rape survivors report the attack to the police. This statistic prompted the name: “One In Nine”.

<sup>20</sup> *One in Nine. 2006. One in Nine Campaign Strategy July 2006. P2*

<sup>21</sup> *One in Nine. 2006. One in Nine Campaign Strategy July 2006. P2*

<sup>22</sup> Lakhani I. 2009. *DRAFT One in Nine Campaign Review document 2009.*

<sup>23</sup> Working Group organisations listed include: People Opposing Women Abuse (POWA); Gender AIDS Forum (GAF); Positive Women’s Network (PWN); Forum for the Empowerment of Women (FEW); OUT LGBT Well-being (OUT); Rhodes University Treatment Action Campaign (TAC); Men as Partners/Engender Health; AIDS Legal Network; AIDS Consortium; Treatment Action Campaign; Masimanyane Women’s Support Centre (E.C), the Provincial Team comprised of: AIDS Legal Network (W.C.); Gender AIDS Forum (KZN); Rhodes University Treatment Action Campaign (TAC); Thohoyandou Victim Empowerment Trust (Limpopo); Greater Nelspruit Rape Intervention Project (GRIP) Mpumalanga.

<sup>24</sup> *One in Nine Website.* Accessed on 02 September 2015. <http://oneinnine.org.za/building-solidarity-feminist-activism/>

<sup>25</sup> Lakhani I. 2009. *DRAFT One in Nine Campaign Review 2009*

<sup>26</sup> Lakhani I. 2009. *DRAFT One in Nine Campaign Review 2009*

<sup>27</sup> *One in Nine Campaign Website* accessed on 02 September 2015 at <http://oneinnine.org.za/home/>

campaign continues with activities to pursue these goals and has in the recent past established an online political education course for feminists.<sup>27</sup>

### **The Shukumisa Campaign (2008 to date)**

The *Shukumisa Campaign* was established in 2008, in continuation of the work of the NWG. After the promulgation of the 2007 SOA, NWG member organisations re-framed the purpose of the working group from focussing on the development of the law, to focussing on the implementation of the legislation. The website expresses the aim of the *Shukumisa Campaign*: “to stir and shake up public and political will to develop and implement policies related to sexual offences.”<sup>28</sup> The *Shukumisa Campaign’s* Terms of Reference articulate its aim and vision as focusing primarily on advocacy for strong sexual offences legislation and policy as well as their implementation in order to build a “strong criminal justice system that supports rape survivor’s access to justice...”<sup>29</sup> The *Shukumisa Campaign* has undertaken numerous and wide-ranging campaign activities, including research and monitoring, with a particular focus on community monitoring; undertaking media advocacy and producing education and advocacy materials such as fact sheets and policy briefs. The campaign has regularly drafted joint submissions to Parliament for ongoing law reform and policy development. In addition, it has, over the past seven years, proactively approached Parliament to engage with committees for greater accountability and improved oversight in respect of the implementation of the 2007 SOA. Campaign activities have also included numerous advocacy engagements with government departments towards policy and programme development for sexual offences. The *Shukumisa Campaign* has grown to include membership of forty-seven organisations from all nine provinces.<sup>30</sup> It includes a range of urban and rural CBOs, NGOs and academic institutions.<sup>31</sup> It is led by a steering committee of ten organisations, elected by the

membership. It is evident that the *Shukumisa Campaign* has grown in strength subsequent to the passing of the 2007 SOA, and that it has sustained significant collective advocacy towards realising survivors’ rights.<sup>32</sup>

## **DIVERSITY**

Neither the children’s nor the women’s sector is homogenous. In the women’s sector divisions between ‘academic’ and ‘activist’ feminists were hotly debated and are well documented subsequent to the Conference on Women and Gender in Southern Africa hosted in 1991.<sup>33</sup> Over the past fifteen years a range of organisations and structures, having different purposes, have worked together (or separately) to address sexual violence. Bennet recognises the diversity of ‘organised women’ some expressly identified as feminist and others not, working on issues related to women’s lives across South Africa.<sup>34</sup> She notes the importance of the emerging social movements in the women’s sector in the late 2000s, whose members identify as ‘women activists’ and whose actions “form the bedrock of emerging political protest against State positions and policies”.<sup>35</sup> Although social movements relating to children’s rights are harder to find, it too is a vibrant sector with a broad range of structures working to improve children’s lives. The types of structures from the women’s and children’s sectors involved in advocacy for reform of the sexual offences legislation include rural and urban community-based organisations and movements; NGOs operating at provincial or national level, frequently being urban oriented; and academic institutions. These structures are driven by different ideologies, be they feminist, rights-based or welfarist.

Differences in approach and ideology have, at times, resulted in divisions between and exclusion of some groups from collective action. The predominance of NGOs and academic institutions with relatively better resources, in leadership

<sup>28</sup> ‘the Shukumisa Campaign’ Website accessed on 03 September 2015 at [www.TheShukumisaCampaign.org.za/about/](http://www.TheShukumisaCampaign.org.za/about/)

<sup>29</sup> The Shukumisa Campaign. 2015. *Terms of Reference for the Members of the Shukumisa Campaign DRAFT* – dated April 2015

<sup>30</sup> The Shukumisa Campaign submission to the Portfolio Committee on Justice and Correctional Services on the Criminal Law (sexual offences and related matters) Amendment Act Amendment Bill. 03 February 2015.

<sup>31</sup> The recent Submission to the United Nations Special Rapporteur on Violence Against Women by the Shukumisa Campaign for South Africa Country Visit 2015 lists the Shukumisa Campaign member organisations as: AIDS Legal Network; Agisanang Domestic Abuse Prevention and Training (ADAPT); Childline SA; CINDI Network (KZN); Coping Centre; Dept. of Social Responsibility - Anglican Church; Dullah Omar Institute, UWC; Ekupheleni Mental Health and Trauma; Epilepsy SA; FAMSAs Pietermaritzburg; Gender, Health & Justice Research Unit, UCT; Greater Nelspruit Rape Intervention Project (GRIP); Ikhwezi Women’s Support Centre; Justice and Women; Legal Resource Centre; Lethabong; Lifeline Durban; Lifeline PMB; Limpopo Legal Advice Centre; Masimanyane Women’s Support Centre; MOSAIC; NISAA; Peddie Women’s Support Centre; People Opposing Woman Abuse (POWA); Project Empower ; Rape Crisis Cape Town Trust; Rape Crisis PE; REMMOHO Women’s Organisation; Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN); SANAC Women’s Sector/ WC Network on Violence Against Women; Sex Workers Education and Advocacy Taskforce (SWEAT)/Sisonke; Sexual Assault Clinic; Sonke Gender Justice; Teddy Bear Clinic; Thohoyandou Victim Empowerment Project (TVEP); Tiphuxeni; Thusanang Advice Centre; Triangle Project; Tshwaranang Legal Advocacy Centre (TLAC); Voice Movement Therapy Eastern Cape; Wiser, Wits University; Women and Men Against Child Abuse; Women’s Legal Centre; Women on Farms Project; Debbie Harrison (Independent); Luke Lamprecht (Independent); Kelley Moulit (Independent)

<sup>32</sup> ONPar. 2014. *A Guiding Document to the Shukumisa Campaign Dossier*. P20

<sup>33</sup> Horn P. 1991. ‘Conference on Women and Gender in Southern Africa: Another View of the Dynamics’ in *Transformation* 15 83:88

<sup>34</sup> Bennet J. 2008. ‘Challenges Were Many: The One in Nine Campaign South Africa’ in *Batlivala S (Ed) Changing Their World* 1st edition. Association for Women’s Rights in Development. P4

<sup>35</sup> Bennet J. 2008. ‘Challenges Were Many: The One in Nine Campaign South Africa’ in *Batlivala S (Ed) Changing Their World* 1st edition. Association for Women’s Rights in Development. P4

positions and decision-making structures within alliances that have worked for these reforms, means that the danger of co-opting is ever present<sup>36</sup> and increases the risk of exacerbating mistrust of community oriented structures.<sup>37</sup> Thus, examining the power imbalances within alliances remains critical.<sup>38</sup> As some alliances, such as the *One in Nine Campaign* and the *Shukumisa Campaign*, have been established and grown, they have faced these challenges, made efforts to explicitly address inherent power dynamics, and sought the participation of a wide range of organisations to greater or lesser degrees of success.

## CIVIL SOCIETY – THE STRATEGIES

Our discussion of the various methods and activities undertaken by civil society for reforms relating to sexual offences legislation, the implementation and amendment thereof as well as meaningful service delivery and access to justice for sexual offences survivors throughout the past three decades is contextualised by two framing constructs. The first draws on Gaventa’s theory of participation in which he refers to three types of spaces in which engagements between citizens and the State take place:

- (i) closed spaces to which only a few people have access, usually those already with power, these are typically the spaces in which political decisions are taken;
- (ii) invited spaces, which are those to which citizens are invited to participate, including legislatures’ calls for submissions, government consultations or engagement through the courts, with civil society, at times, making claims on these invited spaces through taking proactive steps to enter those spaces; and
- (iii) invented (also called created) spaces, which are those spaces defined by citizens for engagement with the State.<sup>39</sup> These invented spaces can include meetings called by citizens or citizen groups, public protest, engaging the media and building social consciousness on issues.<sup>40</sup>

The second framing concept is that of advocacy strategies that are located ‘inside’ or ‘outside’. Inside strategies engage with political and State processes at the table

with policy makers (usually through invited spaces), they include making submissions, engaging in dialogue with legislatures and government departments. Inside strategies may also utilise ‘inventing’ approaches, for example requesting opportunities to make submissions or lobbying policy makers. Outside strategies are actions that define (invent) engagements within civil society or between civil society and the State to engage with the issues outside of the formal and State-owned spaces. These include public awareness and education, mobilisation of civil society and the public, demonstrations and protest action and utilising both traditional and new media platforms, amongst others.

Seeking to influence government leadership, strategy, policy and spending to achieve the reforms envisaged by civil society’s advocacy on sexual offences through relying on ‘inside’ approaches and ‘invited’ opportunities, such as written correspondence or submissions alone, is insufficient. In order to have greater influence on political processes, civil society strategies must invest in building their power outside of the State owned spaces for interaction.<sup>41</sup> Civil society campaigns that have successfully integrated strategies include: The *Equal Education Campaign*, the *Treatment Action Campaign* and the *Right to Know Campaign*, amongst others. The investment in the ‘outside’ strategies, particularly mobilisation, is considered essential to the successes of these campaigns.<sup>42</sup> Linked to this is Bennet’s argument that organisations with the greatest visibility, engaging formally with the national gender machinery, may actually be less influential than those “hundreds of small organisations” that are less visible, but potentially more influential.<sup>43</sup> This underscores the importance of strategies for reform that bring NGOs, academics, local level activists, CBOs and social movements together, that utilise different approaches to achieve the same goal; and that explicitly engage with the internal politics of power and exclusion within civil society.

In the actions to realise the rights of sexual offence survivors over the years, civil society has utilised a range of strategies, however at different times, and different groups have tended to take one approach or another. In addition to the actions driven by the larger alliances, there have been many that were undertaken by individual organisations or smaller informal alliances. Due to these

<sup>36</sup> Hicks and Buccus. 2007. Ibid. P106 and P108

<sup>37</sup> Friedman and McKeiser. 2009. Ibid.P21; and Hicks J and Buccus I. 2007. *Crafting New Democratic Spaces: Participatory Policy-making in KwaZulu-Natal, South Africa*. Transformation 65. P108

<sup>38</sup> Hicks and Buccus. 2007. Ibid. P106 and p108

<sup>39</sup> Gaventa J. 2006. Ibid. Pp26-27

<sup>40</sup> Theron et al. 2007. Ibid. P14; and Friedman S and McKeiser E. Friedman S and McKeiser E. 2009. Ibid. Pp37-38

<sup>41</sup> Ben-Zeev K and Waterhouse S. 2012. *Not Waiting for an Invitation: Lessons from South African Civil Society Engagement with National Parliament*. Heinrich Boell Foundation and Community Law Centre, UWCC P7

<sup>42</sup> Friedman S and McKeiser E. 2009. Ibid.Pp37-38; and Ben-Zeev K and Waterhouse S. 2012. Ibid. Pp 10-14

<sup>43</sup> Bennet J. 2008. *Challenges Were Many: The One in Nine Campaign South Africa* in Batliwala S (Ed) *Changing Their World* 1st edition. Association for Women’s Rights in Development. P4



organisations being members of alliances, due to overlaps between alliances, and because organisations tend to be part of broader women’s sector or children’s sector networks, these events contribute to, and in fact form part of, the multiplier effect in which the whole becomes greater than the sum of its parts. Thus, in spite of the fact that alliances such as the *One in Nine* and the *Shukumisa Campaigns* are separate, having separate strategies and different approaches<sup>44</sup>, since both share goals regarding social and criminal justice reforms relating to sexual offences, the efforts are complementary and collectively contribute to increased political pressure.

### Campaigns

Campaigns involve a series of activities undertaken over a period of time aimed at achieving a particular result. Campaigns relating to the sexual offences reforms have been largely collective and embedded in alliances, including the formal alliances discussed previously. They have used a wide range of inside/outside advocacy methods, which are described in greater detail below.

### Mobilisation and Alliance Building

As discussed earlier, building the support bases for campaigns and broader mobilisation across civil society and in the public is considered central to the extent of influence of campaigns of this nature. Unsurprisingly it has been integral to many of the initiatives to address sexual violence in South Africa. The continual growth and broader range of members of the significant campaigns, such as the *One in Nine Campaign* and *Shukumisa Campaign*, over the years attest to this. In addition, the mobilisation of women, other social-justice related networks and movements to support campaign activities, such as marches or mass letter writing, has increased involvement in activities and drawn greater public attention to the issues.<sup>45</sup>

Coordinated action does not happen without dedicated investment into collectives, thus alliance-driven campaigns have incorporated significant coordination activities. These include strategy and consensus building meetings among members; and on-going communications with membership

and broader networks. These communications are important to keep people informed of developments, they facilitate participation by ensuring people know of opportunities to do so; and, importantly, these communications can maintain the momentum of a campaign.<sup>46</sup> Furthermore efforts to increase the capacity in civil society to engage in formal ‘inside’ advocacy and to build women’s leadership have been integral to these alliance-driven campaigns.<sup>47</sup>

These activities constitute ‘invented’ spaces and use a range of advocacy methods described below, including those categorised as ‘inside’ and ‘outside’ strategies.

### Submissions

Written submissions are perhaps one of the most commonly used tools for advocacy relating to sexual offences reform.<sup>48</sup> Over the years, civil society has prepared individual or joint submissions that have targeted the SALRC, government departments and the legislatures. The quantity of written submissions, relating both to legislative reform and implementation has been astounding. In relation to the first call for submissions on the 2003 Bill<sup>49</sup>, the *Shukumisa Campaign* records that 128 submissions were submitted by civil society to Parliament.<sup>50</sup> In 2015 the Justice Committee received at least 932 submissions relating to amendments on the age of consent for sexual activity and the placement of children’s names on the sex offender register.<sup>51</sup> These submissions have covered extremely wide ground (including: substantive, evidentiary and procedural law; support services for survivors; policing norms and practice, child sexuality and protection).

Submissions on law and policy development as well as reform predominate; however, throughout there is evidence of Community Service Organisations (“CSOs”) engaging with the issues of the implementation of the framework, focussing on guidelines, departmental plans and budgets.<sup>52</sup> Since 2008, various organisations, including the *Shukumisa Campaign* have made claims on the invited spaces of the legislatures to provide input into the annual parliamentary oversight processes, particularly over the DOJ&CD, DSD and the SAPS, highlighting the persistent

<sup>44</sup> Although it is evident that both campaigns utilise inside and outside strategies, the *Shukumisa Campaign* leans more towards inside approaches and the *One in Nine Campaign* to outside approaches.

<sup>45</sup> Examples include the *One in Nine Campaign* methodology as a whole and the *Rape Crisis ‘Justice Denied’* march held in November 2005.

<sup>46</sup> Waterhouse S. In press. ‘People’s Parliament? Do Citizens Influence South Africa’s Legislatures?’ In Khadiagala G, Naidoo P, Pillay D and Southall R (Eds) *New South African Review 5*. Wits University Press. P180

<sup>47</sup> As noted in the discussion on the *One in Nine Campaign* above. In addition one of the stated objectives of the *Shukumisa Campaign’s* 16 days of activism monitoring, the ‘Stop the Bus’ campaigns and collaboration between policy analysts and service providers in writing submissions (which are all discussed later in this section) is to increase capacity and leadership on these issues.

<sup>48</sup> *The Shukumisa Campaign, Dossier, 2014, P16*

<sup>49</sup> *The Criminal Law (Sexual Offences) Amendment Bill (2003)*

<sup>50</sup> *The Shukumisa Campaign, Dossier, 2014, P16*

<sup>51</sup> *Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill [B18 – 2014]: Summary of Submissions – By Clause dated 13 March 2015 and available at <https://pmg.org.za/committee-meeting/20569/>.*

<sup>52</sup> *The Shukumisa Campaign, Dossier, 2014, P16*

failures in leadership to realise the reforms intended by the current legal framework.<sup>53</sup>

Alliances, campaigns and networks have played a central role in ensuring that people are informed of opportunities to make submissions. They have provided information and education on the context and content of proposed amendments, forums for debate and, where possible, consensus building among civil society. The influence of collaboration is highly evident in written submissions, frequently submitted by various organisations as joint submissions. Submissions are also frequently circulated broadly to a range of sectoral networks for endorsement. Additionally, the deliberative forums mean that differences of opinion are debated and are resolved as far as possible among civil society before drafting their submissions. This does not mean that the submissions all take the same approach, but they are, to a large extent, reinforcing.

### Lobbying and Letters

Lobbying, through informal communications with political decision makers from government departments and the legislatures has been a strategy utilised throughout, from conversations relating to the issues in breaks between parliamentary public hearings and deliberations to writing letters. These lobbying activities are important to identify potential sticking points, provide further information, debate a subject more deeply with a policy maker, provide opportunities for active citizenship and can highlight 'unexpected pressure points' for further advocacy.<sup>54</sup>

Corresponding with legislatures and government departments has been used to obtain information regarding the reform process and to pressurise government to prioritise the process as well as to demonstrate concerns within the system. For example, the 2013 *Shukumisa Campaign* open letter to the SAPS addressed problems with the way in which crime statistics are reported and utilised.<sup>55</sup> In 2009 the *One in Nine Campaign* ran a letter writing campaign to protest against the delays in a rape survivor's case (at that stage four years) and to pressurise the DOJ&CD and the NPA to set a date for the trial as a matter of urgency.<sup>56</sup>

## RESEARCH AND COMMUNITY MONITORING

Over the years there has been a significant amount of research undertaken by academic institutions and NGOs on a wide range of issues.<sup>57</sup> These include research on the implementation of bail and sentencing legislation in relation to sexual offences, the prevalence of sexual offences, attrition of cases through the criminal justice system, conviction rates and the quality of specialised services such as policing units and one-stop centres dedicated to managing sexual offences matters. Once again, there is evidence of collaboration and partnerships between organisations to produce research.

This continually growing evidence-base has been critical to advocacy efforts for a number of reasons. Firstly, the evidence-base challenges inaccurate information provided by the State. For example, research on case attrition and conviction rates, even when they are small studies, has helped to counter State claims of widespread improvements in the system.<sup>58</sup> Secondly, the growing evidence has also identified weak points in investigation and prosecution processes. This knowledge has informed advocacy with the SAPS and NPA to improve case management. Thirdly, research has also contributed to improvements in services. For example, research into the impact of closing the SAPS FCS Units, linked to advocacy actions with the SAPS and in the media.<sup>59</sup>

Independent research is important to improve the quality of oversight and political leadership provided by the Legislatures. In general terms, members of Parliament are reliant on government departments for information on the performance of those same departments. However, their capacity for research is extremely limited. Investments in the legislature over the past ten years to increase its research unit have assisted, however this remains stretched.

Research has also informed civil society action. The finalisation of a research report can result in proactive approaches by civil society to policy makers to bring the

<sup>53</sup> On 16 October 2014, the Shukumisa Campaign and the Women's Legal Centre made submissions to the justice committee on the implementation of sexual offences. <https://pmg.org.za/committee-meeting/17661/>; and on 15 April 2013, the Shukumisa Campaign, drawing on 7 authors and inputs from 13 member organisations and research, prepared and presented a submission on the budgets and strategic plans of the Department of Justice and the National Prosecuting Authority.

<sup>54</sup> Ben-Zeev K and Waterhouse S. 2012. . P7

<sup>55</sup> The Shukumisa Campaign, Dossier, 2014

<sup>56</sup> Accessed on 04 September 2014 at <http://www.womensnet.org.za/resource/one-nine-buyisiwe-letter-writing-campaign.html>

<sup>57</sup> Including, but not limited to, the following: Centre for Study of Violence and Reconciliation; Community Law Centre, UWC; Gender Health and Justice Research Unit, UCT; Institute of Criminology, UCT; Medical Research Council; Rape Crisis Cape Town Trust; Resources Aimed at the Prevention of Child Abuse and Neglect; Tshwaranang Legal Advocacy Centre.

<sup>58</sup> Examples include: Artz L and Smythe D. 2007. 'Losing ground? Making Sense of Attrition in Rape Cases'. In SACQ 22. 13:20 and Vetten, L. Jewkes, R. Sigsworth, R. Christofides, N & Loots, L. 2008. *Tracking Justice: The Attrition of Rape Cases Through the Criminal Justice System in Gauteng*. Tshwaranang Legal Advocacy Centre, MRC and CSVR

<sup>59</sup> Frank C, Waterhouse S, Griggs R and Rontsch R. 2009. *Raising the Bar: A Review of the Restructuring of the SAPS Family Violence, Child protection and Sexual Offences Units*. RAPCAN.

information to their attention.<sup>60</sup> While there have been many submissions and advocacy statements made throughout the period of reform to date that are not grounded in evidence, it is also true that there are many submissions that are informed by research. The utilisation of research by CSOs who do not have a research orientation as they define their advocacy positions and draft their submissions is an indicator of the effectiveness of the dissemination of research by the research organisations. Where research dissemination strategies include the engagement of a wide range of organisations in feedback seminars and go beyond publication in academic journals they stand a greater chance of influencing the understanding of a the huge range of stakeholders who engage in advocacy on the issues.

In more recent years, organisations across the spectrum, and increasingly those operating at community levels in urban and rural areas, have participated in monitoring the implementation of the 2007 SOA. Community monitoring has gained greater prominence as a strategy to ensure Government accountability and broader civil society participation in the monitoring process.<sup>61</sup> The *Shukumisa* Campaign, in particular, has utilised this methodology since the 2007 SOA was promulgated, working with member organisations that deliver direct services to monitor services at police stations, hospitals and courts. The *Shukumisa* Campaign has published three of these monitoring reports to date and fourth report is currently being finalised.<sup>62</sup> All of the monitoring reports are collaborative efforts between a number of CBOs and NGOs. The 2008 monitoring was a collective effort of nine organisations.<sup>63</sup> Six organisations participated in the monitoring for the 2010 report and seven for both the 2012<sup>64</sup> and 2015<sup>65</sup> reports. Not only does the monitoring gather information on the state of sexual offences services across a range of different geographical and social contexts, but it also increases the research capacity of CSOs; involves the CBOs and NGOs in the design and execution of the research; and broadens the range of stakeholders that drive the production of knowledge. The *Shukumisa* Campaign incorporates the monitoring into its campaign activity by linking it to the State's 16 Days of Activism Campaign, and, amongst

other activities, collecting data during the sixteen days.<sup>66</sup>

## PROTESTS

The use of protests and demonstrations is evident throughout the history of sexual offence-related law reform. One such protest was the *Justice Denied* protest hosted by Rape Crisis Cape Town Trust in November 2005, which brought a wide range of women and organisations together to march to Parliament and deliver a memorandum demanding that the reform of the sexual offences legislation be prioritised.<sup>67</sup> Additionally, the *One in Nine Campaign* has regularly organised public protests as one of its primary activities. The protests are at times held in different towns and cities simultaneously or outside courts in different provinces. The *One in Nine Campaign's* protests and demonstrations have drawn on a range of creative means to deliver the message of frustration and dissatisfaction at the failures of justice in sexual offences cases.<sup>68</sup>

## WORKSHOPS, SEMINARS AND ROUND TABLE DISCUSSIONS

Throughout the period, workshops, seminars, round tables and even conferences were used by civil society organisations to inform and strategise.<sup>69</sup> As noted previously, organised campaign groups include regular strategy development workshops such as the annual rape indabas and summits that are hosted by the NPA. Although attendance at the NPA's events were at the invitation of the State, these events also provided a key space for civil society to caucus. The value of civil society inventing these spaces is not only evident in the strengthening of civil society knowledge, alliance and strategy, but also due to the fact that they have, at times, invited officials from government departments, Members of Parliament or other parliamentary staff to the events, thus enabling engagement with these decision makers and other functionaries on terms established by civil society.

<sup>60</sup> See for example, the finalisation of the research report by Vetten, L. Leisegang, A and Haken, S. 2010. *The right and the real: A shadow report analysing selected government departments implementation of the 1998 Domestic Violence Act and the 2007 Sexual Offences Act*. Tshwaranang Legal Advocacy Centre, led to a request being made to present the findings to Parliament's Justice and Constitutional Development Committee in 2011 and a joint seminar with civil society and parliamentary stakeholders to distribute the findings broadly.

<sup>61</sup> *A Framework for Strengthening Citizen-Government Partnership for Monitoring Frontline Service Delivery*; DPME, 2013, p. iv

<sup>62</sup> Reports were published in 2008, 2010 and 2012 they are accessible at <http://theShukumisaCampaign.org.za/resource-archive-list/>

<sup>63</sup> Tshwaranang Legal Advocacy Centre, RAPCAN, Nisaa, OUT LGBT Well-being, Pro Bono, Rehommo Women's Organisation, Teddy Bear Clinic, Thusanang Advice Centre, and Women's Net.

<sup>64</sup> For the 2010 report: Tshwaranang Legal Advocacy Centre, Rape Crisis Cape Town Trust, RAPCAN, MOSAIC, Women on Farms; and Thohoyandou VEP. For the 2012 report: Tshwaranang Legal Advocacy Centre, Rape Crisis Cape Town Trust; SWEAF; Women and Men against Child Abuse: Limpopo Legal Advocacy Centre; Thohoyandou VEP and Justice and Women

<sup>65</sup> Anglican Church Social Responsibility, Coping Centre, Justice and Women, Rape Crisis Cape Town, Rape Crisis PE, Sex Workers Education and Advocacy Taskforce, Voice Movement Therapy Eastern Cape,

<sup>66</sup> *The Shukumisa Campaign, Dossier, 2014, P16*

<sup>67</sup> *The Shukumisa Campaign, Dossier, 2014, P16*

<sup>68</sup> Lakhani I. 2009. *DRAFT One in Nine Campaign Review document 2009*.

<sup>69</sup> *The Shukumisa Campaign, Dossier, 2014, P16*

## ADVOCACY MATERIALS AND PUBLIC EDUCATION

Advocacy materials serve to provide information and educate both the public and State stakeholders regarding the issues, while, at the same time, advocating for reforms. Advocacy includes a range of materials, including fact sheets, policy briefs and press releases (which will be discussed in greater detail below). During the period leading up to the second round of parliamentary deliberation in 2006, the NWG worked in smaller teams to produce twelve fact sheets relating to the 2006 Bill<sup>70</sup>. The fact sheets provided information on the content of the 2006 Bill<sup>71</sup>, the recommendations that had been made by the SALRC and the position of the NWG on these.<sup>72</sup> The fact sheets were developed with CSOs, the public, media stakeholders and policy makers in mind as the target audience.<sup>73</sup> The process of producing these was participatory, with initial positions being defined based on inputs by a broader group and then the drafts being circulated for inputs among members. The process of drafting the fact sheets resulted in learning, debate and deliberation among NWG members on some of the contentious issues in the Bill.<sup>74</sup> In the recent past, organisations have prepared briefings on processes that are unfolding, which are widely disseminated to share information, raise questions for debate and encourage further action.<sup>75</sup>

Policy briefs, which reframe research reports into more pithy documents and link research findings to State policy (or the absence thereof), have been regularly produced over the years, particularly by organisations that focus on research. Policy briefs seek to offer simple explanations to the State on how evidence discovered through research can be addressed through policy, programming and/or budgeting.<sup>76</sup>

Organisations have utilised other more creative methods to provide public education. Most notable among these has been the *Stop the Bus* campaigns. The first such campaign was initiated by members of the NWG and led by the Centre for the Study of Violence and Reconciliation (“CSVR”) and launched in March 2006. The aim of the campaign was to provide women in towns and cities across the country with information about their rights and how to fulfil these rights.<sup>77</sup> Rape Crisis Cape Town took the leadership of this campaign – again in conjunction with other organisations - late in 2006 and in following years.<sup>78</sup> The campaign targeted rural areas and hosted “networking meetings, training and counselling” in the towns in which the bus stopped.<sup>79</sup> The aims of the process also went beyond providing information and education, to include gathering information and skills development for volunteers and community members. In addition, numerous organisations have provided information and education on the content of the 2006 Bill<sup>80</sup> and, later, the 2007 SOA; as well as on the state of implementation of the law and policy in a vast range of settings.

## MEDIA ADVOCACY

Civil society organisations, and particularly collective campaigns, have regularly used the media as a forum for advocacy over the years. This includes the prolific use of press releases proactively to inform media stakeholders of developments and seek to influence what is frequently a highly sensationalised area of reporting to provide an interpretation of these developments.<sup>81</sup> As a result of press releases and due to building relationships with journalists, civil society has held a significant media presence on sexual offences issues over the past decade, something which is evident upon internet searches using keywords. In the more

<sup>70</sup> *The Criminal Law (Sexual Offences and Related Matters) Amendment Bill (2006)*

<sup>71</sup> *Ibid*

<sup>72</sup> *The author has archived these Fact Sheets*

<sup>73</sup> Fuller R (2007) *Bureaucracy vs Democratisation: The promulgation of the Criminal Law (Sexual Offences and Related Matters) Amendment Bill*. CSVR: Johannesburg

<sup>74</sup> *The Criminal Law (Sexual Offences and Related Matters) Amendment Bill (2006)*. The author participated, along with other members of the working group in consulting on and drafting the fact sheets. (organisations that took a lead in drafting the fact sheets were the Center for the Study on Violence and Reconciliation, Rape Crisis and Childline SA)

<sup>75</sup> For example, the Community Law Centre, UWC provided updates to civil society on the developments in the amendments to the 2014 Amendment Bill which dealt with the age of consent and the placement of children's names on the sex offender register. These highlighted pertinent issues that were raised as debates unfolded in parliament, they encouraged further actions from organisations to ensure that there was a constant responsiveness to the conservative lobby.

<sup>76</sup> *The Shukumisa Campaign, Dossier, 2014. P17*

<sup>77</sup> Accessed on 04 September 2015 at <http://buscampaign.blogspot.co.za>

<sup>78</sup> Dey K, Chiyangwa J, Odoi NF, Carter R and Ahluwalia K. 2008. *Stop the Bus, I Want to Get On: Lessons from Campaigns to End Violence Against Women in South Africa, Zimbabwe and Ghana*. Gender Studies and Human Rights Documentation Centre; Womankind Worldwide, Rape Crisis Cape Town Trust, Musasa Project. P11

<sup>79</sup> Dey K et al. 2008. *ibid* P12

<sup>80</sup> *The Criminal Law (Sexual Offences and Related Matters) Amendment Bill (2006)*

<sup>81</sup> Numerous examples are available, some are listed in the Shukumisa Campaign, Dossier, 2014. P11, others on a range of organisations websites and yet others in the author's own archives. *The Consortium on Violence Against Women*. 08 March 2005. *Criminal Law (Sexual Offences) Amendment Bill 2003*; Rape Crisis Cape Town Trust. November 2005. *Justice Denied: SA Fighting Rape with Laws from the Middle Ages*; National Working Group on the Sexual Offences Bill: Justice Portfolio Committee Passes Sexual Offences Bill. Nov 2006; National Working Group on Sexual Offences. *Mixed Review For The New Sexual Offences Act*, 14 December 2007



recent past, organisations have become adept at utilising new media platforms such as Facebook and Twitter to share information and network, and to influence and engage in public discourse relating to sexual offences reforms.

## LITIGATION AND COURT JUDGEMENTS

Another important tool for reforms on sexual offences has been strategic litigation and judgements of the courts based on appeals. Some of these precede the promulgation of the 2007 SOA. The 2001 Constitutional Court (“CC”) judgement in the *Carmichele*<sup>82</sup> matter dealt with the State’s obligation to protect women’s rights. In May 2007, the CC<sup>83</sup> in the *Masiya* matter ruled that the definition of rape must be broadened to include the anal penetration of a female. Unfortunately, in spite of minority views in the CC on this, the court did not at this time extend the definition to the anal penetration of males. Shortly after the promulgation of the 2007 SOA, the CC<sup>84</sup>, in the *Geldenhuys* matter, ruled that the different ages for consent for same-sex and heterosexual consensual sexual activities under the 1957 law were unconstitutional. The court also ruled against arguments to raise the age of consent from sixteen to eighteen years. The *Mokoena Matter*<sup>85</sup>, in which judgement was handed down in 2008, dealt with increasing protection of the rights of child victims and witnesses, providing guidance on how protective measures in the 2007 SOA should be interpreted and implemented. In 2012, the Supreme Court of Appeal (“SCA”) overturned a Cape High Court judgement which had found that the failure of the legislature to include penalty clauses in the 2007 SOA rendered all sentences handed down for convictions relating to offences in the 2007 SOA unlawful, although common sense prevailed in terms of the intent of the 2007 SOA to protect the rights of children and women. Other provisions in the Criminal Procedure Act were cited as reasons to overturn the High Court ruling, this brought to light the negative impact of poor legal drafting by the legislatures.<sup>86</sup> Finally, in the *Teddy Bear Clinic matter*, the CC found the provisions that criminalised consensual sexual activity between adolescents to be unconstitutional.<sup>87</sup>

All of these matters involved civil society organisations, either intervening as applicants and initiating the cases or entering as *amicus curiae* (friends of the court) or expert witnesses to provide information to the court. Progressive legislative amendments that are necessitated through court rulings are more likely to succeed. The CC judgements create an imperative for parliamentary law reform and thus provide authority that supports civil society advocacy. Comparing the issue of the age of consent with that of the de-criminalisation of sex work highlights how repeated civil society action to bring about progressive and rights-based reforms are, on their own, insufficient. A supportive CC ruling on the matter can precipitate reform that elected representatives would otherwise be reluctant to champion.<sup>88</sup>

## THE DEVELOPMENT OF THE LAW

### 1900 – 1996

The history of sexual offences legislation in South Africa extends much further back than the law reform process that started in the mid-1990s. The original Criminal Sexual Offences Act, then known as the Immorality Act 23 of 1957, was signed on 12 April 1957.<sup>89</sup> It included provisions regarding the illegality of keeping a brothel and abducting unmarried individuals under a certain age. Additionally, The Immorality Act outlined what is now known as statutory rape and made illegal “unlawful carnal intercourse” between white and ‘non-white’ persons, among other things.<sup>90</sup> These crimes were punishable by fines, whippings, compulsory labour and/or imprisonment.

The Immorality Act consolidated laws relating to brothels, “unlawful carnal intercourse” and immorality and repealed earlier legislation such as The Suppression of Brothels and Immorality Amendment Act of 1908; The Girls and Mentally Defective Women Protection Act of 1916; and amended The Immorality Act of 1927.<sup>91</sup> The Immorality Act was amended a further seven times between 1967 and 1993.<sup>92</sup> Amendments in 1967, 1969 and 1985 brought about the additions of “assistance for purposes of unlawful carnal intercourse”,

<sup>82</sup> *Carmichele v Minister of Safety and Security* (CCT 48/00) [2001]

<sup>83</sup> *Masiya v the Director of Public Prosecutions (Pretoria) and another*. CCT 54/06. Media Summary accessed on 05 September 2015 at <http://www.saflii.org/za/cases/ZACC/2007/9media.pdf>

<sup>84</sup> *Geldenhuys v NDPP*. CCT 26/08 [2008] ZACC 21 and *de Vos*. 2008. Constitutional court considers age of consent. Accessed on 05 September 2015 at <http://constitutionallyspeaking.co.za/constitutional-court-considers-age-of-consent/>

<sup>85</sup> *S v Mokoena, S v Phaswane* (CC7/07, CC192/07) [2008] ZAGPHC 148; 2008 (2) SACR 216 (T); 2008 (5) SA 578 (T) (12 May 2008)

<sup>86</sup> <http://www.centreforchildlaw.co.za/images/files/ourcases/2012%20Prins%20Case%20Summary.pdf>

<sup>87</sup> *The Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another*. CCT 12/13

<sup>88</sup> Submission to the United Nations Special Rapporteur on Violence Against Women by the Shukumisa Campaign for South Africa Country Visit 2015

<sup>89</sup> The name of the act changed by amendments that were made in 1998. S25 Sexual Offences Act 23 of 1957 as amended in 1998.

<sup>90</sup> Immorality Act 23 of 1957

<sup>91</sup> Section 23. Immorality Act 23 of 1957

<sup>92</sup> South African Legal Information Institute. South Africa: Historical acts. Accessed on 06 September 2015 at [http://www.saflii.org/za/legis/hist\\_act/soa23o1957181/](http://www.saflii.org/za/legis/hist_act/soa23o1957181/)

and bans on the manufacture of articles “used to perform an unnatural sexual act” as well as establishing that sexual acts between men “at a party” were illegal.<sup>93</sup> In 1988 the prohibition of inter-racial intercourse was repealed.<sup>94</sup>

The Immorality Act was amended on two occasions in 1992 and again in December of 1993.<sup>95</sup> These last three amendments primarily amended the penalties provided for therein. However, two small amendments rendered the provisions slightly more gender neutral.<sup>96</sup> These minor changes suggest an influence of the growing feminist lobby to bring about reforms relating to sexual offences legislation. However, Kaganas and Murray note that these amendments failed to respond to feminists’ calls for broader reform.<sup>97</sup> Importantly, the 1993 Prevention of Family Violence Act, for the first time, made it illegal for a man to rape his wife. This was a major success for the feminist lobby.<sup>98</sup>

### 1996 – 2002

In 1996 when the SALRC announced Project 107 to address sexual offences committed against and by children, the intensive process of reform began.<sup>99</sup> However, public participation in workshops to discuss the SALRC’s *Issue Paper 10* on sexual offences against children in mid-1997<sup>100</sup> resulted in a loud call from women’s organisations to broaden the scope of the project to include sexual offences against adults.<sup>101</sup>

Shortly thereafter, early in 1999, then Deputy Minister of Justice, Manto Tshabalala-Msimang, who had shown a commitment to addressing violence against women and promoting women’s access to justice, commissioned three civil society organisations to prepare a discussion document to “address and make proposals for amendments to the laws relating to rape”.<sup>102</sup> The discussion document marks an important point in the history of the law reform processes. It provided a thorough examination of the issues, including

a comprehensive analysis of constitutional and international law obligations, and analysis of developing rape law in different jurisdictions. It considered research, the experiences of rape survivors and service providers in its analysis and the analysis was firmly grounded in feminist ideology:

*Inherent in this analysis is the idea that mainstream critical legal theory, jurisprudence and legal practice are impoverished because they do not pay adequate attention to the real experiences of women. In fact, they often make women invisible. On closer examination of legal processes and procedures, the court system and the very laws themselves are clearly revealed as unreflective of women’s reality of justice, life and law.*<sup>103</sup>

Many of the progressive recommendations relating to the substantive definitions of offences, the rules of evidence and rules of procedure can be traced through the reform process to the provisions in the final 2007 SOA, which were hailed by CSOs for their positive impact. Some of these recommendations include the broader definition of rape and amendments to patriarchal and misogynist rules of evidence and procedure.

The SALRC report indicates that the strong call from the public to expand the mandate of the project to include sexual offences against adults gave rise to the request from the Justice Parliamentary Portfolio Committee and the Deputy Minister of Justice to the SALRC to do the same.<sup>104</sup> This resulted in the mandate of the SALRC being expanded to include all sexual offences in 1998. The SALRC released discussion paper 85 on the substantive aspects of the law in August 1999 and discussion paper 102 on the ‘process and procedure’ in December 2001.<sup>105</sup> These were both accompanied by calls for comment and stakeholder workshops.<sup>106</sup> The SALRC’s final report was published in 2002 for submission to the Minister of Justice, subject to Cabinet’s approval.<sup>107</sup>

<sup>93</sup> Immorality Act 23 of 1967, Immorality Act 23 of 1969, Immorality Act 23 of 1985

<sup>94</sup> Section 2, Act 72 of 1985

<sup>95</sup> Sexual Offences Act 23 of 1992 (1), Sexual Offences Act 23 of 1992 (2), Sexual Offences Act 23 of 1993

<sup>96</sup> Sub-sections 3(f) and 3(g) were amended in 1992 and 1993. The first replaces the word ‘woman’ with the word ‘person’ to make any person who withholds information about the owner of a brothel guilty of an offence, the second replaces the word ‘wife’ with ‘spouse’.

<sup>97</sup> Kaganas F and Murray C. 1991. Law reform and the family, the new South African rape-in-marriage legislation. *Journal of Law and Society* vol 18 number 3. 287-302

<sup>98</sup> Section 5, Prevention of Family Violence Act no 133 of 1993.

<sup>99</sup> Artz L. 2010. *Ibid.* page 2

<sup>100</sup> Issue paper 10 sexual offences against children dated 31 May 1997 for comment 31 August 1997

<sup>101</sup> South African Law Commission, Project 107, Sexual Offences Report, December 2002. P1

<sup>102</sup> Pithey B, Artz L, Combrink H and Naylor N. 1999. *Legal Aspects of Rape in South Africa Discussion document commissioned by the Deputy Minister of Justice. 30 April 1999. Rape Crisis (Cape Town); Women & Human Rights Project, Community Law Centre (UWC); Institute of Criminology (UCT). Introduction.*

<sup>103</sup> Pithey et al. 1999. *Ibid.* P4

<sup>104</sup> South African Law Commission, Project 107, Sexual Offences Report, December 2002, P1.

<sup>105</sup> Discussion paper 85 on substantive law was dated 12 August 1999 and called for comment by 29 October 1999; Discussion Paper 102 on process and procedure was published 14 December 2001 and closing date for comment was 28 February 2002

The SALRC planned to undertake two further investigations under project 107 – one on adult prostitution and the second on child pornography. Both of these were significantly delayed. In spite of significant civil society advocacy to address the question of adult sex work comprehensively, it was only in 2009 that the SALRC released their discussion paper on adult prostitution for comment.<sup>108</sup> The issue of child pornography has been addressed to some extent through reforms to the 2007 SOA and to the Films and Publications legislation. In August 2015 the SALRC released their issue paper on child pornography.<sup>109</sup> To date, neither process has been finalised.

### 2002 – 2007

After its finalisation in December 2002, the Sexual Offences Amendment Bill was considered by Cabinet in July 2003, thereafter the 2003 Bill was gazetted. This 2003 Bill included significant differences from that which had been proposed by the SALRC. In mid-August 2003, Parliament called for written submissions on the 2003 Bill by 15 September of that year. The Parliamentary Portfolio Committee for Justice and Constitutional Development held two days of public hearings on the 16th and 17th of September.<sup>110</sup> After deliberating in January and February 2004, Parliament went into recess for the 2004 general elections. There was no further processing of the 2003 Bill until 2006.

Responding to the November 2005 *Justice Denied* march the then Deputy President, Phumzile Mlambo Ngcuka, agreed that the delay was unacceptable, but argued that the delay was not the result of a lack of political will.<sup>111</sup> The 2003 Bill was re-introduced mid-2006 and the committee deliberated extensively over a period of four months. While the committee accepted further written submissions at this stage, it did not put an official call out for submissions.<sup>112</sup> After the Parliamentary Portfolio Committee voted on the Bill in November 2006, it was referred to the National Council of Provinces Select Committee on Security and Justice (“SC-Justice”). The SC-Justice called for public comment, hosted public hearings and deliberated on the Bill in the last quarter

of 2007, before the Bill was finally passed by Parliament and signed into law by the President in December 2007.

All in all, the reform process was robust and included broad participation of civil society. In addition to formal invitations for written submissions, the Parliamentary Portfolio Committee continued to accept written submissions throughout the process on issues as they arose in discussions.<sup>113</sup>

## CRIMINAL LAW [SEXUAL OFFENCES AND RELATED MATTERS] AMENDMENT ACT (32 OF 2007)

Through extensive work and public participation, the law finally began to respond to the experiences of sexual offences survivors. What was promised and what was left out of the 2007 SOA is outlined below. The 2007 SOA was a significant improvement on previous iterations thereof and “repealed certain outdated common law crimes such as rape and indecent assault and replaced them with new extended statutory offences.”<sup>114</sup>

### Positive Developments

The previous definition of ‘rape,’ which was alarmingly outdated (especially in comparison to international standards) was significantly amended. The new law broadened the definition of rape to include men and women as both potential victims and perpetrators. Along similar lines of recognising the potential for sexual offences to be committed against and by any person regardless of their sex, what was formerly termed ‘vaginal penetration’ has been changed to ‘sexual penetration’.<sup>115</sup> The definition of rape also recognises forced penetration with objects as well as parts of the body, and includes penetration of orifices other than the vagina, such as the anus.<sup>116</sup> One need look no further than the *Masiya CC matter* of 2007, where the forced anal penetration of a male was not considered covered under the common law definition of rape, to understand why the changes to South Africa’s sexual offences laws were so essential. The changes

<sup>106</sup> South African Law Commission, *Project 107, Sexual Offences Report, December 2002, P2*

<sup>107</sup> South African Law Commission, *Project 107, Sexual Offences Report, December 2002, P3*

<sup>108</sup> Media Statement By The South African Law Reform Commission Project 107: Sexual Offences: Adult Prostitution [http://www.justice.gov.za/salrc/media/2009\\_dp0001\\_pj107.pdf](http://www.justice.gov.za/salrc/media/2009_dp0001_pj107.pdf)

<sup>109</sup> Issue paper project 107 – Sexual Offences: Pornography and Children August 2015. [http://www.justice.gov.za/salrc/ipapers/ip30\\_pj107\\_SexualOffences-PC-2015.pdf](http://www.justice.gov.za/salrc/ipapers/ip30_pj107_SexualOffences-PC-2015.pdf)

<sup>110</sup> National Working Group on the Sexual Offences Bill. 2006. Factsheet 1: Timeline. In Authors archive

<sup>111</sup> National Working Group on the Sexual Offences Bill. 2006. Factsheet 1: Timeline. In Authors archive

<sup>112</sup> <https://pmg.org.za/committee/38/>

<sup>113</sup> The committee chairperson stated this at the start of the original public hearings. Portfolio Committee on Justice and Constitutional Development. *Criminal Law (Sexual Offences) Amendment Bill: Public Hearings; SADC Protocol On Tribunal: Briefing. 16 September 2007* accessed on 08 September at <https://pmg.org.za/committee-meeting/2871/>

<sup>114</sup> GHJRU, *Law Reform Examiner, 2008, P1*

<sup>115</sup> GHJRU, *Law Reform Examiner, 2008, P1*

<sup>116</sup> GHJRU, *Law Reform Examiner, 2008, P1*

made by the 2007 SOA are necessary because they provide protection for a wider range of survivors.

This is particularly apparent in the offences established to protect children and people with intellectual disabilities, as well as members of other vulnerable groups against sexual exploitation. For example, 'sexual grooming', 'exposure to or use for pornography' and the failure to report sexual offences against children or people with intellectual disabilities are new offences under the 2007 SOA.<sup>117</sup> Other new offences created under the 2007 SOA are crimes outside of the act of rape or sexual assault itself. For example, to coerce a person to commit rape or assault on someone else was made a crime under this 2007 SOA.<sup>118</sup>

Under the 2007 SOA, the use of the cautionary rule in respect of the testimony of complainants in sexual offences cases has been eliminated. Under the cautionary rule, as was used in sexual offence cases preceding the 2007 SOA, the evidence of a rape complainant could "be treated with caution solely because s/he is the victim of a sexual offence".<sup>119</sup> This put forth the assumption that complainants in sexual offence cases were not credible complainants in comparison with complainants of other cases. Changes in this mind-set were confirmed in 1998, when the SCA ruled that the cautionary rule could only be used in sexual offences cases where the use of the rule was prompted by the complainant. This ruling was due to the understanding that the cautionary rule "was based on obsolete and irrational assumptions."<sup>120</sup> The 2007 SOA now provides for the treatment of all complainants with the same level of trust, regardless of the nature of the case being sexual violence or otherwise. An example of this is the use of other information to discredit the complainant – such as delayed reporting to the police. In recognition of this unfair interpretation of a delay in reporting, the 2007 SOA mandates that the courts will not be allowed to draw a negative inference from delayed reporting of a sexual offence.<sup>121</sup>

The 2007 SOA further supports rape survivors in granting their right to obtain post-exposure prophylaxis (PEP), an antiretroviral medication, to prevent potential HIV transmission. Unfortunately, the provision of PEP seems to be the extent of care legislated for survivors of sexual violence.

This also highlights the lack of provisions regarding PEP for children. Apart from PEP provision, the broader psychosocial and medical needs of survivors are left unaddressed by the 2007 SOA. While many submissions advocated for the need for psychological counselling for survivors and other services like STD treatment, these needs are not met through the 2007 SOA.<sup>122</sup>

### Gaps and Concerns

The 2007 SOA clearly brought forth many exciting changes to sexual offences legislation in South Africa. However, there are certainly remaining gaps that left civil society and other interested parties concerned. The 2007 SOA does not address secondary victimisation to the extent that is necessary to prevent further trauma to survivors of sexual violence as they navigate the legal and health systems. Some examples of what should have been further addressed in the legislation are: legal representation for survivors, treatment of children in court, expert testimony during trial not after sentencing and protection of vulnerable witnesses.<sup>123</sup>

The 2007 SOA also continues to criminalise sex work including the "provision of sexual services as well as the conduct of the clients".<sup>124</sup> This decision was made despite the forthcoming recommendations of an ongoing investigation regarding the criminality of sex work being conducted by the SALRC. Furthermore, the clauses pertaining to sex work were not "preceded by the necessary public participation".<sup>125</sup>

The 2007 SOA continues to fall short of the needs of survivors as they navigate the criminal justice system. Provisions that were removed at late stages of the drafting of the legislation included "provisions designed to shield the victim from facing confrontation with the accused."<sup>126</sup> Some possible mechanisms could have been the use of CCTV, intermediaries and in camera hearings to testify. However, these options were removed and in their place the authority was given to the National Director of Public Prosecutions to "issue directives on these matters to the members of the National Prosecuting Authority".<sup>127</sup> The use of protocols as opposed to legislation is a concern

<sup>117</sup> GHJRU, *Law Reform Examiner, 2008, P1*

<sup>118</sup> GHJRU, *Law Reform Examiner, 2008, P1*

<sup>119</sup> Artz L. 2010. *Criminal Law (Sexual Offences) Amendment Act (32 of 2007): Reforms, risks and revelations. Open Society Foundation.*

<sup>120</sup> Artz L. 2010. *Criminal Law (Sexual Offences) Amendment Act (32 of 2007): Reforms, risks and revelations. Open Society Foundation.*

<sup>121</sup> Artz L. 2010. *Criminal Law (Sexual Offences) Amendment Act (32 of 2007): Reforms, risks and revelations. Open Society Foundation.*

<sup>122</sup> GHJRU, <http://www.ghjru.uct.ac.za/issues.htm#cons>

<sup>123</sup> GHJRU. 2008. *Law Reform Examiner. Ibid. P2*

<sup>124</sup> GHJRU, accessed on 15 September 2015, <http://www.ghjru.uct.ac.za/issues.htm#cons>

<sup>125</sup> GHJRU, accessed on 15 September 2015, <http://www.ghjru.uct.ac.za/issues.htm#cons>

<sup>126</sup> GHJRU, accessed on 15 September 2015, <http://www.ghjru.uct.ac.za/issues.htm#cons>

as it can be easily affected by outdated bias, whereas legislation is more concrete.

Other aspects which did not make it into the final version of the 2006 Bill, and, accordingly, the 2007 SOA, were guiding principles with regard to the vulnerabilities and needs which are specific and unique to survivors of rape. Such guiding principles on the treatment of complainants of sexual offences were omitted. “Likewise, rape survivors remain unentitled to legal representation to protect their particular interests during criminal proceedings.”<sup>128</sup>

The new provision of compulsory HIV testing of the perpetrator is a matter of concern. Primarily, it runs the risk of misleading the victim. If the perpetrator tests negative for HIV, the victim may think they are not at risk for transmission and therefore may not seek out PEP or pursue safer sex. Of course, the victim may still be at risk for HIV transmission if the alleged offender’s HIV test is a false-negative because they are in the “window” period. Regardless of the HIV test result, to “apply for compulsory testing of the alleged offender, with malicious intent” becoming an offence under the 2007 SOA, puts the victim at risk if the alleged offender is acquitted. Considering the conviction rate for reported rape cases is only between only five and nine percent, the chance that a victim could be sued or prosecuted for having requested an HIV test is dangerously high. As a result of this, survivors may decide not to apply for the compulsory testing of the offender – therefore putting themselves and others at risk for HIV transmission.<sup>129</sup>

The 2007 SOA does not inspire confidence regarding implementation and management. In the introduction of the 2007 SOA it states that its aim is to “further regulate procedures, defences and other evidentiary matters in the prosecution and adjudication of sexual offences”.<sup>130</sup> It continues to cite an Inter-Sectoral Committee as the arbiter of guidelines for “ensuring that the different organs of state comply with the primary and supporting roles and

responsibilities allocated to them in terms of the national policy framework and this Act”. However, there is no indication of whether non-compliance will result in sanctions, disciplinary proceedings or criminal charges. This vague language for the vital task of coordinating the activities of various governmental entities does not instil confidence that such coordination will occur or be effective.

## 2007 – 2015: NATIONAL POLICY FRAMEWORK, DIRECTIVES AND INSTRUCTIONS

The 2007 SOA requires the development of a range of policy documents to facilitate its implementation and therefore sets out the clear timeframes in which these must be prepared. This includes the development of a National Policy Framework (“NPF”) be tabled within one year of the 2007 SOA coming into effect.<sup>131</sup> In spite of this, it was only five years later, in September 2013, that the *National Policy Framework on the Management of Sexual Offences* was gazetted.<sup>132</sup> The NPF was intended as the operational framework for the administrative and procedural implementation of the 2007 SOA.<sup>133</sup> In Chapter One, the NPF key principles are laid out, these are: to ensure the adoption of a victim-centred approach to sexual offences; a multi-disciplinary and inter-sectoral response; the provision of specialised services; and ensuring equal and equitable access to services.<sup>134</sup> The provisions in the NPF sound the right notes. They recognise that ‘gender power imbalances, age, disability, sexuality and cultural dynamics’ increase survivors’ vulnerability<sup>135</sup> and that psycho-social and practical support must be integrated into all stages of the criminal justice process.<sup>136</sup> In spite of the positive language and intentions of the NPF, the NPF fails to provide the level of detail and substantive direction as to how the 2007 SOA should be implemented.<sup>137</sup> The NPF also positively states that costing and resourcing of state interventions are required, moreover it calls for budget allocations and expenditure for sexual offences

<sup>127</sup> GHJRU, accessed on 15 September 2015, <http://www.ghjru.uct.ac.za/issues.htm#cons>

<sup>128</sup> GHJRU, accessed on 15 September 2015, <http://www.ghjru.uct.ac.za/issues.htm#cons>

<sup>129</sup> GHJRU, accessed on 15 September 2015, <http://www.ghjru.uct.ac.za/issues.htm#cons>

<sup>130</sup> Act no 32 of 2007

<sup>131</sup> Section 62(2)(a) and (b) of Act no 32 of 2007

<sup>132</sup> *National Policy Framework on Management of Sexual Offences: Section 62(1) of the Criminal Law [Sexual Offences and Related Matters] Amendment Act no 32 of 2007*. Government Gazette no. 36804 (NPF)

<sup>133</sup> The Shukumisa Campaign submission. Waterhouse S, Artz L, Vetten L, Lalo V, Rezant B, Valentine B, van Niekerk J. 2013. Submission to the Portfolio Committee on Justice and Constitutional Development on the Strategic Plans and Budget of the Department of Justice and Constitutional Development and the National Prosecuting Authority. P7

<sup>134</sup> NPF Pp21-23

<sup>135</sup> *National Policy Framework on Management of Sexual Offences*, P21

<sup>136</sup> *National Policy Framework on Management of Sexual Offences*, P27

<sup>137</sup> The Shukumisa Campaign submission. Waterhouse et al. 2013. Ibid. P18



to be tracked separately to enable monitoring and thus adequate resourcing.<sup>138</sup> These provisions also sound the right note. However, these statements are followed by the qualifier that services must be progressively realised; yet, no concrete plan or timeline is articulated regarding this progressive realisation.<sup>139</sup>

A range of government departments and agencies are responsible for implementing the 2007 SOA. Given that the DOJ&CD is the lead department for the 2007 SOA's implementation, it is not surprising that it has been the most active in developing law and policy relating to sexual offences.<sup>140</sup> Notwithstanding this, and in spite of drafts being available in 2008, the status of the National Directives on the Prosecution of Sexual Offence Cases for the NPA is unclear. The NPA website indicates that a version was submitted to Parliament in September 2010, but the link is not active.<sup>141</sup> Since the 2007 SOA requires the directives to be gazetted, a search of government gazettes does not yield any such document. Finally, the *Shukumisa Campaign* dossier of 2014 indicates that these have been developed but have not yet been issued.<sup>142</sup>

The SAPS, however, finalised their *National Instructions* in 1998.<sup>143</sup> The instructions are relatively progressive and emphasise the importance of promoting 'victim's' rights.<sup>144</sup> While the National DOH was active in addressing policy relating to sexual offences in South Africa prior to the finalisation of the 2007 SOA, following the promulgation of the 2007 SOA, the DOH has been less active in this regard, bar the finalisation of the 2009 Directives for the forensic examination of sexual offences survivors.

## 2007 – 2015: AMENDMENTS TO THE LAW

In addition to the development of the policy framework and directives, court rulings since the promulgation of

the 2007 SOA have resulted in four further amendments thereto since 2007.

### **The lack of penalties: Criminal Law [Sexual Offences and Related Matters] Amendment Act no. 6 of 2012**

In May of 2012, a case<sup>145</sup> taken on appeal to the Western Cape High Court, successfully argued that the failure of the legislature to include specific sentences for many of the offences in the 2007 SOA rendered it impossible to enforce – referring to the *nulla poena sine lege* principle – Latin for the concept that without a law there can be no punishment and linked to the principle that if there is no law defining it, there can be no crime. The High Court's ruling was taken by the NPA on appeal to the SCA. In June 2012, the SCA overturned the High Court's ruling on the basis that the 2007 SOA does anticipate sentencing offenders found guilty of the offences contained therein and that provisions of the Criminal Procedure Act<sup>146</sup> further empowered courts to impose sentences.<sup>147</sup>

However, on Tuesday 15 May 2012, just four days after the Western Cape High Court judgement, the Parliamentary Portfolio Committee for Justice and Correctional Services discussed the issue as a matter of urgency.<sup>148</sup> In this discussion the committee noted the contention between academics regarding the point and proposed a Committee Bill to address the lack of clarity on the issue. The committee received a number of submissions from CSOs and by 29 May 2012 adopted the 2012 Bill. This was soon passed as the Criminal Law (Sexual Offences and Related Matters) Amendment Act no. 6 of 2012. This 2012 Amendment Act specifies some offences that had not previously been specified and amends section 56 of the 2007 SOA to provide for penalties.

### **Legislating Sexual Offences Courts: The Judicial Matters Second Amendment Act (43 of 2013)**

The first Sexual Offences Court ("SOC") was established following committed feminist lobbying for improved

<sup>138</sup> *National Policy Framework on the Management of Sexual Offences*, P26

<sup>139</sup> Waterhouse S. 2014. *The Shukumisa Campaign Policy Brief Reinstating Sexual Offences Courts: Making the Most of the Promises*. The Shukumisa Campaign. P7

<sup>140</sup> *The Shukumisa Campaign, Dossier*, Pp 11 - 12

<sup>141</sup> <https://www.npa.gov.za/content/prosecution-policy-and-policy-directives>

<sup>140</sup> *The Shukumisa Campaign, Dossier*, Pp 11 - 12

<sup>141</sup> <https://www.npa.gov.za/content/prosecution-policy-and-policy-directives>

<sup>142</sup> *The Shukumisa Campaign, Dossier*, Pp 11 - 12

<sup>143</sup> *National Instruction on Sexual Offences*, 2008. *South African Government Gazette*, 15 August 2008.

<sup>144</sup> Townsend L, Waterhouse S, Nomdo C. 2014. *Court Support Workers Speak Out: Upholding Children's Rights in the Criminal Justice system*. SACQ no 48. P78

<sup>145</sup> *Centre for Child Law. Summary of the Director of Public Prosecutions, Western Cape v Prins and Others 2012 (2) SACR 183 (SCA) accessed on 08 September 2015 at <http://www.centreforchildlaw.co.za/images/files/ourcases/2012%20Prins%20Case%20Summary.pdf>*

<sup>146</sup> Act 51 of 1977 (as amended)

<sup>147</sup> *Director of Public Prosecutions, Western Cape v Prins and Others 2012 (2) SACR 183 (SCA) para 36 in Center for Child Law. Ibid.*

services in rape matters in Wynberg in 1993.<sup>149</sup> In 1999 the DOJ&CD indicated that it would roll these courts out nationally.<sup>150</sup> It was only in 2003 that a national strategy for their roll out was finalised, and shortly thereafter, in 2005, a moratorium was placed on their establishment.<sup>151</sup>

Although sceptical of excessive claims of their success, civil society supported the development of these courts and called for resourcing to ensure that they were rolled out nationally and improved support to survivors and prosecutions in established courts.<sup>152</sup>

Once the SOCs closed, civil society lobbied for their re-establishment. In 2012, the Minister of Justice and Constitutional Development established a Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters ("MATTSO") to investigate the re-establishment of the SOCs. The MATTSO issued its report in August 2013, recommending that the SOCs indeed be re-established. MATTSO provided detailed and practical recommendations to improve support and prosecution at SOCs.<sup>153</sup> The recommendations provided by MATTSO were in line with those made by the *Shukumisa Campaign* to Parliament in April 2013.<sup>154</sup> However, the civil society recommendations went further to recommend that measures such as these should be protected in legislation or, at least, in regulations, and not left to policy and guidelines that are more difficult to enforce.<sup>155</sup>

Soon thereafter Parliament tabled a Bill to legislate for the courts, called for written submissions and finalised the Bill. By January 2014, the Judicial Matters Second Amendment Act of 2013 ("JMSAA") was passed into law, legislating that SOCs may be established.<sup>156</sup> Although civil society have welcomed the law due to it legislating these courts, they have been primarily critical, due to the JMSAA being weakly formulated. Many civil society actors argue that the JMSAA fails to require the establishment of the courts. Further, civil society has argued the JMSAA lacks

provisioning clauses and does not provide for minimum standards or the roll out of the courts.<sup>157</sup> This means that the quality of implementation of SOCs remains at the discretion of government ministers and officials. Thus, the legislation and the MATTSO report do not guarantee State investments in these critical services. The *Shukumisa Campaign* policy brief on sexual offences courts notes that, without political will, these developments will not materialise in reality.<sup>158</sup>

### **Age of Consent: Act 5 of 2015**

The issue of the age of consent to sexual activity has been the subject of rigorous debate throughout the law reform process from the late 1990s to 2015. In spite of the SALRC recommendation that the law include a close-in-age exemption to effectively decriminalise consensual sexual activity between adolescents of similar age, the legislature, in 2007, took a very different position.

In terms of consensual acts of sexual penetration, the legislature left the age of consent at sixteen years and argued that, to ensure there was no discrimination against boys, in the event of prosecution, both children should be prosecuted.<sup>159</sup> It required that the National Director of Public Prosecutions make the decision to prosecute. This position represented a much broader range of acts than those that had been criminalised under the 1957 law. Under the 2007 SOA sexual penetration is broadly defined (in order to provide maximum protection when these acts are committed in non-consenting circumstances). When applied to the context of consensual activity, it meant that, in addition to sexual intercourse, other penetrative acts such as the penetration of someone's vagina or anus with another person's finger was defined as statutory rape. In respect of consensual acts of sexual violation, the 2007 SOA created a close in age defence of two years. This meant that if there was an age gap of less than two years between the adolescents, they would have a valid defence.<sup>160</sup> Sexual violation, again defined in the 2007

<sup>148</sup> <https://pmg.org.za/committee-meeting/14378/>

<sup>149</sup> South African Law Commission, Project 107, *Sexual Offences Report*, December 2002, p3

<sup>150</sup> *Gender Policy Statement*. 2009. Department of Justice and Constitutional Development.

<sup>151</sup> *The Shukumisa Campaign Submission*. Waterhouse et al 2013. *Ibid*. P5

<sup>152</sup> Stanton S, Lochrenberg M, Mukasa V. 1997. *Improved Justice for Survivors of Sexual Violence? Adult Survivors' Experiences of the Wynberg Sexual Offences Court and Associated Services*. Rape Crisis Cape Town Trust, African Gender Institute, Human Rights Commission. *The Shukumisa Campaign Submission*. Bornman S. 2013. *Submission To The Portfolio Committee: Justice And Constitutional Development On Criminal Law (Sexual Offences And Related Matters) Amendment Act Amendment Bill*, July 2013

<sup>153</sup> *Report on the re-establishment of sexual offences courts; Ministerial Advisory Task Team on the Adjudication of Sexual Offence Matters*, August 2013. (MATTSO)

<sup>154</sup> Waterhouse S. 2014. *ibid*. P2

<sup>155</sup> *The Shukumisa Campaign Submission*. Waterhouse et al 2013. *Ibid*.

<sup>156</sup> Act number 43 of 2013. *Judicial Matters Second Amendment Act of 2013*

<sup>157</sup> Waterhouse S. 2014. *ibid*. P2

<sup>158</sup> Waterhouse S. 2014. *ibid*. P8

<sup>159</sup> S15 of Act 32 of 2007

SOA in the context of non-consenting circumstances, includes a very wide range of mostly non-penetrative acts, including contact between the mouth of one person and the mouth of another person (– kissing), or direct or indirect contact between the breasts of a female and any part of the body of another person (– hugging).

Thus, the effect of the 2007 amendments was to broaden the range of sexual activity that was considered criminal when committed with the full consent of both parties if one of these parties was under sixteen years of age. CSOs were not concerned about this in the context where the other person was significantly older than the child under sixteen, however they recognised that this was seriously problematic in terms of consenting actions between adolescents who were both under sixteen years or even under eighteen years.<sup>161</sup> Most problematic was the criminalisation of adolescents for engaging in consenting sexual activities which are considered normal for the age group.<sup>162</sup> The new law meant that these children could be exposed to the criminal justice system from being questioned by police (possibly arrested and charged) to being questioned by State prosecutors. The high-level decision making on whether or not prosecution would be instituted, and the provisions for diverting children out of the criminal justice system, did not prevent these children from exposure to thereto.<sup>163</sup>

There were two further implications of the aforementioned provisions. Firstly, section 54 of the 2007 SOA, which mandated that any person report any knowledge of a sexual offence against a child to the police, would apply to adults who have knowledge of adolescents engaged in consenting activity. The implications of Section 54 had serious implications for efforts to increase sexual health services to adolescents. Secondly, if under eighteens were reported and subsequently convicted for engaging in consensual sex, their names would be automatically placed on the National Register for Sex Offenders.<sup>164</sup>

The Teddy Bear Clinic and Resources Aimed at the Prevention of Child Abuse and Neglect (“RAPCAN”), represented by the Centre for Child Law, challenged the provisions of sections 15 and 16 of the 2007 SOA in the North Gauteng High Court. In January 2013, this Court ruled that both Sections 15(1) and 16(1) were “constitutionally invalid”.<sup>165</sup> The matter was then sent to the CC for confirmation. In October 2013, the CC judgement declared both sections unconstitutional.<sup>166</sup> The CC agreed with the applicants that the provisions failed to meet the standard that the best interests of the child are paramount, that criminalisation does more harm than good, that it undermines communication and that the provisions for diversion failed to protect children from exposure to the early stages of criminal investigation. The court also found that the provisions infringed on adolescents’ rights to dignity and privacy. Perhaps most importantly, the CC found that adolescents have a right to sexual expression and the provisions disgrace behaviour that is developmentally normal. The CC instructed Parliament to amend the 2007 SOA within eighteen months.

Over a year later, on 12 December 2014, the DOJ&CD tabled a Bill in Parliament.<sup>167</sup> This 2014 Bill addressed the issue of the age of consent as well as the issue of the placement of the names of child sex offenders on the National Register for Sex Offenders (discussed below). Parliament called for submissions from the public and at the Parliamentary Portfolio Committee on Justice and Correctional Services’ briefing on the 2014 Bill, the chairperson noted that the committee had already received over 900 submissions and expected more.<sup>168</sup> The committee then hosted five days of public hearings in March 2015. The majority of written and oral submissions focussed on the controversial issue of the age of consent. Due to the delayed start of the parliamentary process and the extent of the public participation in the amendment process, Parliament requested an extension to increase the timeframe, which the CC ultimately granted.<sup>169</sup>

<sup>160</sup> S16 of Act 32 of 2007

<sup>161</sup> Nomdo C. 2015. *Submission to the Parliamentary Portfolio Committee on Justice and Correctional Services on the Criminal law (Sexual offences and related matters) Amendment Act Amendment Bill: Focus on Section 15 and 16. Resources Aimed at the Prevention of Child Abuse and Neglect. P3 and Press Release: Sexual Offences Act Amendments on Teen Sexual Activity and the Sex Offender Register. Released by Childline South Africa; The Community Law Centre, University of the Western Cape; The Centre for Child Law, University of Pretoria; and the Children’s Institute, University of Cape Town, the Teddy Bear Clinic for Abused Children; and the Women’s Legal Centre*

<sup>162</sup> Flisher A and Gevers A. *Expert Opinion. Division of Child and Adolescent Psychiatry, Adolescent Health Research Unit. University of Cape Town. P8*

<sup>163</sup> *Teddy Bear Clinic for Abused Children and RAPCAN vs the Minister of Justice and Constitutional Development. 2013(12) BCLR 1429 (CC) paras 55, 63 and 79*

<sup>164</sup> S50 of Act 32 of 2007

<sup>165</sup> GHJRU, <http://www.ghjru.uct.ac.za/issues.htm>

<sup>166</sup> *Teddy Bear Clinic for Abused Children and RAPCAN vs the Minister of Justice and Constitutional Development. 2013(12) BCLR 1429 (CC)*

<sup>167</sup> *Criminal Law [Sexual Offences and Related Matters] Amendment Act Amendment Bill B18-2014*

<sup>168</sup> *The final official count of submissions is 932. Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill [B18 – 2014]: Summary of Submissions – By Clause dated 13 March 2015 and available at <https://pmg.org.za/committee-meeting/20569/>.*

The debates in the Committee were heated with many conservative moral arguments being raised. However, there were proportionally more child rights-oriented arguments presented to the Committee. Ultimately, and arguably with the tools provided to the Committee by the child rights lobby, Parliament adopted amendments that gave full effect to the CC ruling.<sup>170</sup> Act 5 of 2015 decriminalises all consensual sexual acts between adolescents from twelve to fifteen. Furthermore, there is a close-in-age exemption of two years up to the age of eighteen years.<sup>171</sup> In spite of general confusion regarding the issue, people over the age of eighteen who engage in consenting sexual activity with adolescents under the age of sixteen are still committing the offence of statutory rape or statutory sexual assault and any non-consenting act with a person of any age remains the offence of rape or sexual assault.

### **Placing the Names of Child Offenders on the National Register for Sex Offenders: Act 5 of 2015**

Section 50(2) of the 2007 SOA required that the names of all persons convicted of sexual offences against a child or person with a mental disability, must be placed on the National Register for Sex Offenders. Depending on the length of the sentence, those names were required to remain on the register for stipulated periods of time, ranging from five years to life, and are only removed after that time upon application by the person whose name is on the register.<sup>172</sup>

In the case of 'J', a boy was charged with four sexual offences and found guilty. This meant that the court was required to order that his name be placed on the National Register for Sex Offenders. Based on the provisions of the Child Justice Act<sup>173</sup>, the case went on automatic review to the Western Cape High Court.<sup>174</sup> The High Court declared Section 50(2) unconstitutional for both adults and children. The case was then referred to the CC. The CC declared the section unconstitutional and invalid in relation to children on the basis that it violated the best interests of the

child principle, that children are evolving and capable of change and that they require nurturing and guidance.<sup>175</sup> The CC confined itself to the facts of the case before it and only ruled on the issue of the automatic placement of children's names on the register, not that of adults. The Court recognised the intentions of the register to provide protection to children and persons with mental disabilities. The court found that its aims could be achieved through less restrictive means in relation to child offenders, allowing for an individuated approach, and for child offenders to lead evidence as to why their names should not be placed on the register.<sup>176</sup> The CC gave Parliament fifteen months, to July 2015, to amend section 50(2).<sup>177</sup>

The DOJ&CD tabled its proposed amendments to section 50 along with sections 15 and 16, discussed above. Although the majority of submissions dealt with the issue of age of consent, there were a number of detailed submissions addressing the issue of the register. Civil society organisations argued that the DOJ&CD's proposed amendments were insufficient. Although they allowed that some children's names would not be placed on the register, this was dependent on the child making arguments and convincing the court that their name should not be placed thereon. Instead, submissions argued that the law should be framed so that no child's name should be placed on the register unless there are substantial and compelling reasons to do so.<sup>178</sup> The submissions argued that the duty should be on the State to apply for the names of some child offenders to be placed on the register and that the child must then have the opportunity to lead evidence, after which the court should make a decision.

These submissions were successful. Act 5 of 2015 amends the 2007 SOA so that the court may not make an order to place a child's name on the register unless certain provisions are satisfied.<sup>179</sup> These provisions are that the prosecutor must apply to the court, the court must consider a probation officer's sentencing report and the child must be given an opportunity to address the court.

<sup>169</sup> Media Summary in Acting Speaker of the National Assembly v Teddy Bear Clinic for Abused Children and Another accessed on 10 July 2015 at: [http://www.centreforchildlaw.co.za/images/files/ourcases/2015%20Media%20Summary\\_Speaker%20v%20Teddy%20Bear%20Clinic.pdf](http://www.centreforchildlaw.co.za/images/files/ourcases/2015%20Media%20Summary_Speaker%20v%20Teddy%20Bear%20Clinic.pdf)

<sup>170</sup> Waterhouse S. 2015. Presentation to the Centre for Child Law Workshop on Act 5 of 2015. 28 August 2015

<sup>171</sup> Sections 2 and 3 of Act no 5 of 2015 amending sections 15 and 16 of the 2007 Act respectively

<sup>172</sup> Section 51 of Act no 32 of 2007

<sup>173</sup> Act 75 of 2008

<sup>174</sup> Hansungule Z. 2014. Protecting child offender's rights: testing the constitutionality of the national register for sex offenders. South African Crime Quarterly no 50. Institute for Security Studies. P24

<sup>175</sup> Hansungule Z. 2014. Ibid. p26-27

<sup>176</sup> Hansungule Z. 2014. Ibid. p27

<sup>177</sup> Hansungule Z. 2014. Ibid. p28

<sup>178</sup> Centre for Child Law. 2015. Submissions on the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill [B18-2014] p3 and Nala D. 2015. Childline South Africa, Submission on the Criminal Law [Sexual Offences and Related Matters] Amendment Act Amendment Bill. 02 February 2015.

<sup>179</sup> Section 7 of Act no 5 of 2015 amends section 50 of Act no 32 of 2007

Thereafter, if the court is satisfied that substantial and compelling circumstances exist to place the child's name on the register, it may do so but the circumstances must be recorded in the court record.<sup>180</sup>

### **Reporting and Oversight: Judicial Matters Amendment Bill 2015**

The most recent proposal for amendments to the 2007 SOA, the Judicial Matters Amendment Bill [B2] of 2015 ("JMAB"), has not yet been finalised. Amongst other provisions, this Bill proposes that the requirements in the 2007 SOA for reporting by the Executive to Parliament on the implementation of the 2007 SOA be watered down.<sup>181</sup>

The 2007 SOA includes a number of provisions to facilitate its implementation. These include the establishment of the Inter-Sectoral Committee for the Management of Sexual Offence Matters ("ISCSO"), which is constituted at the Director General ("DG") and Commissioner levels of the DOJ&CD, DCS, the SAPS, the NPA, the DSD and the DOH.<sup>182</sup> Among the functions and duties of the ISCSO is the requirement that the Minister of Justice must consult with a range of relevant members of Cabinet and submit a joint report on the implementation of the 2007 SOA to Parliament annually.<sup>183</sup>

Clause 15(a) of the JMAB, proposes changes to these requirements. Firstly, it lowers the level of responsibility for reporting from Cabinet level to DG level. Secondly, it scraps the requirement of a single consolidated report from State Departments on the 2007 SOA requiring that each department report separately on the implementation of the 2007 SOA in their annual reports. The effect of this is that the requirement for detailed and comprehensive reporting would in all probability give way to very short sections in each annual report that briefly touch on the implementation of the 2007 SOA.<sup>184</sup>

CSOs have recognised that the level of compliance with these requirements has been 'extremely poor'.<sup>185</sup> In spite of the 2007 SOA, which requires reporting on an annual

basis, in eight years, there have only been three meetings recorded in Parliament for the purpose of oversight.<sup>186</sup> Accordingly, CSOs have argued that the continued poor performance of the criminal justice system and low conviction rates warrants greater not less attention to oversight. In a joint written submission and through oral submissions, organisations recommended that instead of diluting the provisions, they should be strengthened in the following ways:

- (i) as much as the 2007 SOA contains a positive duty on the Executive to report, it should be amended to also place a positive duty on Parliament to examine reports;
- (ii) the law should stipulate that Parliamentary Committees, led by the Committee responsible for justice, should sit jointly to examine the implementation of the 2007 SOA to avoid fragmented oversight;
- (iii) all relevant government departments should be called to account at the same meeting; minimum requirements for reporting should be legislated, or stipulated in regulations to the 2007 SOA, and
- (iv) public participation in the process should be mandated.<sup>187</sup>

The Parliamentary Portfolio Committee on Justice and Correctional Services heard submissions in August 2015. No final decisions have yet been taken, however unofficial reports from the DOJ&CD suggest that the submissions have been noted. We await the final outcomes.<sup>188</sup>

<sup>180</sup> Section 7 of Act no 5 of 2015 amends section 50(2)(c) of Act no 32 of 2007

<sup>181</sup> Waterhouse S, Bornman S, Hansungule Z, Vetten L, Muchuchu T, Wakefield L. 2015. Submission to the Portfolio Committee on Justice and Correctional Services on the Judicial Matters Amendment Bill [B2 – 2015] Relating To Amendments to the Sexual Offences and Child Justice Legislation. Submitted: 10 July 2015. P4

<sup>182</sup> Section 63 of Act 32 of 2007

<sup>183</sup> Section 65(3) of Act 32 of 2007

<sup>184</sup> Waterhouse S et al. 2015. Submission on JMAB. Ibid. Pp7-8

<sup>185</sup> Waterhouse S et al. 2015. Submission on JMAB. Ibid. P10

<sup>186</sup> Justice Committee on 16 August 2010 and 16 September 2014 (accessed at <https://pmg.org.za/committee/38/> on 16 February 2015) and the Committee on Women, Children and Persons with Disabilities on 25 August 2009 – this meeting included the implementation of the child justice and domestic violence legislation (accessed at <https://pmg.org.za/committee/51/> on 16 February 2015).

<sup>187</sup> Waterhouse S et al. 2015. Submission on JMAB. Ibid. Pp 13-15

<sup>188</sup> Conversation between author and Department official and Committee minutes 05 August on PMG <https://pmg.org.za/committee-meeting/21239/>



## CONCLUSION

---

The journey for rights-based and feminist organisations to bring laws relating to sexual offences in line with South Africa's constitutional dispensation in order to realise sexual offence survivors' rights to equality, dignity, access to justice and the right to be free from violence has been arduous. Judging from research and monitoring aimed at understanding the implementation of the 2007 SOA, the road ahead is still long. A range of reports indicate that State actors are largely ignorant of the 2007 SOA's content, let alone its purpose; and found operational failures across all levels and departments in Government.<sup>189</sup> Analysis of police statistics, in relation to those provided by the DOJ&CD, shows that the conviction rate for sexual offences in the past five years is, at best, around seven percent - the same rate as was recorded in 2000 prior to the law reform.<sup>190</sup> Smaller, independent studies show that this is likely to be a high estimate. In one rural police station the conviction rate for adult rape was less than one per cent.<sup>191</sup>

Reform is dependent on a State that is willing to make reforms and implement them. However it is perhaps more important for civil society to continue to mobilise and deepen alliances, to utilise a range of methods and strategies relentlessly to draw attention to the persistent failure of the criminal justice system and other Government agencies in these matters. In addition to engaging in the public discourse on these issues, civil society must continue to consider how to strengthen its political leverage with Government.

In the chapter that follows, further concerns regarding the deficient implementation of the 2007 SOA are elucidated through summaries of the oral and written submissions received and/or presented by representatives of CSOs, service providers, activists, professionals in the field, sexual offence survivors, media representatives, Government officials and members of the public who attended the Summit.

---

<sup>189</sup> Gender Health and Justice Research Unit, RAPCAN, Rape Crisis Cape Town Trust, PATCH, Simelela Research in 2011 *Monitoring the Sexual Offences Act: A Qualitative Perspective of the Implementation of SOA; The Shukumisa Campaign Monitoring Reports from 2010, 2012 and 2015* discussed above. Artz L. 2010. Ibid. *Reforms, Risks and Revelations: The Criminal Law (Sexual Offences) Amendment Act 32 of 2007*.

<sup>190</sup> Townsend et al. 2014. Ibid. P76

<sup>191</sup> L Vetten, R Jewkes, and R Sigsworth et al., *Tracking Justice: The Attrition of Rape Cases Through the Criminal Justice System in Gauteng, Johannesburg: Tshwaranang Legal Advocacy Centre, South African Medical Research Council and Centre for the Study of Violence and Reconciliation, 2008*.

## CHAPTER 3

# PUBLIC SUBMISSIONS ON THE SEXUAL OFFENCES ACT (32 OF 2007)

This chapter contains a summary of the submissions, relevant research reports and presentations put forward by civil society for discussion at the Summit. Given the rich array of submissions received, it was impossible to include the full text thereof in the report. However, the summaries set out below encapsulate the main issues raised by the various oral and written submissions and follow the sequence of the Summit proceedings.

## 3.1 THE LEGAL FRAMEWORK RELATING TO SEXUAL AND GENDER-BASED VIOLENCE IN SOUTH AFRICA

### **Contradictions, Expectations and Awaiting Finalisation(s): The Status of the Sexual Offences Act**

#### **Oral Submission**

**Presented by:** Lisa Vetten on behalf of the *Shukumisa Campaign*

This submission provided an overview of the architecture of the sexual offences-related legislative framework with a view to highlighting potential gaps and contradictions as well as discussing those laws and policies in respect of which harmonisation and/or finalisation is still awaited.

While the 2007 SOA's provisions are more comprehensive regarding the types of sexual offences recognised, it was submitted that it fails to address the provision of services for sexual offence survivors or to regulate sufficiently the actions of the relevant government departments responsible for the 2007 SOA's implementation. That direct service provision duties and effective monitoring and evaluation mechanisms are lacking was attributed to the decision taken by the Parliamentary Portfolio Committee for Justice, during their deliberations regarding the draft 2007 SOA, that legislating services would be too large a financial burden on the State.

It further emphasised that one of the key legislative gaps, thus, relates to the lack of binding policy and management guidelines. This, in turn, negatively impacts healthcare and other service provision, staff qualification requirements and the training both required of and available to service providers in different sectors. The alarming lack of training programmes relating to the treatment of rape survivors, with only one university in South Africa providing training for forensic nurses, was used to illustrate this point. Furthermore, the 2007 SOA requires that only specialised services be made available, while failing to detail how these services will be provided for, who will be responsible for them and how those responsible will be held accountable.

In relation to the SAPS specifically, the lack of standards in regulating services provided to survivors of sexual offences was said to be exacerbated by the lack of coordination between police officers and stations in circumstances where there is a shared case, a situation that makes it impossible to consolidate evidence in court. Of particular concern regarding the SAPS is the use of monetary incentives for reducing rape reporting rates, for example, through the giving of bonuses to police stations based on the reduction of rape crimes statistics. This, it was submitted, has led, amongst other things, to reports of the destruction of rape case dockets by police station staff and other conduct that discourages survivors from reporting. Far from incentivising the SAPS to create further barriers to the reporting of sexual offences, it was submitted that service provider incentives and performance evaluations must be directly responsive to the quality of service provided in order to enhance meaningful access to justice and service delivery for sexual offence survivors.

The submission further emphasised that barriers to reporting sexual offences need to be addressed in an inter-sectorial

manner, especially for vulnerable groups such as undocumented migrants, LGBTI people, children and older persons. While the Victim Empowerment Bill was highlighted as addressing some issues relating to the resource allocation necessary to ensure meaningful service delivery, such as psychological support, for rape survivors, the submission reported vast differences in the manner in which State funds are allocated to sexual offences-related service provision, with similar work receiving vastly different funding depending on the province in which it is being provided and whether the service provider is State or civil society employed.

The submission concluded with a call for more meaningful implementation, monitoring and evaluation systems as well as for the harmonisation, finalisation and implementation of outstanding sexual offences-related laws and/or policies.

The following factsheet was disseminated to Summit participants and provides an overview of the legislative framework under review, including those laws and policies in respect of which harmonisation, finalisation and implementation is awaited:

COMPLETED	AMENDED	CONTRADICTORY	AWAITING FINALISATION
Older Person's Act, 13 of 2006	Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007	Guidelines for the Prevention and Management of Sexual Violence and Harassment in Public Schools – issued 2008 (DBE)	Policy on the investigation of serial rape and serial murder (CSP/SAPS)
Child Justice Act, 75 of 2008	Criminal Law (Sentencing) Amendment Act, 38 of 2007		Policy on reducing barriers to reporting sexual offences and domestic violence (CSP/SAPS)
National Instruction 2/2012: Victim Empowerment (SAPS)	The Children's Act, 38 of 2005		National Management Guidelines for Sexual Assault – issued 2003 (DoH)
National Instruction 3/2008: Sexual offences (SAPS)	Criminal Procedure Act, 51 of 1977		National Sexual Assault Policy – issued 2003 (DoH)
National Instruction 3/2010: The Care and Protection of Children in Terms of the Children's Act (SAPS)	Judicial Matters Second Amendment Act, 43 of 2013		Thuthuzela Care Centre blueprint (NPA)
National Instruction 1/2014: Protection of Older Persons (SAPS)			Victim Empowerment Bill (DSD)
National Directives and Instructions on Conducting a Forensic Examination on Survivors of Sexual Offence Cases in Terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 – issued 2009 (DoH)			Report on the Re-establishment of Sexual Offences Courts: Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters – issued 2013 (DoJ&CD)
Regulations on services for survivors of sexual offences and compulsory HIV testing of alleged sex offenders – issued 2008 (DoJ&CD)			
National Policy Framework for the Management of Sexual Offence Matters - issued 2012 (DoJ&CD)			
National Policy Guidelines for Victim Empowerment – issued 2009 (DSD)			
Guidelines for Services to Survivors of Sexual Offences – issued 2010 (DSD)			
Prosecution Policy Directives (Part 27) – issued 2014 (NPA)			

### **Supporting legislation and policy:**

- (i)** *Civilian Secretariat for Police Service Act, 2 of 2011*
- (ii)** *The Domestic Violence Act, 116 of 1998 (DVA)*
- (iii)** *National Instruction 7/1999: Domestic Violence*
- (iv)** *National Policy Standard for Municipal Police Services Regarding Domestic Violence, 2006*
- (v)** *Regulation 33076: Consolidated Regulations Pertaining to the Children's Act, 2005*
- (vi)** *The Service Charter for Survivors of Crime in South Africa*

### **Department of Social Development:**

- (i)** *Integrated Social Crime Prevention Policy (2011)*
- (ii)** *White Paper on Families in South Africa (2012)*
- (iii)** *Policy on Funding Non-Governmental Organisations for the Provision of Welfare and Community Development Services (n.d)*
- (iv)** *Framework for social welfare services (2013)*

## **Monitoring the Implementation of Sexual Offences Legislation and Policies**

### **Written Submission**

**Submitted by:** *The Shukumisa Campaign*

Between November 2013 and September 2014, the *Shukumisa Campaign*, along with project partners, conducted surveys at police stations across four provinces in South Africa (Eastern Cape, Western Cape, Gauteng and Kwa-Zulu Natal). The survey was undertaken in order to assess the implementation of sexual offences legislation and related policies. In total, 112 police stations were surveyed with the majority of the surveyed police stations located in the Eastern Cape. In the Eastern Cape, the findings are representative of 45 percent of police stations, whereas the survey is representative of 16 percent of the total police stations across the four provinces.

The report identified three main findings regarding the general service provided by police officers in the monitored stations. Firstly, the quality of service received depended on the attitude, efficiency and professionalism of the officers on duty, which finding is consistent with that of other Summit submissions. Secondly, the report found that 35 – 40 percent of police stations across the four provinces were unable to provide relevant documentation regarding policy and legislation. Despite many officers being aware of the 2007 SOA, 27 percent of officers on duty had no knowledge of the availability of information forms at their station. The report stated that documentation regarding the 2007 SOA and other policies was more readily available at police stations in the Western Cape and Kwa-Zulu Natal (in 68 percent of surveyed stations) in comparison to police stations in Gauteng and the Eastern Cape (twenty-five percent of surveyed stations). Thirdly, not all stations monitored by the *Shukumisa Campaign* had access to FCS detectives, a problematic finding given South Africa's high incidences of sexual offences, family violence and violence against children.

The report also examined the human resources devoted to survivors from vulnerable groups. Concerning rape survivors with intellectual disabilities, it was found that a significant number of police stations had no relevant resources, especially in the Eastern Cape. For rape survivors with hearing disabilities, 44 percent of all stations surveyed were identified as having no relevant resources for addressing the needs of these survivors. The report furthermore highlighted that police stations are heavily reliant on NGOs for providing support to survivors with hearing impairments as well as LGBTI persons.

## **Legal Accountability: Existing Case Law, Gaps and Future Challenges**

### **Oral Submission**

**Presented by:** Sanja Bornman on behalf of the Women's Legal Centre (WLC)

*Without an effective criminal justice system, the rights in the South African Constitution are really nothing more than nice ideas. Paper law and empty promises.*

This submission highlighted the various mechanisms through which the way for improved access to justice for SGBV survivors may be paved - be it through parliamentary law reform processes, the development and implementation of the various sexual offences-related policies and guidelines; or precedent setting litigation. It engaged meaningfully with the question of impact, asking specifically whether the legislative and policy developments seen in the last twenty years have really become part of the reality of survivors' lives in South Africa in 2015, further posing the question of how we can ensure that they do.

The submission outlined gains made through precedent-setting litigation, which cases it asserted can be said to build on each other and form a march toward breaking down barriers to accessing justice, meaningful service delivery and accountability in respect of sexual offences. The following areas in respect of which gains have been made were identified and the relevant case law discussed in relation to:

- (i) The positive duty on the State and its organs to protect women and girls from SGBV;
- (ii) State liability for SGBV;
- (iii) The recognition of VAW as a form of gender discrimination;
- (iv) Sentencing and the need for courts to send a message to society that SGBV is a serious offence and will not be tolerated;
- (v) That the testimony of rape survivors will no longer be treated with caution; and
- (vi) The development of the law of prescription to allow for the possibility of adult survivors of childhood sexual offences holding their abusers accountable in civil law;

While the selection of case law discussed painted a positive picture of the ability of the legal system to recognise the experiences and needs of sexual offence survivors as well as the liability of the State to provide protection, the question was posed as to whether all sexual offence survivors reap the benefits thereof. With specific reference to women and children in peri-urban and rural areas, disabled persons, LGBTI persons; as well as sex workers, for example, it was recognised that the answer is 'no'.

The submission recognised that, notwithstanding efforts made to hold the State accountable and shift the landscape to carve out some critical changes to the law, poor implementation and service delivery persists.

Accordingly, the question was asked of how to develop the best legal response to SGBV in a context of bad police investigation, secondary victimisation of survivors, courts that sentence perpetrators of sexual offences with disregard for the intention of the mandatory minimum sentences legislation and delays in the criminal justice process – all of which impact daily on the lives of survivors who are trying to access justice.

The submission concluded with the sobering acknowledgement that, for many, what is on paper is simply not accessible in real life and, accordingly, recommended that future litigation force the State to address the systemic barriers to justice and other sexual offences-related service delivery. Asserting further that *the courts have the potential to really improve outcomes and restore some of the faith we have lost in the criminal justice system.*

## **Elucidating the Linkages between the Implementation of Gender-Based Violence-Related Legislation and Housing Policies**

### **PANEL DISCUSSION**

**Case Study Presented by:** Naomi Thomas on behalf of the Witzenberg Rural Development Centre

**Discussants:** Sanja Bornman (WLC) and Charlene May (LRC)

In this session, which took the form of a case study presentation followed by a panel discussion, the need to challenge the following was discussed:

- (i) The factors considered in housing allocation and subsidy determinations;
- (ii) The criteria and available procedures for obtaining eviction or ejection orders from a shared property in circumstances of SGBV;
- (iii) The role of local government in relation to the provision of council housing, in terms of local council housing policies, to SGBV survivors;
- (iv) Whether SGBV is considered in the determination of housing allocation and subsidy applications;



- (v) The absence of policies relating to the provision of emergency housing to SGBV survivors;
- (vi) Entry criteria for safe houses/shelters and reasons for being turned away;
- (vii) Funding and other resource allocation for shelters, the length of time a SGBV survivor may seek refuge as well as the services available to SGBV survivors at shelters;
- (viii) The need for safe housing for SGBV survivors when the time comes to leave a shelter;
- (ix) Ways in which government housing and subsidy policies could reasonably assist SGBV survivors in gaining more immediate and sustainable access to safe housing;
- (x) The structural and systemic barriers to accessing safe housing and housing subsidies – for example, the rejection of SGBV survivors’ housing subsidy applications for reason of their name already being in the system as having been allocated a house or subsidy together with an erstwhile abusive partner/family member; and
- (xi) The need to reform the government subsidised housing framework as well as local government housing policies to respond better to the housing needs of SGBV survivors.

The discussion encouraged participation from all Summit attendees and highlighted the need to hold Government accountable at all levels for ensuring the fulfilment of SGBV survivor’s safety and security rights. It revealed the inadequate nature of housing allocation and subsidy procedures and the potentially discriminatory impact thereof on SGBV survivors. Lastly, the session concluded with a call for civil society and community members to campaign for the provision of safe housing for SGBV survivors as well as Government accountability in this regard.

## 3.2 GENDER RESPONSIVE BUDGETING

This session took the form of a panel discussion regarding the nexus between gender-responsive budgeting and the deficient implementation of sexual offences-related legislation. The concerns raised by the panellists, namely Thoko Madonko (Alternative Information and Development Centre) and Lorenzo Wakefield Consortium on Crime and Violence Prevention (APCOF/CJCP), were underpinned by the content of their own research findings as well as those of two South African parliamentary reports namely:

- (i) Thorpe, Jen. (2014) Financial Year Estimates for Spending on Gender-Based Violence by the South African Government. *Parliament of the Republic of South Africa*; and
- (ii) Watson, Joy (2014) The Cost of Justice in South Africa: Tracking Expenditure on Gender-Based Violence in the Department of Justice and Constitutional Development. *Parliament of the Republic of South Africa*

These reports are summarised below, followed by a summary of the panel discussion.

### Financial Year Estimates for Spending on Gender-Based Violence by the South African Government

**Author:** Jen Thorpe (Senior Parliamentary Researcher)

According to this report,<sup>192</sup> it remains unclear how much the South African Government is spending on the implementation of the DVA and the 2007 SOA. In order to ensure appropriate budgeting for the implementation of the legislation, the report argues that it is imperative to identify the detailed costs of providing different services. In addition, it points to the need to create a separate and inter-sectoral budget for SGBV and explains that deficiencies in the implementation of the DVA and 2007 SOA are influenced by the lack of transparent financial spending reports regarding their respective provisions.

The report addresses these issues by detailing some of the costs that would be incurred in the full implementation of the DVA and 2007 SOA. In addition to the costs borne by survivors, five governmental entities (namely the SAPS, DOJ&CD, DOH, DSD and DCS) as well as civil society bear the cost of implementing the legislation. While the report attempts to disaggregate the costs, the precise costs of each line-item would demand further research in addition to the many hidden costs not accounted for, for example, costs related to reporting a sexual offence or the funding provided to NGOs dealing with persons affected by SGBV.

The report also documents current challenges in identifying the estimated spending on SGBV in South Africa. It explains that the budgets for government departments are not ring-fenced, which makes it impossible to identify clearly the amount

<sup>192</sup> Thorpe, Jen. (2014) *Financial Year Estimates for Spending on Gender-Based Violence by the South African Government*. Parliament of the Republic of South Africa

spent on activities related to SGBV. Two examples outlined in the report are particularly telling:

- (i) the funding provided to the National Prosecuting Authority (“NPA”) for training prosecutors on the 2007 SOA and DVA was only part of the general fund for training; and
- (ii) the funding provided to the SAPS for debriefing officers who engage with traumatised survivors of SGBV forms part of the SAPS’ overall operational budget.

This results in monies which are allocated to government departments possibly ending up funding services that are unrelated to SGBV. The report also estimates total government spending on such services, which is likely to be a gross underestimate. However, the report stated that the sub-total of spending by the DOJ& CD and the SAPS for the 2013/2014 fiscal year was R147 460 811.58. Moreover, given that in the same fiscal year the NPA budgeted R33 920 037 to run the Thuthuzela Care Centres (“TCCs”), the report suggests that the total full amount per annum spent by the NPA on fully operational TCCs was R47 645 606, which excludes the costs related to the sixteen partly operational TCCs. The report further estimates that the cost to the DOH for fully operational TCCs would be roughly R155 945 270.<sup>193</sup> Therefore, it suggests that the Government of South Africa had spent at least R311 051 687.58 on services to survivors of SGBV in the fiscal year of 2013/2014.

The report attests that further to the failure to ring-fence budgetary allocations, the lack of interdepartmental budgets can have a real impact on the lives of survivors as: “it results in differing services at different places, a lack of services in rural areas, and a failure to ensure that sufficient specialised staff are available and trained. In essence, it means that the Government cannot ensure that women reporting sexual or domestic violence receive services that do not cause further trauma”.<sup>194</sup>

With regard to the impact of budgetary inefficiencies on NGOs, the report highlights that an estimated 60 percent of services are provided by organisations who primarily rely on donor funds, as resources stemming from the DSD have been insufficient in ensuring support to women and children impacted by SGBV and domestic violence. The DSD does not cover shelter costs for food, accommodation, counselling, medical services and legal assistance for survivors. Yet, when the DSD funds government-run or private organisations, it covers the entirety of the costs plus profit. The uneven distribution of funds for the same services is thought to be a clear indication of the gaps in implementation strategies in respect of policies related to SGBV. Moreover, following the decision to allow provinces to develop their own DSD financial policies, the report explained how services for survivors of SGBV have subsequently been greatly affected. The amounts allocated to services in each province vary “dramatically...resulting in dramatically different services available to women who have been victims of violence.” Finally, despite the reported increase in the demand for services, the funding for many shelters, such as the Saartjie Baartman Centre, had not increased between the periods from 2002 to 2011.

The difficulty of tracking cases in the justice system has also made it difficult for government departments to budget and fund services for survivors. Therefore the report concluded with a call for a new and improved funding model for SGBV which requires accurate statistics on SGBV in order to inform the allocation of funding to relevant departments and ensure survivor-friendly services. It is further recommended that the funding model must invest in prevention mechanisms that have been ignored thus far by many government departments in their budgeting and allocation processes. Furthermore, it is recommended that Treasury should establish a cohesive funding model to address VAW. This should include costing legislation and providing conditional grants to government departments based on their estimates of funding required specifically for domestic violence and sexual offences. In addition, it is recommended that Parliament develop an oversight mechanism to ensure implementation of the DVA and 2007 SOA by relevant committees on a quarterly basis, thus fostering better inter-sectoral collaboration. Finally, the report recommends that the DSD should review its partial funding policy and ensure that it is adequately funding services related to DV and that the budget for Sexual Offence Courts is ring-fenced and their establishment expedited.

<sup>193</sup> DSD did not provide estimates on their spending before the publishing of the report.

<sup>194</sup> *Ibid.* p.13

## **The Cost of Justice in South Africa: Tracking Expenditure on Gender-Based Violence in the Department of Justice and Constitutional Development**

**Author:** Joy Watson (Senior Parliamentary Researcher)

This report<sup>195</sup>, in assessing the expenditures of the DOJ&CD that are related to SGBV, argues that SGBV remains a high cost to the State and that the lack of a transparent budgeting prevents one from acquiring an accurate measurement of how much the Department actually spends on the different SGBV-related activities per annum. What is particularly concerning for the department that is tasked with providing services to victims and survivors of SGBV is that the DOJ&CD (when compared to all government departments) was named as the department most responsible for wasteful expenditure in 2012/2013. According to the report, in 2012/2013, the DOJ&CD incurred fruitless expenditure amounting to R39.2 million and, as such, the report rightly states that “it is within this context of poor financial management control that the discussion on expenditure on gender-based violence must be located”.

Additionally, the report notes, for example, that although the incidence of SGBV is extraordinarily high in South Africa, staffing does not reflect the need for services. Insufficient numbers of domestic violence clerks, dedicated district magistrates and prosecutors for sexual offences and domestic violence cases and the need for more dedicated and specialised staff to address SGBV illustrate the point and result in certain services being rendered unavailable to survivors of sexual offences.

The report notes that the lack of strategic planning and budgeting has resulted in the situation where there are no separate holding areas for SGBV survivors and perpetrators in certain courts. It must be recognised that being confronted by a perpetrator in a shared holding area can have a major impact on survivors and lead to secondary victimisation. The report therefore argues that the programme has evidently not given due consideration to the need to reduce the trauma experienced by survivors as well as the effects of secondary victimisation. The lack of oversight in respect of sentencing of sexual offences cases, which has resulted in “varying, inconsistent and at times inappropriate sentencing” is also noted.

To conclude, the report points to three important recommendations. Firstly, it is suggested that there is a need for greater transparency in the amounts that government departments are spending on SGBV and more importantly an evaluative look at the efficiency of their investments. Secondly, it is recommended that Government should provide for a comprehensive needs assessment of their service delivery as well as monitor and evaluate services rendered. Thirdly, that government move towards inter-departmental budgeting to provide a more holistic approach to addressing SGBV and to avoid duplication of work.

## **Gender Responsive Budgeting and its Linkages with Gender-Based Violence and the Deficient Implementation of Sexual Offences Legislation**

**Oral Submission**

**Presented by:** Thoko Madonko (Alternative Information and Development Centre)

This oral submission provided a ‘big picture perspective’ regarding gender responsive budgeting and explained that South Africa remains subject to an austerity budget with the result that government is cutting services and not providing for new posts.

It was asserted that Government has used phrases like “we need to take a bit of pain”, but, in the context of GBV, the question was asked “how can we expect our communities to take any more pain when we are asking for the delivery of services?” This is particularly poignant given the shortage of social workers and high rates of SGBV and unemployment in the country. The submission powerfully held Government responsible for imposing the bulk of this “pain” on the most vulnerable members of our population, whom are affected by the diminished resources allocated to the SAPS, the DOH and the DSD, furthermore calling on Government to better understand the needs of SGBV survivors and to budget accordingly.

Additionally, it was submitted that the “rands and cents show where the priorities of the Government lie, in that they are not geared towards the kinds of service delivery we know we require,” adding that such policies indicate the lack of responsibility taken by the public sector to provide services to communities, especially to those affected by SGBV. The

<sup>195</sup> Joy Watson (2014) *The Cost of Justice in South Africa: Tracking Expenditure on Gender-Based Violence in the Department of Justice and Constitutional Development*, Parliament of the Republic of South Africa. (Herein referred to as the “Cost of Justice” Report)

submission called for civil society to push against this trend relentlessly, stressing that the spending of SGBV-funding within government departments needs to be monitored and that there needs to be more consultation with representatives from disadvantaged and vulnerable groups with regard to the development of the country's various budgets. It was further argued that Government deliberately makes the language of budgeting and finance inaccessible so as to exclude communities from the process. While the State's budget is supposed to be inclusive and take a "bottom-up" approach, its formation remains top-down. It was suggested that, "in theory, it is beautiful, but in practice, it is rubbish." Accordingly, it was proposed that spaces be opened up to develop a locally owned budget process that will feed up into the macroeconomic fiscal framework.

A final concern raised by this submission is the revision by Government of the poverty lines as this, it was said, has direct implications for the way in which poor people access services and are availed of or denied State assistance.

## **The SAPS and Planning for Gender-Based Violence: An Update**

### **Written submission**

**Presented by:** Lorenzo Wakefield (Consortium on Crime and Violence Prevention (APCOF/CJCP))

**Citation:** Wakefield, L (2014) *The SAPS and Planning for Gender-Based Violence: An Update*, Parliament of the Republic of South Africa, Cape Town.

This submission presented the findings of the abovementioned research report. It asserted that information on budgeting for SGBV-related training, services and campaigns could not be determined by the SAPS as it was not disaggregated from the larger budget allocated to other types of crime. Given the current burden of SGBV, this submission recommended that the SAPS provide Parliament with a budget itemised with specific activities relating thereto.

Furthermore, it advised that a survey, which was conducted in 2013 with members of the SAPS, had sought to establish the number of specialist detectives trained in GBV in FCS units for each province, yet the SAPS had not differentiated between trained members and specialist detectives. This made it impossible to determine if each FCS Unit has access to a specialist detective, as not all members have received SGBV training. Where detectives for domestic violence cases were identified, it was clear that the caseloads for these few detectives were overwhelming in terms of quantity. The research that informed this submission moreover identified that whilst the work of the FCS Units is promising, there were many police stations without access to FCS Units. The report went on to recommend that considering the high rate of violence against women and children across the country, the SAPS should roll out FCS units to all police stations in South Africa. In addition, it was recommended that this be done through a strategic plan accompanied by a costing and implementation guide from Parliament.

The submission also discussed the Victim Friendly Rooms (VFRs) and reported that they were functioning in 809 police stations. However, there were only 14 FCS units with VFRs. Whilst the low numbers of VFRs in FCS Units is a cause for concern, the submission explained that the SAPS had planned to implement 22 new VFRs in the 2012/2013 financial year and that more were included in blueprints of planned police station renovations. However, the report suggested that the plan to increase VFR in police stations should be revised to facilitate a more strategic rolling-out of these services and one which accommodates needs and priorities. Where VFRs are unavailable, it was recommended that the SAPS should report to Parliament on how it provides services to survivors.

In relation to national instructions and the implementation of these directives, the submission asserted that although there was a lack of station orders regarding the policing of domestic violence and sexual offences cases, there was a consensus that the National Instructions on sexual offences were sufficient. However, these same National Instructions require station orders. It was therefore submitted that the finding regarding the lack of station orders raised concerns regarding the low prioritisation of domestic violence and sexual offences cases and pointed to the lack of standardisation and guidance needed to manage those cases.

In addition to these concerns, the submission raised issues regarding the gender representation and internal monitoring of the SAPS. The submission was unable to determine the proportion of women appointed to FCS units as the SAPS do not record the gender of the units' members. The data that was available from certain stations revealed that there were a small number of female detectives, thus raising concerns regarding the availability of female detectives to take statements from survivors who may prefer to report to a female officer. Moreover, the submission went on to state that internal monitoring of the policing of SGBV has been found to be insufficient and recommended that there be efficient monitoring and evaluation

with more regular updates to guide SAPS policies, practices and campaigns.

With regard to addressing the gaps in training and station orders, the submission highlighted that education and training on sexual offences and domestic violence had become a budgetary priority for the SAPS. It explained that whilst basic in-service training had been budgeted for and made available in many cases, only a small number of officers had actually been trained. However, the SAPS predicted that additional new and existing recruits will be trained and that they had indicated that these additional resources would possibly strain the budget. Budgetary constraints are a re-occurring theme and the submission points to an example of the high cost of fuel as impeding SAPS response vehicles due to their failure to budget for fuel for their vehicles. It reported that contrary to the SAPS' claim that they lack vehicles, they have sufficient vehicles to carry out their responsibilities and thus they are "not in the position to justify their lack of response times to SGBV complaints based on a lack of vehicles". The report concluded the problem lay rather in the high cost of fuel and the SAPS' failure to budget for it, posing a barrier to policing.

The survey that informed the submission also found that there was an urgent and critical need for improved co-ordination between the SAPS and forensic social workers, who are invaluable to the successful investigation of cases, particularly in cases involving children. The increased need for more forensic social workers has been recognised by the SAPS who claimed that there were plans to employ many more – although they admitted that the budget for these positions is unclear.

### **Under-funding Rape and Domestic Violence Services: Neglecting Women's Wellbeing, Neglecting Women's Work?**

#### **Written submission**

**Submitted by:** *The Shukumisa Campaign*

Following a review of seventeen case studies from seven of South Africa's provinces, the *Shukumisa Campaign* found that from 2010, funding cuts and shifts in the DSD's policy had had a negative influence on the quality of care NGOs can provide to survivors of domestic violence and sexual offences. In 2011, DSD instituted a new policy regarding funding for service providers that capped DSD's salary contribution at seventy-five percent of an organisation's salary costs. Given the new policy, civil society organisations have had to find funding for the remaining 25 percent. However, litigation brought by Free State-based NGOs resulted in the DSD being ordered to revise their funding model. In the meantime, the policy has resulted in organisations finding it difficult to hire experienced and qualified staff, given the lower salaries and job insecurity, which, in turn, has resulted in the systemic de-skilling and de-professionalization of NGO staff. The review further asserts that, "the decrease in funding for research and advocacy activities, coupled with the loss of staff, has resulted in fewer organisations being able to play an activist role in holding government to account."

DSD's new policy coupled with the global financial crisis of 2008, which severely limited the availability of international donor funding and further limited corporate giving to rape and domestic violence services, caused a crisis for providers of care to survivors. Among the seventeen organisations reviewed, 100 positions were lost between 2010 and 2013. While some organisations have been able to replace a few part-time posts, others have had to rely on temporary staff and volunteers. Due to funding cuts, several programmes have been diminished or eliminated without being replaced.

Given the crisis faced by SGBV service providers, the DSD made additions to its Victim Empowerment Programme in 2012 and 2013. However, a review of the provincial budget records has shown that the entirety of the money was not allocated to NGOs. Instead, some provincial DSD offices used this money for internal government expenses such as the monitoring of NGOs.

In conclusion, the report questions whether the under-funding of services for SGBV survivors, a profession that is dominated by women, illustrates the devaluing of women's work. It also recommends that:

- (i) there is an urgent review of DSD's funding policy;
- (ii) that the KPMG costing model to be used for DSD's budget allocation for NGOs be adjusted for the specific needs pertaining to domestic violence cases;
- (iii) that there is an increased contribution by the private sector to support services for survivors of SGBV; and
- (iv) that there needs to be careful monitoring of DSD expenditure on programs and the ring-fencing of funds to SGBV-related services.



## 3.3 CHILDREN AND THE IMPLEMENTATION OF SEXUAL OFFENCES LEGISLATION

### The Implementation of Sexual Offences Legislation in Respect of Gender-Based Violence in Schools

#### Written submission

**Presented by:** Solminic Joseph on behalf of the Equal Education Law Centre (EELC)

The submission by the EELC highlighted that SGBV is a prominent issue in South African public and private schools at present. The submission asserted that one in five sexual offences involving children of school-going age occurs within the school. In addition to the protection of the human right of children to access education enshrined in the Constitution of South Africa, there are key laws which address the threat of the abuse of young learners: (i) the 2007 SOA, (ii) the Children's Act (2005), (iii) the South African Council of Educators Act (2000) and (iv) the Employment of Educators Act (2011). Combined, these laws serve to prohibit sexual conduct between educators and learners and mandate a range of disciplinary and judicial procedures in the event that sexual misconduct occurs.

The submission explained that whilst this legislative framework has the capacity to protect learners from sexual violence, the inconsistencies and vagueness between these laws acts as a significant barrier to their implementation, particularly where there is "duplication and poor coordination of procedures". For example, neither the 2007 SOA or the Children's Act provide definitive clarity with regard to the degree of knowledge or "certainty of sexual abuse necessary to trigger the duty to report" or who is held responsible for non-reporting. This flaw considerably hinders the functionality of the legal framework. The 2007 SOA, for instance, imposes a duty on *all persons* to report abuse, whereas the Children's Act only imposes this responsibility on *teachers*.

This inconsistency with regard to the duty to report is made even more complicated by the reluctance of people to report misconduct. A particular concern in the submission was the reluctance of teachers to report sexual misconduct and sexual offences. The reasons given ranged from fear of being ostracised by their peers to worries about damaging the reputation of the school. This finding, it was submitted, results in a breakdown of trust between teachers and learners, which trust relationship is the cornerstone of education.

In addition to the laws that seek to protect learners from sexual misconduct, there exists three distinct registers of educators who commit sexual offences against learners which aim to function as preventative measures if properly consulted by employers. These are:

- (i) the National Register for Sexual Offences ("NRSO"),
- (ii) the National Child Protection Register ("NCPR"), and
- (iii) the South African Council of Educators ("SACE") register, each of which, the submission outlined, is supposed to be consulted by potential employers.

However, the lack of coordination between the registers can hamper this process. Together, the law and register rely upon disciplinary procedures in order to fully protect learners. However, it was explained that a lack of coordination between disciplinary bodies may result in inconsistencies that can potentially allow "educator-offenders to continue teaching and offending in South African schools". This is particularly so when there is confusion as to which entity is charged with determining employability coupled with a lack of capacity to process complaints.

To highlight the challenges and inconsistencies that learners and educators face in relation to the laws and correct procedures, the submission presented three case examples.

#### Case Study 1:

An example of the failure of the *Abuse No More Protocol* can be found in the case of a Grade R learner in Khayelitsha who was raped at school during interval. The young girl was referred to a rape crisis centre and although a 'J88' form was completed, no rape kit was used to gather evidence. When the EELC demanded feedback from the Western Cape Education Department ("WCED") concerning the handling of this case, they replied that they had followed the requisite procedures. However, it was clear that the learner did not receive the recommended month of counselling from the WCED as they lacked the resources, and the police had failed to identify the perpetrators. Instead, the principal asked the student to identify the perpetrator from amongst a group of male students, putting further pressure on the survivor. It was alarming

to the EELC that this school did not conform to WCED and national policies regarding safer schools. The family moved to another province with the child and the case remains unresolved.

### **Case Study 2:**

This case study highlighted the challenges pertaining to applying sanctions to teachers accused of sexual offences with learners and the lack of knowledge relating to mandatory reporting by other staff. The EELC was approached by an NGO and a teacher working in the Lavender Hill area about a predatory teacher working in a primary school. He is alleged to have, amongst other things, smoked in class, shown learners pornography and impregnated two former Grade 7 learners. The case was brought to the WCED, who took up the investigation. However, the WCED did not focus on the sexual misconduct allegations and subsequently were reproached for not allowing other teachers to voice their concerns regarding the misconduct of the alleged abuser. Concluding the investigation with a final written warning for absenteeism, the case was never brought to the attention of the police. The EELC raised the sexual misconduct allegations with the WCED again and the case has been re-opened.

### **Case Study 3:**

The EELC was approached by the father of a Grade R girl claiming that he received the news of his daughter's rape days after it happened, despite the teachers knowing about the event. The learner was raped by two Grade 2 boys whilst waiting for her transport at school. The parents learned about their daughter's rape only when they visited the school for an unrelated reason. The teachers failed to advise the parents because they did not attend parents' meetings held at the school. The school asked the perpetrators' parents to apologise for the behaviour of their children. While the WCED investigation remains open, it is clear that the procedures employed to address the circumstances surrounding this event have been insufficient so far.

The case studies highlighted failures to report and recognise sexual offences and, most importantly, the lack of knowledge on the part of teachers and learners regarding the legislation relating thereto. At a very basic level, the submission explained that learners need to know what to do if a situation arises where they are being sexually harassed or abused and who to approach in order to report it. This, it was submitted, is essential to making learners feel safe and enabling to them to protect themselves and seek assistance.

Section 62 of the 2007 SOA calls for implementation through a mandated National Policy Framework, which, at the time of writing this submission, was yet to be established. However, one positive step towards this framework is the *Abuse No More Protocol*, which was set forth by the WCED. Unfortunately, the submission suggested that the efficacy of its provisions have been thwarted by the ignorance of teachers and other school staff members, as well as the WCED's lack of resources.

In light of these concerns, the submission recommended that the SACE amend discretionary powers, so as to ensure that all cases are referred to the SAPS, as well as facilitating a budgetary increase to allow for the more efficient processing of complaints. It is also recommended that the partnership between schools and the SAPS be strengthened in order to encourage the reporting of sexual misconduct to the SAPS as well as the establishment of programs and incentives between the education and law enforcement systems. Similarly, the inconsistencies between the legislation relating to sexual offences in schools must be rectified. The submission suggested that this could be aided by a national policy that spells out the responsibilities of each actor and ensures accountability. The submission also recommended that employers, educators and learners alike must become more aware of issues surrounding sexual misconduct, especially rights and responsibilities relating thereto.

To conclude the submission, the EELC suggested specific recommendations aimed at each role-player involved in the process. As regards the SACE, it was recommended that rather than using discretionary powers, as they do at present, to report complaints of sexual violence, they should mandate that every incident be reported to the SAPS which, in turn, will ensure that offenders are registered on the NSRO and the NCPR. Furthermore, in relation to the processing of complaints, it is recommended that SACE be allocated more funding in order to increase their capacity to undertake more disciplinary hearings and make the disciplinary functions more effective.

The duty to report is also linked to the relationships that schools have with the SAPS. Therefore, the submission recommended that these relations be improved so that the trust relationship between schools and the SAPS can grow. One way of facilitating this is to give students better and easier access to the SAPS and to engage the SAPS more on how to deal with complaints from learners.

With regard to the registers and the legislation, the submission recommended that the coordination between the three registers be improved and that the confidentiality of the NRSO register, in particular, be reduced so that the contents are freely available to the public so as to give parents the right to protect their children from sexual predators in schools. In terms of legislation, the submission recommended that the various laws be streamlined so as to complement each other and provide certainty with regard to duties to report.

The final recommendation of the submission was aimed at schools themselves and their capacity to prevent sexual offences against their learners. It was recommended that schools must “incorporate education about sexual misconduct, rights and responsibilities into the learners curriculum” and, most importantly, the steps that a learner can take in order to make a complaint. In addition to informing and educating the learners, employers should educate their teachers regarding their duty to report and the mechanisms for anonymous and discreet reporting of sexual misconduct.

The EELC disseminated a factsheet to Summit participants, which factsheet is set out below and details the relevant legislation and procedures in respect of SGBV in schools.

## EQUAL EDUCATION LAW CENTRE FACTSHEET:

### The Implementation of Sexual Offences Legislation in Respect of Gender-Based Violence in Schools

#### Legislation:

- s.7 (2) of the Constitution of the Republic of South Africa (1996), requires the State to “respect, protect, promote and fulfil the rights in the Bill of Rights”.
- The South African legislative framework regarding sexual violence in private and public schools comprises 3 major laws: Criminal Law Amendment Act (2007), Children’s Act (2005) and South African Council of Educators Act (2000)
- There is a 4th Law, governing the employment and conduct of educators in *public* school settings: The Employment of Educators Act (2011)
- Together, these 4 laws set forth the conditions governing employment and dismissal of educators. However, the functionality of these laws is threatened by ambiguities and inconsistencies.
- SACE requires all educators to register with the council, and its accompanying Code of Ethics prevents “any form of sexual relationship with learners at any school”. SACE, *although not required*, may direct the removal of an educator from the registry if found in breach of the Code of Ethics.
- The Employment of Educators Act is insufficient to inform individuals of their legal duty to report sexual abuse to the authorities for criminal investigation, and employers of their legal obligation to apply to registers to determine their employability.

#### Abuse No More Protocol:

- S.62 of the Sexual Offences Act mandates a national policy framework to ensure implementation and enforcement, yet no policy has been promulgated. Although South African legislation establishes the illegality of sexual relationships with learners, the absence of a national policy allows for abuse to go unreported, unpunished and undeterred.

#### By The Numbers:

- Sexual violence is one of the greatest challenges affecting South African youth
- 1/5 cases (21%) of sexual violence occurs in school settings
- The full extent of the issue is difficult to gauge: neither Provincial nor National Departments of Education monitor incidents of sexual violence in schools – estimated 50% of students fail to report incidents of abuse
- About 4.7% of South African learners are estimated to have been sexually assaulted at school
- Female and rural learners are especially at risk: 30% of these learners report having been raped at school.
- In total, 68% of females report to having been subjected to some form of sexual harassment at work and/or school, throughout their lives.
- The Western Cape Education Department (WCED) has a provincial policy known as the Abuse No More Protocol. It has established procedures on who to inform and how to proceed should abuse be suspected and

emphasises the need to do so.

- No mention is made of the obligatory duty to ensure the registry of all educators within SACE.
- A CJCP report found that 95.9% of educators are aware of their duty to report allegations of sexual assault but in only 61.9% of reported cases did these individuals take action.

#### **Registers:**

- There are 3 independent registers governing the employability of educators – NRSO, NCPR and SACE – each operating independently with little coordination.
- SACE conducts its own disciplinary procedures, and as such, the criminal justice system may find an educator guilty where SACE does not, allowing for the educator to remain on the register and continue to seek employment.
- All registers suffer from a lack of capacity; SACE estimates that between 2014 and 2015, 1 000 new cases will need resolution. This backlog increases the risk of exposing learners to sexual harm in schools.

#### **Disciplinary Procedures:**

- SACE refers issues to the Ethics Committee which makes recommendations based on the complaint. If charges are levelled, a hearing with the DBE is scheduled and if a breach is discovered, then SACE may, at its discretion, remove the educator from the register.
- Investigation efforts may be hampered by a lack of personnel available as well as budgetary constraints or a lack of co-operation among parties involved.
- Since the start of the Register's operation (2000), disciplinary hearings have resulted in 150 strike-offs and 113 other sanctions from a total of 3,044 complaints.

#### **Recommendations:**

- A change in discretionary powers in regards to SACE should be addressed.
- It should be mandatory that all complaints of sexual misconduct be reported to SAPS. This could also enable more transparency between registers.
- An increase in funding is necessary to increase the capacity of SACE in undertaking disciplinary proceedings and lowering incompleteness rates.
- A national policy must be promulgated, thus helping to prevent the sexual predation of all children, including learners, and ensure a coordinated approach in dealing with sexual offences.
- Laws must be amended to ensure conformity between the various Acts, including revision of inconsistencies contained within. E.g. The Employment of Educators Act and SACE Code of Ethics differ in terms of their prohibitions of educator-learner relationships.
- The Acts must all include mention of every employer's legal duty to apply for a certificate of employability from the registers.
- Training for employees and learners alike regarding sexual misconduct, rights and responsibilities must be incorporated.
- A close relationship between schools and SAPS should be instituted in the form of programs, exercises and incentives.

## **Children and the Implementation of Sexual Offences Legislation**

### **Oral Submission**

**Presented by:** Christina Nomdo on behalf of Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN) Professor Shanaaz Matthews on behalf of the Children's Institute (UCT)

In oral submissions, RAPCAN together with the Children's Institute tendered that it is impossible to discuss the implementation of the 2007 SOA and violence against women without discussing violence against children, arguing forcefully that it should be mainstreamed into all of our deliberations. The submission furthermore raised the lack of prioritisation of the best interests of children as a major concern and suggested that, due to this omission, the best interests of the child are being lost in the system.

The panellists addressed Summit participants on three issues: (i) the magnitude of the problem, (ii) the ways in which the

current system impacts children and (iii) the challenges arising from the implementation of relevant legislation. They pointed to the difficulty in fully comprehending the magnitude of the problem of sexual assault against children in South Africa. Notwithstanding there being no comprehensive data on this issue, State departments continue to design and implement programs without knowing how many children are impacted by this type of violence. Data from other communities is used to estimate the current situation. For example, community-based studies have revealed that as many as 40 percent of girls under 18 report sexual assaults and 16 percent of boys. Police data is also used, but it is insufficient as it is estimated that eight cases out of nine of sexual offences against a child remain unreported, data that leads the Children’s Institute to assert that “we are sitting on a pandemic that impacts society at its core”.

It was submitted that implementation challenges lie in budgeting and under-resourcing, that there is specifically a lack of funding for the implementation of the Children’s Act and child-centred protective measures, such as access to social workers. This, in turn, results in a lack of long-term psycho-social services for child survivors and their families, which can result in secondary victimisation, post-traumatic stress and other consequences.

Reflecting on the observed reality of cases, the Children’s Institute and RAPCAN looked to a case example to conclude their submission and open the discussion as follows:

“I want to end by just reflecting on a case that very recently we reviewed; a case on our doorsteps not too far from here. A 13 year old child who spent the weekend with her father, and she disclosed that she was sexually abused by her mother’s friend – not mother’s boyfriend but a friend of his. What the child disclosed was that the mother actually facilitated sexual abuse by this friend of hers. So she allowed access to the child to be sexually abused. The father reported this case to the police and the child had a medical examination. It was very clear there was evidence of long-term sexual assault. Mom and the friend were arrested. And they were both released on bail. Mom was warned that she should not interfere with the child, yet the child was placed back in her care. To make a long story short, the case went to court. The mother was found not guilty. The mother’s friend, the perpetrator who sexually abused this child over a period of time, was found guilty and sentenced for 16 hours of community service and his name was placed on the Sexual Offenders Register but not on the Child Protection Register. And this case was not referred to social work services to look at the child’s safety and her long-term protection. And nor was any of the other children’s care considered in this case. So here you have a 13 year old that’s left vulnerable for further abuse and obviously a mom who’s not able to take the best interests of her child at heart.”

With reference to this case example, RAPCAN emphasised that the parent is the primary duty bearer to protect a child and the rights of the child. Furthermore, that families and parents must know the designated child protection agency in their communities. These agencies and NGOs know the necessary processes and have the resources to refer children to the psycho-social services they need. RAPCAN and the Children’s Institute warned parents and caregivers against asking their children to re-tell their stories, stating further that the Criminal Justice System acts to re-traumatise children by making them repeat their story and submitting that this process needs to be done much more responsibly through trained professionals and social workers.

Lastly, RAPCAN pointed to some positive developments by explaining how they developed a project 10 years ago where they implemented children-friendly rooms in SOCs, ensuring that trained support workers would play with the children and teach them in a sensitive way about the legal process. Trained social workers have been a valuable tool to ensure that magistrates and prosecutors treat children with more care. Importantly, RAPCAN urged people affected by sexual abuse against children to talk to organisations and to Parliament as they are looking for the “*real persons*” testimony.

### **Implementation Brief on the Management of Sexual Offences in Courts for Child Victims: Failing Systems, Broken Promises**

#### **Written Submission**

**Submitted by:** Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN)

Considering that the Constitution of South Africa provides that “the best interests of children are of paramount importance in all matters related to children”, this report argues that court environments be tailored to the needs of young survivors rather than the opposite. From 2002-2003 RAPCAN worked in six regional magistrate’s courts to provide support services and court preparation to children and their families as they navigated the criminal justice system after incidences of sexual violence. Through the provision of these services as well as research through interviews with and written reports from



children, their caregivers and court support workers, RAPCAN highlighted the challenges and implications of implementation of the various laws and programmes related to sexual offences against children.

The report argues that the coordination of stakeholders in combating sexual violence against children is paramount. This includes the DSD, the DOH, the DOJ&CD, the NPA and the SAPS. Despite the strength of the legal and policy framework, the implementation of protective measures for children does not successfully protect child witnesses and complainants from re-experiencing trauma. Similarly, the promising establishment of interventions, such as the SOCs, is only as successful as the investment and political commitment to them – which, according to RAPCAN, leaves much to be desired. As a result, conviction rates remain low despite the extensive legal reform and progress surrounding sexual offences.

The report goes on to highlight that case-flow management and the mismanagement of sexual offences courts results in the frequent delay and postponement of cases. This, it is submitted, is an issue that could be mitigated with increased involvement of prosecutors to ensure the preparation of case dockets as early as possible. The design of court buildings also all too often puts witnesses and complainants at risk of seeing the accused, possibly leading to trauma, anxiety, and impacting testimony. Accordingly, the allocation of funds towards the safe and thoughtful design and renovation of court buildings, particularly entrances or passageways, is recommended as an important step to reducing this risk.

Lastly, the report points to the need for the enforcement of standards regarding various aspects of the court procedure, which child survivors and their caregivers must navigate. This includes more strict enforcement of closed court protective measures and increased accountability irrespective of any decision to refuse the use of an intermediary. Finally, the report recommends that increased training is necessary in a variety of respects. This includes, but is not limited to: mandatory evaluation of training programmes, court personnel training, training regarding equipment use and maintenance; and training for lawyers regarding appropriate cross-examination in cases involving child sexual offence survivors.

## **Community Perspectives Regarding Service Provision and Access to Justice for (Child) Sexual Offence Survivors**

### **Oral Submission**

**Presented By:** Nolusindiso Dyantyi on behalf of Afrika Tikkun, Delft

This submission began by highlighting that Afrika Tikkun is a service provision organisation working specifically with children in six townships throughout South Africa. The submission further explained that the organisation is an entry point for other services particularly for referrals. The organisation's submission offered a community perspective of service provision and access to justice for sexual offence survivors. Three case examples were shared in the submission, involving sexual abuse of children, abuse between siblings and the misuse of restorative justice between families of young survivors.

Through the sharing of case examples, the submission highlighted the primary role of parents as well as that of the State. It was asserted that, as parents, it is vital not to hide things because of a fear of judgment, as sexual offences leave no room for embarrassment or blame. It was further asserted that parents, social workers, educators and anyone working with children must be attentive and investigate why children are acting out and, more importantly what it is that those behaviours are concealing. Emphasis was placed on the provision of basic training regarding sexual offences-related laws and policies for all service providers working with children, as valuable observation skills can help perceive suffering and abuse when disclosure is not forthcoming. The submission warned against using labels that can be harmful in understanding a person's experience.

Furthermore, it averred that the role of the State is to be responsive to communities' needs which, it was said, should be communicated at the individual level. Lastly, it was submitted that it would not be possible to implement the laws and policies under review, and provide services to survivors, without the coordination and mutual accountability of all relevant role-players.

## 3.4 SEXUAL OFFENCES AND FORENSIC MEDICINE

### **Sexual Offences and Rape Homicide: Experiences of a Forensic Pathologist in Cape Town**

#### **Oral Submission**

**Presented by:** Professor Lorna Martin (Division of Forensic Medicine, Department of Pathology, Faculty of Health Sciences, University of Cape Town)

The submission highlighted that between 1999 and 2009, the proportion of women's deaths caused by violence perpetrated by a non-intimate partner rose from 13.2 percent in 1999 to 28.5 percent in 2009. Professor Martin asked how civil society can encourage Government and role-players to improve the implementation of the 2007 SOA. In answering this, she explained the role played by forensic pathology in this process - even though it is not explicitly incorporated in the 2007 SOA. The submission explained that forensic pathologists perform autopsies in order to ascertain a victim's cause of death. The forensic pathologist's report is then taken to the inquest court, where a magistrate will confirm the cause of death. If the case is taken to a criminal court, autopsy findings will be presented as testimony in court. Formerly, this forensic service was performed through the SAPS. However, since 2006 the DOH has assumed this responsibility. In the Western Cape, there are only eighteen forensic pathologists to investigate 10,000 unnatural deaths yearly. As not all mortuaries have forensic pathologists, many autopsies are performed by general practitioners, whom Professor Martin believes should not fulfil this role nor deal with rape survivors.

Typically, the submission explained that, the crime scene is investigated, along with the SAPS, by support officers of the forensic pathologist. In some cases, the forensic pathologists investigate the crime scene themselves. Although it is not clear when the SAPS will call them in to investigate, they are present in most rape homicide cases. The investigation and autopsy includes taking histories from those involved (for example the investigating officer) and an x-ray and full examination of the body of the victim. Professor Martin explained that forensic science can provide information, like the use of DNA since the 1990s, in order to assist the court in discerning what occurred at the crime scene.

As forensic pathologists are mandated by law to be involved in the investigation of unnatural deaths, Professor Martin asserted that Government should be held accountable for providing these services in all provinces.

### **The Integration of Clinical Forensic Medicine into the District Health System in the Western Cape**

#### **Written Submission**

**Submitted by:** Donovan Andrews (University of the Western Cape)

This submission related to research findings regarding the integration of Clinical Forensic Medicine ("CFM") into the District Health Systems ("DHS") in the Western Cape. The research took the form of interviews with stakeholders, including the DOH, the DHS, CFM practitioners, TCC staff and Child and Family Units (CFU's). The aim of the research was to garner the perceptions of those involved with CFM in the Western Cape as to the functioning of sexual offences-related CFM services in Cape Town particularly in order to assess whether or not a need exists to integrate CFM into the DHS system.

The research found that the TCC service provision model is very successful and that the stakeholders interviewed were happy therewith. Moreover, the overall feeling was that the DHS-based CFM service delivery platform in the Metro sub-structures was working. The central tenets of its success were perceived to be aided by the level of support and strong commitment of the DOH as well as close district supervision of the Metro CFU's. In addition, those interviewed pointed to good stakeholder interactions and good coordination between service providers as being a core aspect of the model's success, coupled with the well-established TCC model.

As the submission explains: "[w]ith a few exceptions, most stakeholders were satisfied with the access and level of services provided. They believed it offered the most contextually relevant platform from which to operate ... many stakeholders, however, commented on the comparatively weak CFM services in rural areas of the province, especially in areas without strong support from the DOH and other stakeholders such as the police and prosecuting authorities". Additionally, stakeholders pointed to the need for better referral links with community-based healthcare providers and home-based healthcare services, particularly in rural areas.

The overall recommendation related to the need for a model of enhanced district-based CFM platforms, which would involve “dedicated or designated CFU’s depending on the burden of care”, and that these CFU’s would have clearly defined lines of accountability, service networking, referral and coordinating relationships as well as exchange of information. Lastly, the submission proposes that the CFU’s be run as independent cost centres that fall within the budget of the district hospitals in which they are situated.

## **Gender, Health, & Justice: Thuthuzela Care Centres and Service Delivery to Victims/Survivors of Sexual Offences**

### **Oral submission**

**Presented by:** Dr Genine Josias (Khayelitsha Thuthuzela Care Centre)

*It is up to you to demand services. If you don't stand up and demand, then they will not listen.*

In this submission, Dr Josias powerfully asserted that there have been far too many cases of rape survivors waiting for hours at emergency rooms for treatment and that rape cases are often not prioritised in these settings, with the result that survivors are left to wait until “more urgent” cases have been attended to. The submission went on to explain that when a survivor is finally seen, it is typically by a doctor who has not been trained to use a rape kit or to work with rape survivors. Dr Josias decried that often those who testify to expert medical evidence in court are not properly trained, nor do they have professional guidance in dealing with or understanding rape and its medical implications or what is required of their expert testimony for it to be meaningful.

Dr Josias explained that the lack of resources for the treatment of rape survivors changed with the onset of the HIV epidemic. At this point, support came in from international donors who were concerned about the spread of HIV, not necessarily about rape. This allowed access to PEP for survivors, but the focus on the biomedical component of rape left many other aspects of care unmet.

“They thought if you work with rape victims it would be easy. They would just have to come forward and give them medication – give them PEP. Little did they know, rape is not just biomedical ... It doesn't work like that. Rape is a psycho-social, political, economic, gender, biomedical, justice issue. It involves ALL the aspects of care. Can't just give them a tablet and everything is ok. Doctor, I don't have food in my house. Can't do that. This is how it started that they had to give services to survivors of rape - give HOLISTIC services. Out of that, the Thuthuzela model was born”.

The Thuthuzela model of care began in 1999 with the establishment of the first TCC. The TCCs are holistic ‘one stop shops’ providing a range of services. As averred by Dr Josias, “thuthuzela: means to comfort. That is what is supposed to be happening at these centres”. But, while the model is very successful on paper, Dr Josias admitted that it is not always executed efficiently in practice and that better resourcing, ongoing training, workshops and updates are needed to ensure improved care for sexual offence survivors. While there are 51 TCC's in South Africa today, many more are needed. Dr Josias highlighted the power of civil society and social pressure in improving service delivery for sexual offences survivors. This, she illustrated through an example from Khayelitsha, where members of the public marched and demanded that the DOH provide services for sexual offence survivors and establish a TCC in Khayelitsha as none existed at the time.

Dr Josias went on to submit that CFM does not get enough recognition or attention from the DOH and that this has led to the disintegration of the national CFM services committee, as well as the lack of professional standard upkeep for doctors in this field. The skills, particularly interpersonal skills, necessary to be successful in providing services to rape survivors are vital – yet there is not enough training provided for or required of professionals. The submission emphasised two essential characteristics of doctors and other healthcare providers working with rape survivors. Firstly, they must know the content of sexual offences-related legislation and other relevant policies. Secondly, healthcare providers need to have a deep understanding of the reality of rape survivors as well as a good attitude towards them to prevent secondary victimisation.

The marketing of TCCs within communities was submitted as being essential to raise awareness of the rights of rape survivors and of the services that are available to them. Specifically, Dr Josias suggested the use of posters, pamphlets, local newspapers and the radio, churches and mosques to disseminate information regarding TCCs. She further asked: “Do people know what to do if they have been raped? Do they know they don't have to open case?” In this regard, Dr Josias

highlighted the importance of sexual offence survivors being made aware that doctors are not allowed to refuse treatment, even if the patient wishes not to open a criminal case.

Dr Josias further asserted that vulnerable groups, such as LGBTI persons and adult male sexual offence survivors, must be encouraged to seek care and that TCC staff must be empowered to respond sensitively in such cases. Recognising the proliferation of sexual orientation and/or gender identity-related hate crimes and the need for all survivors to feel that care is available to them, Dr Josias illustrated the point with the following example:

*A lot of people will not say they are lesbian – sometimes we have to ask that question – sometimes they will say no. Maybe later they say they are but so what. In the past five months, we’ve had six lesbian “corrective rapes” at our centre. Not one wanted to open a case and not one wanted to be referred. It is important that they feel that we see everybody. The most difficult person to come forward is an adult male who has been raped. In ten years we’ve seen four adult men ... We need to work on that.*

Lastly, Dr Josias called for greater coordination between forensic medicine service providers themselves as well as between sexual offences-related criminal justice and other service providers. Recognising that “things change”, she further called for mandatory updates and workshops for all role-players (including social workers, teachers, doctors, nurses and SAPS members) as well as that provision be made for the employment of more TCC staff.

### 3.5 THE VICTIM IMPACT OF GENDER-BASED VIOLENCE

#### **Victim Impact of Gender-Based Violence and the Deficient Implementation of Sexual Offences Legislation**

##### **Oral Submission**

**Presented by:** Kathleen Dey on behalf of the Rape Crisis Cape Town Trust (RCCTT)

This submission elucidated the gaps in sexual offences-related service provision and their impact on sexual offence survivors. Presenting the findings of recent research conducted by Rape Crisis in conjunction with the Open Democracy Advice Centre, the WLC and the DSD, entitled *The Road to Justice (2014)*, the submission asserted that there are five key gaps, namely:

- (i) People in South Africa lack knowledge about the criminal justice system, how it works and how to access justice.
- (ii) People who report a case lack information about what is happening in their case as well as the ability to track developments across the criminal justice process which involves various role-players, including: the police, health facilities, the prosecuting authority and the court, each with their own systems for tracking their respective involvement in the progress of a case.
- (iii) There is a lack of psychosocial support for survivors within the system which results in survivors being inadequately prepared for trial and seriously impedes the chances of a successful conviction. Furthermore, there is a lack of psycho-social care as well as understanding that “[r]ape is a crime, it’s a medical matter, but it’s also an emotional matter. Long after the trial and medical issues subside, the emotional pain lasts”.
- (iv) There is no central mechanism or body that monitors cases, takes complaints about system failures or deficiencies and holds officials and service providers accountable for non-performance of their duties. The result hereof is that “[i]t is difficult to complain and it is difficult to see the results of a complaint”.
- (v) There exists a lack of coordination, particularly at the highest levels of governance, in relation to the implementation of the various sexual offences-related laws and policies. Government departments fail to plan or budget in harmony with each other and that trickles down to all three levels of government, negatively impacting on the nature and infrastructure of sexual offences-related service provision.

As regards the impact of the deficient implementation of sexual offences-related legislation on survivors, the submission explained the traumatising effect of *not knowing*: not knowing where to access psycho-social, medical, legal or other assistance; not knowing the status of the investigation in respect of one’s own sexual offence; not knowing the steps in the criminal justice process or the likely timeframes associated therewith; not knowing or understanding that even if an alleged perpetrator is arrested, that person may be granted bail and be back on one’s street, not knowing the various sentencing options after a conviction has been secured and, accordingly, not knowing how to prepare oneself, plan or navigate one’s path to justice and recovery.

***The problem of not knowing [about the status of] your case seems to be the worst thing. You are traumatised and you don't know what will happen next. You fixate on that...***

This, it was submitted, negatively impacts on survivors' willingness to report sexual offences and results in the creation of a further barrier to reporting. Ensuring that survivors have the right support is vital as "[k]nowing someone is there for you, that is a very important thing for minimising secondary trauma". The submission further recognised that it is often volunteers or lay counsellors working in the community that root sexual offences-related service provision role-players, such as healthcare workers, the SAPS and the prosecuting authority, "in a living community of people" such that "instead of just a police station you have a victim friendly place" where staff can provide survivors with information and comfort in their own language.

In view of the above, the submission recommended:

- (i) that each link in the sexual offences-related service chain be linked to one another;
- (ii) the development of a unified tracking system that ensures that survivors are updated and empowered with information regarding the progress of their case through, for example, text messages that are sent to the survivor as developments are recorded on the system or a *Road to Justice Card* (which has a unique number and is used to track all the health, criminal justice and psycho-social interventions and developments that occur);
- (iii) the creation of an ombudsman for victims of crime, whose duty it will be to hold all service providers accountable and review the delivery of services to survivors;
- (iv) the development and adequate resourcing of psycho-social support systems for survivors, which include community-based volunteers as court supporters, supervised by trained social workers;
- (v) the development of coordinated services for survivors through strong inter-departmental and inter-sectoral collaboration at all levels; and
- (vi) a review the Life Orientation curriculum in schools and the development of an overarching communication strategy to educate members of the public about the criminal justice system and their rights.

The submission concluded with a wish for what should happen in the service chain:

*[W]herever a rape survivor reports, the other [service links in the chain] will be told. If the person has specialised needs (elderly, disability) then those people would be asked to come in. The system should be alerted to provide the services. The survivor should not have to request that. The more the complaints go on record, the more evidence there is that change needs to happen. That is how we make change*

## **Sexual Offence Survivors and Secondary Victimization**

### **Written Submission**

**Submitted by:** Family and Marriage Society of South Africa (FAMSA) Karoo

FAMSA Karoo is an organisation working to improve family environments and aims to empower people, especially survivors of abuse. In its submission, FAMSA argued that the judicial system is failing the family as sexual offences-related laws and policies are not meaningfully responding to sexual assault survivors' needs. FAMSA is particularly concerned with the quality of service provision offered by first responders, such as police officers and medical personnel. FAMSA suggests that often doctors are unavailable to treat survivors following an assault and, thus, survivors are forced to wait several hours for assistance. Additionally, FAMSA stressed that trauma rooms in police stations are not always accessible for survivors and that FCS officers are not available when needed.

Of major concern is the unprofessional and damaging treatment of survivors by police officers, often leading to secondary victimisation. According to FAMSA's submission, one woman was raped while drunk and went to the police station immediately after the event. However, upon realising that she was drunk, a police officer told her to go home and come back the next morning to take her statement. After leaving the police station, she washed and changed her clothes such that when she revisited the police station the following day, evidence could no longer be collected. The complainant's case was eventually withdrawn due to the lack of evidence.

In addition to police mismanagement, FAMSA avers that statement-taking and the quality of statements written by the SAPS on behalf of survivors is often poor. Furthermore, it was submitted that survivors should not be forced by the SAPS



to provide a statement while extremely traumatised. To address this, FAMSA recommended that statement taking could be more efficient and thorough and that Victim Friendly Rooms be better equipped to handle traumatised survivors.

FAMSA also recommended that civil society be more focused on holding perpetrators accountable for their actions, asserting further that we all become accomplices if we fail to do so. FAMSA also suggested that civil society should *help victims become survivors* and demanded that the Government be held accountable for the implementation of laws and policies and lead by example. Fundamentally, FAMSA argues that civil society and government departments need to change their mind-set about sexual offences-related services in order to work jointly to reduce the burden on survivors.

## 3.6 MARGINALISED VOICES AND THE IMPLEMENTATION OF SEXUAL OFFENCES LEGISLATION

### The Implementation of Sexual Offences Legislation from the Perspective of People with Intellectual Disabilities

#### Oral submission

**Presented By:** Carol Bosch on behalf of Cape Mental Health (CMH): Sexual Assault Victim Empowerment Programme (SAVE)

Cape Mental Health (“CMH”) is a non-governmental organisation working to ensure that the rights of people with mental disabilities are fulfilled, while the SAVE Programme specifically aims to ensure access to justice for those who have been victims of sexual abuse. Overall, CMH has been pleased with the implementation of the 2007 SOA. It has allowed CMH’s clients to be taken more seriously given the scope of cases now recognised and the availability of expert testimony from psychologists, which, in turn, has served to educate FCS officers, prosecutors and magistrates regarding the difficulties experienced by people with intellectual disabilities (PWIDs) in seeking access to justice and other sexual offences-related services. It has also led to closer monitoring of case withdrawals in cases that have involved PWIDs. The developments evidenced in the 2007 SOA and its implementation have resulted in an increase in convictions in cases of CMH clients, including for newly recognised offences such as the failure to report suspected abuse and grooming.

Regarding implementation, the CMH suggested that there needs to be greater awareness of the 2007 SOA within communities across South Africa in order to verify and strengthen peoples’ familiarity therewith and hopefully reduce stigma attached to disability. Additionally, key role-players, such as prosecutors and support workers, must be skilled to identify sexual offences and provide better services to survivors, and especially to PWIDs. Moreover, CMH recommends that there should be more funding allocated in all provinces so that people with disabilities are able to access the services they are entitled to. Moreover, they argue that PWIDs should be availed of the protective measures provided for in the 2007 SOA when testifying in criminal proceedings, such as the use of an intermediary, but that such protective measures are often denied on the basis that they are too old.

The submission advised further that expert reports are required in criminal proceedings in which the sexual offence survivor is a PWID but that no funding exists to cover the costs associated therewith. CMF also asserted that it is crucial to make sure that perpetrators of sexual assault should never be able to work with children or PWIDs. Furthermore, it was submitted that public perceptions about the sexuality of PWIDs need to be challenged, and moreover that PWIDs need to be educated regarding their sexuality in order to be able to discern what is (in)appropriate sexual behaviour.

CMH argued that civil society has a role to play in educating communities about services that are available as well as holding government departments responsible for service delivery by monitoring and providing feedback. In order to improve service delivery for survivors, CMH suggests that regular feedback meetings and networking opportunities involving civil society, government and various service providers should be created.

## **The Deficient Implementation of Sexual Offences Legislation in Respect of Men and Male Prisoner Sexual Assault Survivors**

### **Written and Oral Submission**

**Presented By:** Dr Marlise Richter on behalf of Sonke Gender Justice (Sonke)

In this submission Sonke argued that sexual offences-related laws, policies and services have not responded meaningfully to sexual assault survivors' needs in society in general and within detention centres more specifically. Sonke reports that the sexual assault of inmates in private and Government-owned detention centres is widespread and systemic. Moreover, Sonke points to the material and environmental conditions in correctional facilities, such as overcrowding, staffing levels and lock-up times, which increase the risk of sexual assault and exploitation of detainees.

In a series of short documentaries focusing on male prisoners' experiences of rape, it was reported that many prison staff lack basic human empathy for survivors. In the documentary series *Sexual Violence in Prisons*, Vincent, the subject of one of the documentaries, told a healthcare worker at a prison that he was sexually violated multiple times and sought treatment. However, the healthcare worker told him to "go wash your stinking body" and denied him medical treatment. He was subsequently blamed for his sexual assault by a prison priest and refused assistance by a prison social worker.

Despite the high numbers of incarcerated persons who have experienced sexual violence, the Department of Correctional Services ("DCS") has a limited number of initiatives in place to prevent sexual assault. Moreover, Sonke is concerned that despite the Correctional Matters Amendment Act of 2011, which requires newly sentenced inmates to be screened for vulnerability to sexual abuse, there has been no screening tool developed by the DCS. Additionally, Sonke is concerned that correctional facility staff lack the sensitivity to assist sexual assault survivors in the care that is necessary for their recovery.

Sonke claimed that the DCS has not implemented the *Policy Framework to Address the Sexual Abuse of Inmates* ("the Policy Framework"). The Policy Framework has established a zero tolerance standard on sexual abuse within correctional facilities and requires a mandatory inmate orientation and education on the standard developed therein. Additionally, the Policy Framework requires training of all staff to prevent, detect and respond to cases of sexual abuse and to protect inmates from sexual assault.

Sonke recommended that DCS must implement the Policy Framework as a matter of urgency and devise a screening tool for vulnerable inmates, sensitise correctional facility staff about its contents and monitor and report about the progress of implementation. Furthermore, Sonke argued that it is crucial to collect disaggregated data on sexual violence across all public and private correctional facilities. Finally, it was strongly recommended that a standard screening tool and complaint forms for sexual abuse should be developed and utilised across all facilities. The organisation finally added that civil society must protest the lack of political will in relation to responding meaningfully to the implementation of sexual violence related legislation. The submission explained that insufficient funding resulting from the lack of political impetus for the implementation of the 2007 SOA has had prodigious implications on the ability of service providers to facilitate access to justice for survivors of violent offences in general, and those committed against male prisoners in particular.

## **Sex Workers' Experiences and Sex Workers' Ability to Access Services and Justice**

### **Written Submission**

**Submitted by:** Cherith Sanger and Ishtar Lakhani, Sex Workers Education Advocacy Taskforce (SWEAT) and Sisonke

**Presented By:** Ishtar Lakhani and Ayanda Denge on behalf of SWEAT and Sisonke

This submission asserts that sex workers are exceptionally vulnerable to violence in South Africa and that their rights are systematically violated. In 2014, SWEAT along with the WLC compiled a summary of the human rights violations committed against sex workers in South Africa. SWEAT found that 697 human rights violations were reported to their hotline and to the WLC. Of the 697 human rights violations reported, there were 25 incidents of rape, 39 murders, 150 assaults by sex workers' clients or partners, 65 assaults by the SAPS, five incidents of theft by the SAPS, 23 incidents of harassment by clients or partners and 329 incidents of harassment by the SAPS. The extremely high numbers of violence and harassment committed against sex workers has not occurred in a social vacuum. Rather, SWEAT and Sisonke argued that the criminal status of sex work, entrenched by the 2007 SOA, increases their vulnerability to violence and drives sex work further into the periphery of society. This in turn, has led to stigma, unfair discrimination, intrusive policing, violence, poor health

and exploitation. The submission described the various ways in which sex workers are trying to challenge the continued violation of their constitutional rights. These include the right to be informed promptly of the reason for being arrested or detained; to consult with a legal practitioner; to challenge the lawfulness of detention; the right to communicate with or be visited by a relative or doctor during detention and to challenge the conditions of detention that are contrary to the right to human dignity.

According to the submission, the provisions of the 2007 SOA that criminalise the buying and selling of sex are incredibly difficult to implement due to enforcement requiring intrusive and violent policing as well as entrapment. Furthermore, despite the estimated R14 million spent on policing sex work, the reality is that sex workers are seldom prosecuted. It is far more likely that sex workers are arrested (often by illegal means), harassed and later released.

SWEAT reported that, given the difficulty of collecting evidence of sex work, it is common practice for police to regard condom possession as a confirmation of sex work. This practice hinders sex workers' rights to health and access to healthcare services. Given that police routinely use condoms as evidence, many sex workers are afraid to carry condoms with them for fear of arrest. In a study conducted by SWEAT, nearly 50 percent of sex workers interviewed indicated that they did not carry condoms at times for fear that it would lead to harassment or arrest by police. One sex worker lamented:

*We use condoms to protect ourselves from HIV/AIDS, but they don't allow us to carry them, so how can we protect ourselves?*

SWEAT and Sisonke argued that the criminalisation of sex work leads to the stigmatisation of sex workers, which invariably perpetuates discriminatory attitudes and behaviours by healthcare workers. Sex workers report that they generally receive poor healthcare services from public healthcare facilities and are routinely denied condoms and other forms of contraception that are available to the public. This is particularly acute for transgender sex workers who have to 'prove' their identity to healthcare workers and also with regard to detention by police where transgender women sex workers are detained in male cells. The submission explained that this poor treatment by healthcare professionals coupled with poor healthcare services for sex workers in general makes them reluctant to access these services. This, in turn, makes sex workers even more susceptible to poor healthcare outcomes such as HIV/AIDS and sexually transmitted infections.

The submission concluded by recommending that sex work should not constitute a sexual offence and therefore the provisions of the 2007 SOA that criminalises sex work should be repealed. This would allow sex workers to realise their human rights, as enshrined in the *South African Bill of Rights*. SWEAT and Sisonke also suggested that applying existing labour laws to developing occupational health and safety laws for sex work will enhance protection for sex workers regarding the health risks involved in their profession. The current legislation criminalises labour contracts for sex workers, thus denying them the prohibition of coercion and protection to refuse sex. Finally, it was recommended that a national directive should eliminate the application of by-laws used to arrest and penalise adult sex workers. SWEAT and Sisonke argued that the decriminalisation of sex work can reduce sex workers' vulnerability to violence and eliminate the stigma that renders them susceptible to poor service delivery.

## **LGBTI Blind Spots and the Implementation of the Sexual Offences Act**

### **Written Submission**

**Submitted by:** The Triangle Project and Gender Dynamix

**Presented by:** Sharon Cox

Despite legal reforms and South Africa's constitutional protections concerning LGBTI persons, the submission asserted that there have been increased human rights abuses, including sexual offences, against individuals on the basis of their gender and/or sexual orientation. The Triangle Project and Gender Dynamix work to offer services to LGBTI survivors of sexual violence, to engage LGBTI communities in capacity-building and to advocate for the application of the legislative framework at all levels of service provision.

The submission reports that the criminal justice and public health systems have been extraordinarily slow in responding to hate-based sexual crimes against LGBTI individuals. Additionally, victim empowerment programs have largely been inadequate in responding to the lived experiences of LGBTI people. As noted by the literature, black lesbians and bisexual women have been particularly vulnerable targets. They are subjected to high levels of sexual violence across South Africa

as they are “located within several different and intersecting forms of discrimination and oppression linked to their gender, race and economic status”.

The report went on to specifically highlight that under-reporting is a particularly significant issue for LGBTI survivors of sexual violence. Yet, there is very little research which seeks to understand the structural and social barriers that discourage LGBTI persons from reporting violence. This is likely due to a variety of reasons as this group lies at the intersection of different forces of oppression that are dominant in South African society. The report quoted findings from a previous study conducted by the Triangle Project in 2006<sup>196</sup> in the Western Cape with survivors of homophobic hate crimes. Of those studied, 66 percent of the women said that they did not report their attack due to fear of not being taken seriously and a further 25 percent feared that their sexual identity would be exposed as a result of reporting the crime. These problematic responses by service providers, in turn, cause secondary victimisation, which can be intensely traumatising for survivors and have negative long-term health effects. Therefore, the successful implementation of the 2007 SOA is essential for LGBTI persons, as they are the most likely survivors to experience secondary victimisation from service providers that have not been trained on LGBTI issues or sensitised to the specific needs and circumstances of LGBTI survivors of sexual offences.

The submission also explained that in relation to services for marginalised groups, both the criminal justice and healthcare systems fall short in providing care for male survivors of rape, which has serious implications for interventions. Whilst the submission regards rape as a largely feminised epidemic, it asserts that male rape survivors face severe stigma and shame. Consequently, they have enormous difficulty in accessing services such as PEP, which is typically designed for female survivors. The report goes on to explain that this gap in implementation results in men and boys being subject to secondary victimisation, particularly those male BGTI persons who experience sexual assault at very high levels in South African townships and in rural areas.

This secondary victimisation affects the way in which sexual offences against LGBTI persons are recorded and dealt with by the justice system. When the survivor is afraid to disclose their sexual or gender identity to the SAPS when reporting the crime, this omission causes the offence to be categorised as a sexual offence and the hate crime element is lost. It is important to the justice system and the LGBTI community that hate crimes associated with sexual offences against LGBTI persons are recorded and become part of the broader statistics on sexual offences.

The submission argued that the current laws and policies surrounding sexual offences are ineffective as a result of being poorly implemented at the lowest levels and non-standardisation across service providers. For SGBV survivors and LGBTI survivors in particular, the inefficiency, lack of sensitivity, poor capacity and often-stereotypical assumptions of service providers leads to a process that can be both traumatising and embarrassing. This is particularly acute for transgender persons who often have to prove their identity and ‘out themselves’ when interacting with the justice or public health systems following an offence. Moreover, a lack of specificity regarding who provides what services to whom and when, paired with the absence of accountability measures such as monitoring and evaluation mechanisms further perpetuates and promotes poor service delivery.

The submission further recommended that the primary implementing agents of sexual offences-related legislation and frontline healthcare staff receive training in respect of the implementation thereof and how it applies specifically to LGBTI persons. This must be ongoing and must include impact assessments. The role of civil society was also emphasised in building networks and alliances for the inclusion of vulnerable groups in service provision and challenging perceptions about SGBV in general and particularly that perpetrated against LGBTI persons.

Moreover, it was suggested that the implementation of the 2007 SOA should take into consideration the unique challenges faced by younger survivors and that an approach that is inclusive of family structures and sensitive to tensions around secrecy and shame be developed. Finally, given the fact that the majority of sexual assaults are committed by individuals known to the survivor, which increases the likelihood that the survivor will come into contact with the perpetrator after the assault, it was submitted that this should be considered when determining an accused’s eligibility for bail.

---

<sup>196</sup> No bibliography provided.

## **The Experiences of Women Farm Workers in Seeking to Access Sexual Offences-Related Services and Justice**

### **Oral Submission**

**Presented By:** Sharon Messina and Health Team Members of the Women on Farms Project (WFP)

The WFP's oral submission was primarily anecdotal and focused on the testimonies of two survivors who work as Health Team members within the organisation. Their stories reflect the "length women will go to in order to support other women", even when they have been dealing with SGBV themselves. Sharon Messina of WFP suggests that farm women are the most marginalised group of women as they are abused economically, discriminated against in relation to relevant services and geographically isolated in rural areas that limit their access to police stations and healthcare facilities. Furthermore, they are often dependant on their abusive male partners, family members or farm owners for housing and consequently risk unemployment as well as homelessness should they report SGBV. Given their economic status, women farm workers are also generally unable to afford to pay someone to take them to a police station after an incident of SGBV.

After relating aspects of her personal experience in seeking to access healthcare and justice-related services in respect of SGBV, one of the presenters explained to Summit participants that in addition to being abused by her husband, she felt abused by police officers as they did not allow her to lay charges, nor was her case handled effectively once a charge had been laid.

A second presenter and member of the WFP Health Team explained that although another claimant had called an ambulance and the police after being abused by the father of her child, they had failed to come or offer any assistance. The following day, the complainant had managed to take a taxi to the police in order to seek assistance. She relayed how the officers doubted that she had been abused and that a female officer requested that she undress in order to prove that she had physical evidence of abuse. This illustrated the secondary victimisation that she suffered at the hands of the SAPS that day.

This submission highlighted not only the difficulties encountered by women on farms in seeking access to SGBV-related healthcare and justice services but also the lack of accountability on the part of

- (i) their employers for the SGBV taking place on their farms and the enhanced vulnerability created by farm housing being allocated to permanent farm workers (who are generally male), leaving seasonal farm workers (who are generally the female partners of the permanent male farm workers) reliant on abusive partners/family members;
- (ii) the SAPS;
- (iii) healthcare workers for their treatment of these survivors; and
- (iv) the DSD for their failure to provide adequate services in rural areas.

It further highlighted the importance of civil society organisations, here the WFP, who provide psycho-social and other support services to particularly vulnerable and marginalised categories of SGBV survivors for whom access to justice and other sexual offences-related services remain elusive.

## **Refugees, Asylum Seekers and Undocumented (Im)migrants' Experiences of Accessing Sexual Offence-Related Services and Justice**

### **Written submission**

**Presented by:** Tendai Bhiza on behalf of People Against Suffering, Oppression and Poverty ("PASSOP")

*We refugees. We are also human beings, like anyone else.  
If you do not accept us, we have no family. We want to become as a family with you people.*

PASSOP argued that refugees, asylum seekers and (un)documented (im)migrants are one of the most vulnerable groups in South Africa. They have often been exposed to hardship, exploitation and violence in their home countries as well as in South Africa. Moreover, the rise in xenophobic attacks and xenophobic sentiments towards migrants and asylum seekers in South Africa in recent years has meant that they are treated as second-class citizens, denied access to justice and refused their basic rights.

The submission explained that following their entry into South Africa, refugees, asylum seekers and (un)documented (im)migrants face a variety of structural obstacles, systematic exploitation and increased exposure to violence. They are



particularly vulnerable as they often lack social support systems and family as well as justice system protection, which renders women particularly vulnerable to SGBV. Following SGBV, female refugees, asylum seekers and undocumented (im)migrants typically do not take their cases to the SAPS as they do not have 'papers' and fear being arrested and/or deported. The submission asserted that even when women report to police stations, they are often turned away on account of their lack of identification documents or xenophobic attitudes. This has had dangerous consequences for some of PASSOP's clients such as a Malawian woman who experienced domestic and sexual violence at the hands of her partner, but was unable to obtain a protection order. The reason for this was understood to be related to the woman in question not having identification documents.

A further obstacle to accessing justice and sexual offences-related healthcare services was language barriers. The requirement that registered interpreters be engaged to provide translation services results in survivors being traumatised further as there are often none available. PASSOP explained that even where there are people available to translate, such translations are not considered 'official' unless those translating are registered interpreters. In addition, those who are available may not be someone that the survivor feels comfortable with acting as her translator. This, in turn, leads to survivors not being able to tell their story in their own language and possibly being turned away from justice and/or healthcare service providers and/or the loss of vital information and/or evidence.

Whilst refusal of services have been the norm, PASSOP reported that assistance from police officers and healthcare workers largely depends on whether or not they have a positive and accepting attitude towards African (im)migrants, refugees and asylum seekers, suggesting that the personal attitudes of service providers remain a huge impediment to accessing services following SGBV. It has been PASSOP's experience that some police officers are xenophobic and consequently, do not feel responsible for providing assistance to (im)migrants and asylum seekers, even when PASSOP's clients have shown their formal papers. Furthermore, it was submitted that survivors of SGBV who are (im)migrants, like other survivors of SGBV, often feel uncomfortable reporting to mostly male legal professionals, police officers and healthcare providers and prefer speaking to women about their experiences.

According to PASSOP, policies and legislation surrounding sexual offences do not suit the needs of refugees, asylum seekers and (un)documented (im)migrants. Accordingly, PASSOP recommended that civil society organisations form groups and a task force to affect law or policy reforms in favour of those in need of service provision and protection. Moreover, PASSOP asserted that the implementation of sexual offences legislation can be improved by effectively training counsellors, social workers and police officers to engage more sensitively with refugees, asylum seekers and (un)documented (im)migrant SGBV survivors. Furthermore, the relationship between civil society, Government and both justice and healthcare service providers must improve before better services can be offered. Finally, it was recommended that there ought to be more safe houses, counselling and support for survivors with particular emphasis on vulnerable groups, particularly asylum seekers, refugees and (un)documented (im)migrants. In this regard, PASSOP explained that the support of communities themselves is paramount to the processes of changing perceptions of foreigners in South Africa and facilitating better integration between vulnerable groups and the broader South African population.

## 3.7 THE MEDIA AND GENDER-BASED VIOLENCE REPORTING

### The Media and Gender-Based Violence Reporting

#### Panel Discussion

**Panellists:** Rebecca Davis (Journalist, Daily Maverick) & Janine Cameron (Assignments Editor, ETV News)

The media panel discussion elucidated for Summit participants how decisions regarding what to report and how to report it are made. Recognising the reality that news must be entertaining, interesting and engaging for the public, the panellists admitted that this means that stories regarding SGBV are under represented in the media.

As part of an open discussion, Summit participants raised with the panellists the importance of language and that the kind of sensationalist reporting that accompanies many of the stories relating to SGBV influences and informs perceptions of sexual offence survivors negatively and, in some cases, results in secondary traumatisation. Furthermore, Summit participants expressed their own experiences of being misrepresented in the media and felt that, in addition to the insensitive use of language, sexual offence survivors were further victimised by inaccurate reporting. In this regard, an example of the media

referring to 'girls falling pregnant' when, in fact, they had been raped was used to illustrate the point, as was the use of the word 'sodomised' in respect of cases of male rape.

The panellists shared openly their own challenges regarding how to report in a manner that is nuanced, sensitive and protective of survivors whilst still 'telling the story' in a way that captures public imagination and attention. Another admission related to the failure of the media to follow all stories through to their end, with the result that the general public does not get a real sense of the true extent of the systemic and other barriers to accessing justice for SGBV or the true length of that road.

To conclude their submission, the panellists specifically opened the door to bridging divides and improving the sensitivity with which they report on SGBV by extending an open invitation for collaboration with civil society and the public in general in respect of the referral and sourcing of SGBV-related stories as well as for training and sensitisation workshops for journalists, which they acknowledged are both absent and much needed.

### 3.8 GOVERNMENT PERSPECTIVES REGARDING SERVICE PROVISION AND ACCESS TO JUSTICE FOR SEXUAL OFFENCES SURVIVORS AS WELL AS WORKING WITH CIVIL SOCIETY TO ENSURE MEANINGFUL IMPLEMENTATION OF SEXUAL OFFENCES LEGISLATION

#### PANEL DISCUSSION

**Panellists:** Ms. Samaai (Director: Legal Services, Western Cape DOJ&CD); Dr Chunga (DOH); and A representative from the Independent Police Investigative Directorate (IPID)

Government representatives who participated in the panel discussion around which this session was framed, expressed a desire to move beyond the critical perspective to the more productive question of "how we will make it work", stating further that there are many government officials who want to work with civil society to make this happen.

Dr Chunga from the DOH addressed the positive results brought by the implementation of the TCCs, which were first piloted in 2002 during a time when conviction rates were high. He expressed dismay at the fragmentation of forensic medicine services due to the small number of trained doctors in this field and the resultant standards of service that differed greatly from one healthcare facility to another particularly between urban and rural areas. In response to Summit participants' questions relating to the lack of staff in healthcare facilities, Dr Chunga mentioned that the DOH is trying to implement a nurse-driven approach in rural areas, where training programs are being developed with the aim of enhancing service provision.

Ms Samaai of the DOJ&CD talked of the essential engagement between government, civil society and people on the ground. She stated that several mechanisms are in place to bridge the divide between these stakeholders, such as the various clusters and forums that meet regularly both nationally and provincially. She emphasised that the aim of the DOJ&CD is to make every person in South Africa feel and be safe, yet, there seems to be a missing link between the policies and the forums and other activities. She urged Summit participants, organisations and community members to voice what is "missing" in ensuring service provision to survivors of SGBV. Moreover, Ms Samaai reported how forums, in particular the Gender Justice Forum, had played an important role in the MATTSO Committee and their evaluation of and recommendations regarding the reinstatement of SOCs.

A summit participant raised the point that the clusters and forums may exist and run well, but there is lack of co-ordination between them, especially regarding which forums civil society has access to and is invited to participate in. Ms Samaai replied that one thing that civil society can contribute to is dispersing more information and encouraging communication within and between the different role-players in order to ensure that management is successful. Ms Samaai further asserted that management needs to monitor complaints so as to be informed when people are waiting too long at the courts or are not receiving proper service, stating that if Government does not know the issues, Government cannot address them.

The point was also raised by Summit participants that there must be programs to educate civil society regarding the DOJ&CD and other Government structures. If management needs more feedback from community members who experience

negligence in courts, police stations and hospitals, then civil society requires more information regarding where to make such reports. Ms Samaai answered by detailing the *imbizo* projects aimed at educating communities about the criminal justice system in areas with a high prevalence of violent crimes. Furthermore, a representative from IPID advised that their main mandate is to investigate complaints against police officers and monitor their performance. Additionally, IPID may also open cases for community members that do not feel safe reporting to the SAPS. Summit participants were then specifically advised that IPID works in collaboration with higher levels of government and the NPA in order to report offences committed by SAPS members and invited Summit participants to reach out to them in order to lodge a complaint, alternatively for outreach activities in communities to educate them about their rights and available services.

This session concluded with participants being invited by the panellists to share aspects that should be prioritised in the provision of services for sexual offence survivors. Suggestions included: (i) increased accountability, (ii) better follow-up through the whole process of a case by the SAPS and the DOJ&CD, (iii) a sense of urgency in the handling and resolution of sexual offences cases, (iv) the implementation of everything discussed at the Summit; and (v) sexual offences legislation and implementation policies that talk to the real issues on the ground.

### **3.9 PERSISTENT THEMES AND STRATEGIES FOR ADDRESSING ENHANCED SERVICE DELIVERY, ACCESS TO JUSTICE, STATE ACCOUNTABILITY AND THE IMPROVED IMPLEMENTATION OF SEXUAL OFFENCES-RELATED LEGISLATION**

Persistent themes emerge from the submissions and open discussions held during the three days of Summit proceedings.

These themes include:

- (i) Deficient implementation of sexual offences-related legislation and policies coupled with a perceived lack of political will;
- (ii) The need for a holistic and co-ordinated approach to 'victim support' and service provision, which includes appropriate inter-departmental budgeting and resource allocation;
- (iii) The needs of vulnerable groups;
- (iv) The lack of community-based consultation and needs assessments; and
- (v) The need for accountability in relation to access to justice and other service provision in respect of SGBV.

As the submissions make clear, there is a need for a holistic and co-ordinated approach to consistent, sustainable and needs-responsive support and service provision. This, in turn, requires inter-departmental as well as inter-sectoral co-operation and appropriate budgeting as well as resource allocation and expenditure, augmented by Government and other stakeholders being held accountable for their actions and, more so, their inactions. Moreover, the provision of sexual offences-related services as well as access to justice for members of vulnerable or marginalised groups permeates every submission in one way or another. Summit submissions further demonstrated that oversight is failing across every government department and at every level and that this is experienced as evidencing a lack of political will to implement sexual offences-related laws and policies meaningfully. The need for a continuance of care and the persistent as well as consistent training and sensitisation of all relevant service provision role-players and oversight bodies regarding the provisions of the various sexual offences-related laws and policies, their duties in terms thereof, the needs of SGBV survivors and causes of secondary traumatisation was raised repeatedly. Linked to this is the need for greater community-based consultation(s), particularly in peri-urban and rural areas, so that those tasked with implementation can come to understand the nuanced needs and barriers to accessing both justice and other relevant services experienced by different communities, and the individuals who comprise them, as well as how such varied needs are framed and influenced by their particular socio-economic and geo-political circumstances.

In the section that follows, national coordinating structures for addressing SGBV in South Africa will be discussed, followed by the questions and recommendations put forward by Summit participants for enhanced access to justice and service delivery in respect of SGBV survivors.

## CHAPTER 4

# THE ILLUSION OF CONTROL: NATIONAL CO-ORDINATING STRUCTURES AND STRATEGIES ADDRESSING SEXUAL AND GENDER-BASED VIOLENCE IN SOUTH AFRICA

By Lisa Vetten

Wits Institute for Social and Economic Research (“WiSER”)

## INTRODUCTION

In March 2000 Cabinet instructed the Minister of Health and the Minister of Safety and Security to develop a strategy to reduce rape. This decision led to the establishment of the democratic state’s first national coordinating structure tasked with addressing the problem of violence against women: the Inter-departmental Management Team (“IDMT”).<sup>197</sup> Spearheaded by the SOCA Unit of the NPA, the IDMT lasted until 2011 when it was replaced by the National Council on Gender-based Violence (‘the Council’), itself destined to be superseded in 2014 by the Inter-Ministerial Committee on Violence Against Women and Children.

Each of these structures, in different ways, has sought to bring the planning, development, management and monitoring of all programmes and strategies addressing violence towards women under their control. To what extent have they succeeded in doing so? And are such national structures effective in combatting violence against women? These questions go to the heart of questions around how the Summit’s various recommendations are best acted upon. Are proposals best consolidated within one single, overarching plan and taken forward through such centralised structures, as was suggested in some submissions? Can such centralising bodies serve as a vehicle for the development and maintenance of working relationships, both between the various structures of the State, as well as between these structures and non-governmental organisations?

This short paper explores these questions by reviewing the history and workings of these three national coordinating bodies, as well as the costs associated with each (where

these can be established). While the content of the various plans produced by these bodies is obviously relevant to their functioning, this review focuses on the processes, interactions and actors giving life to these bodies, so highlighting the factors affecting their ability to act. This discussion lays the basis for the various recommendations concluding the paper.

## THE INTER-DEPARTMENTAL MANAGEMENT TEAM AND THE 365 DAY NATIONAL ACTION PLAN

The IDMT comprised the SOCA Unit, along with the DSD, the DOJ&CD, the SAPS and the DOH. Following its establishment the IDMT initiated a series of interviews with government officials and an analysis of reported rape cases, using the data generated to compile a set of recommendations to government in 2002 around addressing rape.<sup>198</sup> Which of these recommendations were adopted, as well as what actions were undertaken, remains unknown, as the final anti-rape strategy was never made public. More open to scrutiny is the IDMT’s subsequent initiative: the 365 Day National Action Plan to End Gender Violence.

In May 2006 the ‘365 Days of Action to End Gender Violence’ conference was convened by the SOCA Unit, the United Nations Children’s Fund (UNICEF) and Gender Links. The conference resulted in the Kopanong Declaration, as well as the ‘365 Day National Action Plan to End Gender Violence’ (NAP). Launched on 8 March 2007, the NAP made South Africa one of the first countries to heed the United Nations Secretary-General’s 2006 call

<sup>197</sup> *Interdepartmental Management Team. (2002). Towards Developing an Anti-Rape Strategy: Report of the Interdepartmental Management Team. Prepared by the National Directorate of Public Prosecutions (NDPP), the SAPS, the Department of Health, the Department of Social Development and Monitor Group.*

<sup>198</sup> *ibid*

for countries to develop multi-sectoral plans addressing violence against women.<sup>199</sup>

The NAP was centralising and directive in ambition, envisaging that all “South African government departments and civil society organisations will as stakeholders use the National Action Plan as the basis to develop their own strategic and operational plans to ensure unity of purpose and cohesion of efforts to achieve maximum impact in the process of eradicating this scourge.”<sup>200</sup> The plan itself consisted of 37 priority actions, as well as a comprehensive multi-sector action plan of 91 actions distributed across the areas of prevention, response, support and coordination and communication. This excess of activities alone would have made the NAP difficult to implement without the additional factors that came to complicate its implementation still further.

The NAP was reviewed in 2012 and 2013 by the Commission for Gender Equality (“CGE”)<sup>201</sup>, with another, separate review undertaken by independent consultants in 2014.<sup>202</sup> Neither set of reviewers found the NAP to have succeeded in its aims. Although a Programme Unit was established in the SOCA Unit’s offices to co-ordinate and take forward the NAP subsequent to the Kopanong Conference, the IDMT was itself under-funded and unable to provide strategic direction to departments around the plan.<sup>203</sup> According to the CGE review, the IDMT had not only excluded organisations from involvement in the NAP but had also proved unable to co-ordinate government departments’ implementation of the plan. This was likely due to the lack of political authority accorded the IDMT which was unsuccessful in persuading departments to integrate the NAP into their annual plans and budgets. This did not mean that government departments failed to implement programmes, policies, laws and actions around violence against women; they simply did not consult or involve the IDMT in their activities.<sup>204</sup> Indeed, many of the activities completed by departments were already in

progress at the time of the NAP’s formulation and would have been accomplished anyway.<sup>205</sup>

A five year plan, the NAP officially came to an end in 2011 but limped on until 2013 when it was put on hold pending review. As for the IDMT, this had ceased functioning two years earlier in 2011 when the Council was established.<sup>206</sup> Its hasty and uncoordinated dissolution left little for the Council to inherit however. The absence of a smooth hand-over meant that little information about current programmes, projects, plans and immediate priorities was shared between the IDMT and the newly established Council, leaving the Council without clear direction around how to take the NAP forward.<sup>207</sup>

## THE NATIONAL COUNCIL ON GENDER-BASED VIOLENCE AND THE NATIONAL STRATEGIC PLAN

The impetus behind the establishment of the National Council on Gender-Based Violence was a recommendation to South Africa to review its multi-sectoral action plan to combat violence against women and girls. This call was made in January 2011 by the UN Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) Committee, which also recommended that the country expeditiously adopt comprehensive measures to address such violence in accordance with General Recommendation No. 19.<sup>208</sup> Cabinet approved the recommendation to establish the Council in December 2011 and it was subsequently inaugurated on 10 December 2012, with Deputy President Kgalema Motlanthe appointed its chair.<sup>209</sup>

The Council’s objectives in relation to gender-based violence were defined as providing strategic guidance and political leadership; strengthening the coherence of current

<sup>199</sup> National Action Plan. (2007). 365 Day National Action Plan to End Gender Violence. [Online]. Available at: [http://www.justice.gov.za/VC/docs/campaigns/2007\\_365actionplan.pdf](http://www.justice.gov.za/VC/docs/campaigns/2007_365actionplan.pdf) [Accessed 14 November 2015].

<sup>200</sup> *ibid* at P5.

<sup>201</sup> Commission for Gender Equality. (2013). *Out of Mind or Out of Sight? Report prepared by the Commission for Gender Equality in possession of the author.*

<sup>202</sup> Nduna M and Nene N. (2014). *Review and Analysis of South Africa’s Implementation of 365 Days National Action Plan.* Department of Psychology, University of the Witwatersrand and Ifalezwe Learning Express.

<sup>203</sup> Commission for Gender Equality. (2013). *Out of Mind or Out of Sight? Report prepared by the Commission for Gender Equality in possession of the author.*

<sup>204</sup> *ibid*

<sup>205</sup> Nduna M and Nene N. (2014). *Review and Analysis of South Africa’s Implementation of 365 Days National Action Plan.* Department of Psychology, University of the Witwatersrand and Ifalezwe Learning Express.

<sup>206</sup> Commission for Gender Equality. (2013). *Expectations Unfulfilled? Assessing the Effectiveness of the National Council on Gender-based Violence.* [Online]. Available at: <https://drive.google.com/file/d/0B43RY8h-VdugGN2x1MTdMOE9wdEE/view> [Accessed 14 November 2015].

<sup>207</sup> *ibid*

<sup>208</sup> UNFPA. (2013). *National Strategic Plan to End Gender Based Violence (2014-2018) Terms of Reference* [Online]. Available at: <http://countryoffice.unfpa.org/southafrica/drive/FinalTORNSPonGBV09July2013.pdf> [Accessed 14 November 2015]

<sup>209</sup> Commission for Gender Equality. (2013). *Expectations Unfulfilled? Assessing the Effectiveness of the National Council on Gender-based Violence.* [Online]. Available at: <https://drive.google.com/file/d/0B43RY8h-VdugGN2x1MTdMOE9wdEE/view> [Accessed 14 November 2015]



strategies; adopting multi-sectoral approaches; securing the resources required to enable the Council to meet its mandate; and monitoring and evaluating the implementation of all interventions.<sup>210</sup> The Council took inspiration from the South African National AIDS Council in designing its structure, which came to comprise a mix of government departments and agencies (including at provincial level), representatives of various civil society sectors, faith-based organisations, trade unions and traditional leadership structures.<sup>211</sup> The Inter-Ministerial Committee (“IMC”) on Violence Against Women and Children (which was later to prove the Council’s nemesis) was included as a permanent structure on the Council and given the power to appoint chairpersons to a number of committees – including the power to appoint the chairperson of the Council.<sup>212</sup>

There was however, neither shared understanding of the role and purpose of the Council, nor its relationship to the Department of Women, Children and People with Disabilities (“DWCPD”). While civil society representatives and some government officials considered the Council to be an autonomous entity that decided its own strategic direction and implemented its own programmes with funds sourced independently of government, others saw it as a sub-structure of the DWCPD to which it was also accountable. Not unsurprisingly this created conflict between the DWCPD and the civil society organisations represented on the Council. The Council’s available budget and funding was another source of suspicion.<sup>213</sup>

The Council also did not appear to enjoy the support of other government departments which not only sent junior staff to attend meetings, but also did not ensure consistency in representation.<sup>214</sup> Further weakening its political authority was the unexplained withdrawal from the Council soon after its inception by the Deputy President.<sup>215</sup> Indeed, according to the CGE’s assessment of the Council’s first year, its functioning was dogged by

“petty squabbles” and power struggles not only between the various representatives on the Council, but also between the Council and the IMC.<sup>216</sup>

Matters improved somewhat in November 2013 when a chief executive officer was finally appointed to drive the Council’s activities. The NAP, as the centrepiece of the Council’s activities, was reviewed by consultants who reached very similar conclusions to the CGE about its negligible impact.<sup>217</sup> A new strategy in the form of a national strategic plan was envisaged and the Human Sciences Research Council (“HSRC”) appointed to guide its development. An organisational capacity needs assessment was solicited for the Council and the *Vikela Mzansi campaign*<sup>218</sup> planned. The report ‘Study on Violence Against Women: Know your Epidemic – Know your Response’ was also commissioned by the DWCPD.<sup>219</sup>

These activities were brought to a halt by the 2014 elections and the disbanding of the DWCPD. The Department’s programmes dealing with children and people with disabilities were incorporated into DSD and a new Ministry of Women established in the office of the President. With the resignation of the Council’s chief executive officer in mid-2014, the Council was left in limbo, effectively leaving the field to the IMC and its programme of action. In February 2015 the new Minister of Women, Susan Shabangu, informed the Portfolio Committee for Women in the Presidency that the Council had been put on hold due to concerns with the process leading to its establishment. Where policy guidelines or a framework typically preceded the introduction of such initiatives, this had not been the case in relation to the Council. There had also been no analysis of existing mechanisms to see if a Council was warranted. Members of the committee appeared to be in agreement with the Minister’s decision, stating that they had warned the DWCPD that “it [the Council] was a skeleton with no vision, no resources and no Programme of Action.”<sup>220</sup>

<sup>210</sup> *ibid*

<sup>211</sup> *ibid*

<sup>212</sup> *ibid*

<sup>213</sup> *ibid*

<sup>214</sup> Southern Hemisphere. (2015). *Final Report for the Evaluation of the Implementation of the Safer South Africa Programme on Violence Against Women*. Report submitted to UNICEF.

<sup>215</sup> *ibid*

<sup>216</sup> Commission for Gender Equality. (2013). *Expectations Unfulfilled? Assessing the Effectiveness of the National Council on Gender-based Violence*. Available at: <https://drive.google.com/file/d/0B43RY8hVdug-N2x1MTdMOE9wdEE/view> [Accessed 14 November 2015]

<sup>217</sup> *ibid*

<sup>218</sup> This was described as a campaign bringing together government departments, civil society organisations, donors, the business and faith-based sectors, donors and youth representatives with the aim of creating and directing a national movement to ensure the protection and safety of children, women, people with disabilities and lesbian, gay, bisexual, transgender and intersex individuals. In addition, the campaign was to promote and publicise the Council. The Minister of Women, Children and People with Disabilities was to be the patron of the campaign.

<sup>219</sup> Southern Hemisphere. (2015). *Final Report for the Evaluation of the Implementation of the Safer South Africa Programme on Violence Against Women*. Report submitted to UNICEF.

<sup>220</sup> Parliamentary Monitoring Group. (24 February 2015). *Department of Women in Presidency on 2nd Quarter Report July–September 2014, with Minister*. [Online]. Minutes available at: <https://pmg.org.za/committee-meeting/20046/> [Accessed 14 November 2015].

## THE INTER-MINISTERIAL COMMITTEE AND THE INTEGRATED PROGRAMME OF ACTION

The IMC was first convened by Cabinet in May 2012 to investigate the root causes of violence towards women and children.<sup>221</sup> Chaired by the DSD it included the SAPS and the Departments of Justice and Constitutional Development, Basic Education, Home Affairs, Health, Telecommunications and Postal Services, and Women, Children and People with Disabilities. Its establishment essentially marked the emergence of two rival structures in the bureaucracy, as well as the duplication of activities.

In addition to commissioning research into the root causes and structural determinants of violence, the IMC also commissioned a diagnostic review of State responses to violence and how these could be strengthened. (This was not dissimilar to the 'Know your response' component of the DWCPD report). The latter was driven through the Department of Performance Monitoring and Evaluation ("DPME") and intended to inform the development of a performance improvement plan around government responses to violence towards women and children, also to be managed by the DPME.<sup>222</sup> The IMC however, chose not to wait until either of these studies had been completed and in 2013 presented their Integrated Programme of Action ("IPoA") for 2013-2018 to Cabinet – to the Council's consternation, its members arguing that the development of such a programme had not formed part of the IMC's founding mandate but had been the responsibility of the Council.<sup>223</sup>

The IPoA marks a significant shift in policy by emphasising prevention and early intervention over services addressing the aftermath of violence. It thus sets as its ultimate aim the elimination of violence against women and children in the country.<sup>224</sup> This reorientation and its consequences was not made subject to consultation outside of government,

only a UNICEF technical team appearing to exert some external influence over the drafting of the IPoA.<sup>225</sup> The IPoA also considered many current efforts and approaches to addressing violence against women and children to be fragmented and uncoordinated, resulting in stakeholders being insufficiently accountable. To remediate this the document sets out the roles of the various departments, as well as designating roles to civil society organisations, academic institutions, business, media and beneficiaries.<sup>226</sup> The actual plan consists in some 57 actions, targets to be met in this regard and identifies which department is responsible for those targets. Organisations' contributions to the IPoA is reduced to engaging in prevention activities, providing care and support services to survivors and undertaking advocacy and awareness-raising with perpetrators. Overall co-ordination and management of the IPoA falls to the IMC.<sup>227</sup>

However, while the IMC began strongly, its effectiveness appears to have dwindled. The IPoA was approved by Cabinet in September 2013, but only finalised in August 2014 to accommodate changes to the departments following the May elections.<sup>228</sup> By September 2015, a year after its finalisation (and two years after Cabinet had approved its contents), the IPoA had still not been costed and nor had any discussion of its content taken place with civil society groupings, or provincial and district level government officials.<sup>229</sup>

## THE COSTS OF CO-ORDINATION AND PLANNING

While it is by now difficult to establish the costs of the IDMT, such information is available for the Council, DWCPD and IMC. In June 2013 the DWCPD appeared before the Select Committee on Women, Children and People with Disabilities to request R20.7 million from Treasury for its gender-based violence campaigns, of which an estimated R7.5 million was required for the

<sup>221</sup> Dlamini B. (8 May 2013). *Budget Vote Statement by the Minister of Social Development, Ms Bathabile Dlamini, MP to the National Assembly, Cape Town.* [Online] Available at: [http://www.DSD.gov.za/index.php?option=com\\_content&task=view&id=484&Itemid=82](http://www.DSD.gov.za/index.php?option=com_content&task=view&id=484&Itemid=82) [Accessed 14 November 2015].

<sup>222</sup> Southern Hemisphere. (2015). *Final Report for the Evaluation of the Implementation of the Safer South Africa Programme on Violence Against Women.* Report submitted to UNICEF.

<sup>223</sup> *ibid*

<sup>224</sup> Department of Social Development. (2014). *South African Integrated Programme of Action Addressing Violence Against Women and Children (2013-2018).* [Online]. Available at: [http://www.DSD.gov.za/index2.php?option=com\\_docman&task=doc\\_view&gid=607&Itemid=39](http://www.DSD.gov.za/index2.php?option=com_docman&task=doc_view&gid=607&Itemid=39). [Accessed 20 November 2015].

<sup>225</sup> Southern Hemisphere. (2015). *Final Report for the Evaluation of the Implementation of the Safer South Africa Programme on Violence Against Women.* Report submitted to UNICEF.

<sup>226</sup> Department of Social Development. (2014). *South African Integrated Programme of Action Addressing Violence Against Women and Children (2013-2018).* [Online]. Available at: [http://www.DSD.gov.za/index2.php?option=com\\_docman&task=doc\\_view&gid=607&Itemid=39](http://www.DSD.gov.za/index2.php?option=com_docman&task=doc_view&gid=607&Itemid=39). [Accessed 20 November 2015].

<sup>227</sup> *ibid*

<sup>228</sup> *ibid*

<sup>229</sup> Southern Hemisphere. (2015). *Final Report for the Evaluation of the Implementation of the Safer South Africa Programme on Violence Against Women.* Report submitted to UNICEF.

development and implementation of the Department's five year national strategic plan.<sup>230</sup> Ultimately, it would seem that very little of this budget was provided by National Treasury, the funding having come instead from the Safer South Africa Programme on Violence Against Women and Children ('Safer South Africa'). The Safer South Africa Programme was introduced into South Africa in 2012 by UNICEF, UNFPA, Save the Children South Africa and the British governments' Department for International Development (United Kingdom) (DfID). Perhaps inspired by the 2012 United Nations' Expert Group meeting on the Prevention of Violence Against Women and Girls (which had recommended the prioritisation of prevention),<sup>231</sup> Safer South Africa focused exclusively on interventions thought to prevent violence, as well as many of both the IMC and the Council's activities.

The Safer South Africa proposal was awarded \$5 629 186 in total.<sup>232</sup> Of the programme's four outputs two were directly relevant to the Council and the IMC's activities: output 1, strengthened national institutions and strategies to prevent violence against women and children (allocated \$400 000); and output 4, strengthened surveillance, monitoring and evaluation systems for evidence-based prevention of violence against women and children (allocated \$350 000). Over and above the amounts allocated to these four outputs, a further \$800 000 was set aside for technical assistance.<sup>233</sup>

Initially calculated as R4.8 million, the budget for output 1 more than doubled to R10.28 million following a request by the DWCPD for additional funds to support the Council. On this basis it may reasonably be inferred that at least R5 million of this amount was spent on the following activities: appointment and remuneration of a CEO and administrator to the Council; coordination costs for the Council; the organisational capacity assessment; review of the NAP; and conceptualisation of the *Vikela Mzansi*

*campaign*. This amount also included the R600 000 paid to the HSRC for the literature review intended to inform the national strategic plan, as well as the initial planning for the provincial consultations before these were put on hold.<sup>234</sup> The review of Safer South Africa also notes the HSRC having obtained additional funds outside of the Safer South Africa programme for the provincial consultations. What this additional support amounted to and whether or not it was actually paid, given the cancellation of the consultations, is unknown.

A separate IMC-related activity was also contained within this output: development of the C4D Guideline for Social and Behavioural Change to Prevent Violence Against Women and Children.<sup>235</sup> According to the 2013/14 DSD Annual Report these cost R228 000 to develop.<sup>236</sup> Comprising a set of steps guiding the conceptualisation, execution and evaluation of communication strategies aimed at promoting behavioural change, the Guideline has yet to be implemented.<sup>237</sup>

The Safer South Africa review considered the aspects of the expenditure on the Council to represent "a very real efficiency cost in terms of wasted time and resources."<sup>238</sup> This refers to the fact that while the review of the NAP was finalised, as were the literature review for the National Strategic Plan and the 'Know your Epidemic – Know your Response' report (although the latter has not been launched or disseminated), the other Council activities were not finalised.

Output 4 was allocated approximately R3.5 million,<sup>239</sup> with part of this budget allocated towards the 'Know Your Epidemic – Know Your Response' report commissioned by the DWCPD, as well as the Structural Determinants and Root Cause Analysis report commissioned by the IMC. Expenditure on these two reports can be traced through departmental annual reports:

<sup>230</sup> Parliamentary Monitoring Group. (3 June 2013). *National Council on Gender Based Violence; Responses to questions on the Department's Budget Vote*. [Online]. Minutes for NCOP WCPD available at: <http://www.pmg.org.za/report/20130603-national-council-gender-based-violence-responses-questions-departments-budget-vote>. [Accessed 12 November 2015].

<sup>231</sup> Commission on the Status of Women. (2013). *Report of the Expert Group Meeting on Preventing Violence Against Women and Girls*. Report prepared for CSW 57 4 – 15 March 2013. [Online]. Available at: <http://www.unwomen.org/-/media/headquarters/attachments/sections/csw/57/egm/report-of-the-egm-on-prevention-of-violence-against-women-and-girls%20pdf.pdf?v=1&d=20140917T100704> [Accessed 25 October 2015]

<sup>232</sup> Southern Hemisphere. (2015). *Final Report for the Evaluation of the Implementation of the Safer South Africa Programme on Violence Against Women*. Report submitted to UNICEF.

<sup>233</sup> Ntuyiya S, Mac Raibin S and Ogongwe E. (2012). *A Safer South Africa for Women and Children: Improved Security and Justice for Women, Girls and Boys*. Joint Programme Document submitted by United Nations Family, United Nations International Children's Fund and Save the Children, South Africa and the Government of South Africa.

<sup>234</sup> Southern Hemisphere. (2015). *Final Report for the Evaluation of the Implementation of the Safer South Africa Programme on Violence Against Women*. Report submitted to UNICEF.

<sup>235</sup> *ibid*

<sup>236</sup> Department of Social Development. (2014). *Annual Report 2013/14*. [Online]. Available at: [http://pmg-assets.s3-website-eu-west-1.amazonaws.com/DSD\\_ar14\\_-\\_desktop.pdf](http://pmg-assets.s3-website-eu-west-1.amazonaws.com/DSD_ar14_-_desktop.pdf) [Accessed 14 November 2014]

<sup>237</sup> Southern Hemisphere. (2015). *Final Report for the Evaluation of the Implementation of the Safer South Africa Programme on Violence Against Women*. Report submitted to UNICEF.

<sup>238</sup> *ibid* at P174

<sup>239</sup> Assuming a crude conversion rate in 2012 of R10 to \$1.

- (i) The DWCPD's Annual Report for 2013/14 lists two amounts provided by UNFPA for "a work study on violence against women," with the first amount given as R228 000 and the second as R737 000, suggesting that R965 000 was spent on this report in total<sup>240</sup>.
- (ii) The DSD's annual report for 2014/15 lists UNICEF as paying R1.4 million for the structural determinants and root cause analysis report.<sup>241</sup>

The remaining funds are likely to have covered the costs of the diagnostic review commissioned by the DPME, which also fell under this line item. (The proposed performance improvement plan was to be covered by a separate UNICEF budget outside of the Safer South Africa programme.<sup>242</sup>) In addition, R807 207 was paid to the Medical Research Council in 2015 to develop a surveillance system around violence against women and children.<sup>243</sup> Finally, the 2014/15 annual report for DSD records UNICEF paying R239 885 for technical support to the IMC in developing the IPoA.<sup>244</sup>

Other donors contributed to civil society initiatives around the Council and national strategic plan. In May 2014 the Joint Gender Fund supported a national roundtable around the Council (cost unknown), while the Ford Foundation and Irish Aid allocated R530 000 to Sonke Gender Justice towards its activities promoting the national strategic plan.<sup>245</sup>

It may thus be conservatively and crudely estimated that between 2012 and 2015 at least R9 million was spent on these two structures and their associated plans and activities. To date this expenditure has yielded just two public documents ('*Know your Epidemic – Know your Response*' and the review of the NAP) and a stalled plan to address violence against women and children.

## REFLECTING ON THESE STRUCTURES AND PROCESSES

The centralised co-ordinating structures examined in this review were established on the assumption that violence towards women represents a problem of inadequate co-

ordination and strategizing that requires both centralised management and planning for its resolution. Yet this narrative suggests that it is the attempt to centralise and concentrate decision-making and resources which constitutes the problem. This is because all such enterprises are exercises in the consolidation of power and, as such, will generate both acquiescence and resistance. Which it is to be depends a great deal on the networks of power in which these structures are located. In the case of the IDMT, Council and IMC this circuitry is woven from individuals, government departments, donors, the UN and its entities, and organisations based in civil society.

The source of the political rivalry between the Council and the IMC is not known but it is clear that by 2013 at least the DWCPD had begun to lack legitimacy within sectors of government. By 2014 both the Minister for Women, Children and People with Disabilities, as well as the Department and the Council had become politically dispensable. But having cleared the field, the IMC did not persist in seeing its programme implemented – raising the troubling possibility that vanquishing a political rival was more important than addressing the problem of violence against women.

While the IDMT may not have been plagued by divisive competitiveness, its effectiveness was diluted by the absence of formal political authority compelling departments to comply with the NAP. Reliance on persuasion to encourage departments' cooperation is also likely to affect implementation of the IPoA. While the allocation of roles contained in the IPoA may clarify responsibilities, this does not amount to the strong exercise of either accountability or authority. This power resides with the courts and legislature and, to some extent, South Africa's Chapter Nine institutions. Some government departments are also empowered by law to exercise oversight of others (such as the office of the Auditor-General or the Independent Police Investigative Directorate). The IMC exercises no authority in this regard.

The UN and its various entities represent another strand within this web of power. The NAP, for example took pride in South Africa being one of the first countries to heed the 2006 call by the UN Secretary-General to develop multi-

<sup>240</sup> Department of Women, Children and People with Disabilities. (2014). Annual Report 2013/14. [Online]. Available at: <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/141014dowrep.pdf> [Accessed 14 November 2015].

<sup>241</sup> Department of Social Development. (2015). Annual Report 2014/15. [Online]. Available at: <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/151014DSDAR.pdf> [Accessed 14 November 2015].

<sup>242</sup> Southern Hemisphere. (2015). Final Report for the Evaluation of the Implementation of the Safer South Africa Programme on Violence Against Women. Report submitted to UNICEF.

<sup>243</sup> Department of Social Development. (2015). Annual Report 2014/15. [Online]. Available at: <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/151014DOSDAR.pdf> [Accessed 14 November 2015].

<sup>244</sup> *ibid*

<sup>245</sup> E-mail correspondence to the NSP GBV Campaign, issued by Tanya Charles, Sonke Gender Justice, 15 October 2015.

sectoral plans addressing violence against women, while the recommendations by the CEDAW committee provided significant impetus for the Council. Two UN entities – UNICEF and UNFPA – were central to developing Safer South Africa, while UNICEF provided technical support to the IMC in the development of the IPoA.

These influences on policy, as well as the role played by the UN agencies in driving these shifts, raises broader questions about democratic practice and process. When decisions which affect policy locally are taken at the level of the trans-national they grant inordinate influence to those organisations able to be present in UN discussions while simultaneously denying a voice to organisations without the means to participate in discussions. Decisions to prioritise prevention have not only eroded services to women, children and their families, but also worsened the working conditions of South African organisations providing those services.<sup>246</sup>

Civil society organisations are also the most tangential to these national coordinating structures, which have either sought to exclude organisations entirely or, when inclusion has come, ensured that entry and participation have been entirely on the bureaucracy's terms. In fact, concentrating power in one site considerably amplifies the potential for such structures to become closed, invited spaces.

## CONCLUDING RECOMMENDATIONS

State-driven national structures addressing violence against women and their attendant strategies are congenitally failing endeavours, and organisations left chronically disappointed by, and excluded from, their workings. What options does this assessment leave for advancing the Summit's recommendations?

First, while these structures and strategies have accomplished nothing of note to date, targeted actions focused on specific issues, sometimes undertaken in collaboration with government departments and sometimes not, have succeeded in bringing about change (as Waterhouse (in this report) and others<sup>247</sup> have demonstrated). Such advocacy must be continued in taking forward Summit recommendations.

Second, the plans contained in national strategies do not substitute for the detailed and specific actions required of departments in compliance with their mandate and

functions. These are typically set out in departments' annual performance plans and accompanying budget votes. It is up to organisations to scrutinise these and engage with the relevant Parliamentary Portfolio Committees around their content. This interaction, combined with commentary on departments' annual reports to Parliament, is one approach to challenging inadequate implementation of law and policy. Further, gaps identified in the architecture of sexual offences law and policy are also best pursued directly with the relevant department or structure.

Third, whatever the critique of the IPoA, it has been adopted by Cabinet and is due for review in 2016. This is an opportunity organisations should seize in order to ensure at least some returns on the significant expenses incurred by the IMC, Council and IPoA. Demanding the public release of all other documents associated with the IMC and IPoA is also warranted.

Finally, a number of structures have been established at national and provincial level to address different aspects of violence against women. Amongst others, these include the National Intersectoral Sexual Offences Committee convened by the DOJ&CD to oversee implementation of the 2007 SOA, the compliance forum established by the Civilian Secretariat of Police and the SAPS to ensure implementation of the Domestic Violence Act, as well as the various Gender Justice Forums established by the NPA in a few provinces, and the provincial Victim Empowerment Forums organised by the DSD. Not all are effective and not all include civil society organisations. Nonetheless, they multiply opportunities for advocacy and should be utilised as such.

<sup>246</sup> Vetten L. (2015). *Who Cares? Post-rape Services and the Expanded Public Works Programme in South Africa*. Research Report prepared for the Heinrich Boell Foundation.

<sup>247</sup> See Vetten, L and Watson J. (2009). *Engendering the Parliamentary Agenda: Strategic Opportunity or Waste of Feminist Energy?* Cape Town: Gender Advocacy Project Policy Brief Number 3; and Usdin S, Christofides N, Malepe L. and Maker A. (2000). 'The Value of Advocacy in Promoting Social Change: Implementing the New Domestic Violence Act in South Africa.' *Reproductive Health Matters* 8(16): 55-65.

## CHAPTER 5

# IN THEIR OWN VOICES: PARTICIPANTS QUESTIONS AND RECOMMENDATIONS

A key element of the Summit was to provide the participants with a platform to express their own opinions as well as their needs in relation to the implementation of the 2007 SOA, related service provision, and information regarding their rights. This section highlights some verbatim quotes concerning the role of the police, government inefficiencies, frustrations with inadequate legislation and the need for greater sensitisation of many of the service providers to the needs and rights of sexual offence survivors.

## 5.1 PARTICIPANT QUESTIONS FOR GOVERNMENT, THE SAPS, NPA OR OTHER RELEVANT ROLE PLAYERS/SERVICE PROVIDERS

### POLICE

“Why [don’t the police care] about the cases of rape or any case? Why is it that the national prosecuting authority doesn’t care about the people who [are] doing the bad things? [The police] let criminals and rapists out.”

“Why do the police not step up when a Summit like this is happening? The police, NPA and all government departments need to step up in terms of the Sexual Offence Act, domestic violence issues, etc. Why are the police, since they are the persons who are supposed to deliver services, always the ones who let secondary traumatising happen? Why can’t all government departments be part of community summits like these? Why [is there] arrogance when community members approach them regarding certain issues, especially domestic violence issues? Can’t government take responsibility for things going wrong when it comes from their side?”

“Why are the government doing nothing about the rape [by men]? Police are not doing their jobs right. Why are the police here? For what reason?”

“Is there any way that FCS female officers can be employed/motivated to join the units? The units are understaffed and not well trained. For example, to work with survivors who are disabled, response times remain a challenge [...] about +/- 3–4 hours.”

Women on Farms Project: “The SAPS and relevant role players need to change their attitude toward women when they report cases. Do the SAPS have authorisation to act violently towards perpetrators? Why are cases postponed many times and dragged out?”

“Make police stations more community friendly and a safer place for survivors of sexual offences. Implement victim support services. Make families aware of sexual offences, (meaning teach your children in your house what is criminal and the consequences thereof). Implement youth programmes within our communities with different support units. Improve environmental design. For example: fix the street lights, build houses and parks, or recreation centres on vacant land/local fields and cut off bushes. Also assistance programmes to offenders and their families are needed.”

“I would like to ask where do we complain if maybe you have been mistreated by the police and you have been out and in of their offices even talked to their ‘captains brigadiers’ but you are not satisfied with the answers. I would like to know why Government is not the same. I have a problem with my village, the clinic is far from the people and we have to pay when we want to attend. If not, your name will be written down. When you ask what the money is for, the nurses will say



it's for transport for them to fetch medication for us, because the hospital motor [vehicle] only comes once a week to bring medications. I have a question, is it possible for the blankets of the State police custody to be dirty and the place where people are locked [up] is also dirty? I was locked in Site B police station the blankets there stinks, dirty, full of blood. Just because I was locked [up] and arrested, that means I don't have rights anymore. Who is responsible for all of this? Why is this happening while we say we have democracy? Where are our rights when such things are still happening? What is our generation going to learn and know? Where is our dignity?"

## SERVICE PROVISION

"With sexual violence and SGBV being epidemic, we have high female femicide. Why does DSD not have an afterhours service like the [child protection] protocol, with emergency places of safety (safe houses) for victims?"

"Who is responsible if police have poor service? What steps do you take as government if there's nothing changing with police? Is there any training or government workshop to empower them?"

"I want to speak around issue of response times. Victoria hospital – with fresh rapes – doctors need to be paged to come in. Most times it takes one to three hours. Our organisation has advertised that we wanted to upscale the service. It is not catering for needs of women. Also, where are the emergency safe house facilities? We can't take the client home. Where do we take them home?"

"Why are some Thuthuzela Care Centres still telling survivors that they can't receive treatment unless they open a case with the police - Victoria Hospital for example"

"I just want to know what kind of services are you offering for children and where can we access you. For us as young people, we know there are services but we don't know how to access those services. When we go to hospitals, we just sit around and do nothing. We don't know how to access people like you who can fight for us. What services do you offer for the children?"

"I want to ask the DOJ, why are there no programmes to educate us on the structures? What programmes are in place to educate people about programmes and structures?"

"What budgets/finances are made available for victims? Justice services should be more accessible. Police officers should get the relevant training. Is the sexual offence register available and where?"

## ACCOUNTABILITY AND GOVERNANCE

"How do you monitor the services your organisational department offers? If found out that services are not offered accordingly, what measures are taken? Our society is very conservative and closed up, while in public, people seem open-minded – 'we don't have a problem with gay people' or 'we have to report the uncle who commits rape' – when back within their own walls, it's a different story, then gay people become evil and the raping uncle is protected. How do you deal with that?"

"We are working hard but no one helps us, why? We do referrals to social workers, councillors, police, we do encourage people in communities, even sick people. Government please do something for us, as we are community care workers. We need more stipend."

"Government does not care about the survivors of sexual offences."

"There's no standard. We can't say everyone will get the same standard of treatment. You know Government does know what to do. We have seen projects that work. So why, if they know how to do it properly, why are they not doing it?"

"Are we really protecting human rights? Where is freedom for women? Are we doing what are saying we are? We really protecting human rights?"

“Why does government come to the people when they want people to vote for them? In Delft, there is a high risk of crime. Unemployment, substance abuse, poverty and teenage pregnancy. Government must do something.”

“What is the national strategy to prevent violence against women and children? What is the Western Cape Province, DSD strategy to prevent violence against women and who do we keep accountable for poor services for women? Premier? Non performing provincial office? VEP programs in province for whom and when?”

“What has happened to the National Council on Gender Based Violence? Has the transfer of the children’s rights and rights of people with disabilities to the DSD resulted in a funds transfer? What is happening to oversight on women’s rights in the national council of provinces?”

“What monitoring bodies/ systems are in place which deal with the updating/ changing of policies and legislation? If there is no such body, when will one be implemented in order to prevent cracks within theoretical frameworks in order to ensure practical, equitable and accessible justice for all citizens as set forth in constitution?”

“Why are shabens in our townships legalised? Knowing that alcohol is classified as substance abuse that is contributing towards our countries crims stats.”

“I want to know what is threatening me and who will protect me? When I am violated, who will defend me? That is my lived reality. One must know what is helpful for us. I feel wholly unqualified to discuss the law. It’s too academic. I want to know those simple things. Wherever I live: who is strengthening me? What is there? And who can I tell if they [the SAPS] don’t help me?”

## DISCRIMINATION

“Why do men rape women? Where are the police for assistance? Sexual offenders must have their penis cut off. All women are not safe anymore of rape and sex. What about the babes of 2-5 [years old] whose mouths are raped? What’s wrong with men? Do they know what they do?”

“Why is it that in a democratic society, we still are being economically, gendered, racially and socially oppressed through exclusion from policy, law and governance aspects?”

“Why is it that there is neglect/ exclusion of civil society from influencing of budgetary spending or have their needs defined in national/ provincial/ local budgets? In a democracy is it not supposed to be a bottom up flow of information as opposed to a current top down flow which is indicative of a capitalist, autocratic approach?”

“Why do the funded women’s shelters disqualify survivors of sexual abuse access to their shelters because they test positive for drugs? Who mandated them to do so? Government knows they are secondary abusers of abuse.”

“We are told we have the right to freedom from violence – and the state has the responsibility to implement/ uphold those rights. Within this framework we need to ask: Is the State respecting, protecting, and fulfilling the right to freedom from violence when it comes to the implementation of the Sexual Offences Act?”

## TRAINING AND EDUCATION

“Why does government use partially trained or not fully-trained people to deal with sexual offences?”

## 5.2 PARTICIPANT RECOMMENDATIONS:

The following are some of the recommendations and/or comments submitted in writing by Summit participants.

“The communities at local level must be made aware of the laws/policies. Road shows to different towns must be done to get to people on ground level, especially on the farms and rural areas informed.”

“Civil society is the link between the survivor, offender and stakeholders. Civil society must take part in influencing policy.”

“Government should go to the people so that they can know what it is that is really bothering them. We only see the government cabinets when they want us to vote for them and they come and make empty promises because they come for them. They come and promise heaven and earth after they got our votes, then they disappear and all we get is bad service. If they say they have done A and B, then they should come and do follow-ups on us. We are struggling, we are staying in the shacks while they sleep nice and comfortable in the house! We want to see what is right that is happening in our country. They must stop the equality they are fighting for because they are not fighting for us, they are fighting for themselves.”

“Imbizos and Indaba’s must be organised where people, civil society and government departments come together to brainstorm, ask questions and give input into the meaningful implementation of sexual offences-related legislation, policies and services.”

“I think Thuthuzela, Rape Crisis, Simelela should form one organisation or have their own task team that will deal on all rape cases, because they are doing the same thing it is important that we stop opening new centres [since] they are centres that are already existing and doing the same thing. Rather improve or champion the organisations that already exist that have the same vision, mission and goal. [An] example: Khayelitsha has Simelela, Rape Crisis and Thuthuzela.”

“Have mobile offices rendering legal services. Victim empowerment and support groups. Have such groups or services accessible. Have Thuthuzela services at Delft.”

“Before improving service for survivors we need to look at the challenges preventing survivors going to access those services. The police need to get the necessary training to deal with sexual abuse survivors. They [need to] follow up on rape survivors. Keep on reporting and get help. Look at the situation with human rights eyes. The community needs to stand up, for they too wait for government.”

“Women examiners in health are doing well with management of survivors of sexual offences. Training for registered nurses was available at UCT. Expand on this to address the gap with regards to competent health staff at health facilities and Thuthuzelas. Focus on South African Nursing Council to acknowledge the course and appropriate remuneration.”

“Please bring your services to the Oudtshoorn area.”

“Better marketing of the services the different organisations have to offer from government departments to NGOs. Extensive monitoring of work in all spheres – Do the police officers do their work properly? Do the social workers do their work properly? Do the NGO directors do their work properly? An excellent example is the public service accountability monitor based at Rhodes University. More organisations of this nature should be in place. Universities are an ideal link.”

“The hospital and clinic in Nyanga have a good service but there are loaded and few staff. CCW’s doing a good job but they are receiving very low stipends. Even the DSD carers grab jobs for social workers and coordinators but nobody cares about them. It’s been more than seven years and the stipend is still, R1200 it’s unfair.”

“On Protection: an urgent investigation should be launched to look at government funded women shelters that do drug testing as means to use for women to access services or shelter. Women who have been at a shelter before do not get placement back at shelters, if they need urgent place of safety. There is a huge need for emergency safe houses for women who had been raped or suffered acute GBV and need temporary place of safety. Government failure to fast track rape cases, 2010 was possible to have a speedy trial, why not now? The psychological impact on women having to attend court has huge and lasting impact on women ‘giving up’ as the trauma is too huge to continue. There is no justice for GBV victims. For example, women have to wait around eight weeks for court case to finalise a protection order: women cannot access court for an urgent protection order after 2PM. Government remain perpetrators of secondary abuse with government

systems being not women and survivor friendly.”

“Amend legislation to prevent the possibility of perpetrators representing themselves in court. We need wide scale multilingual publicity campaigns on these laws. Increase the number of counselling sessions for the SAPS officers and make it compulsory. Policy making around LGBTI users of state services is also needed. Developing an effective multi-sectoral funding model to ensure both the prevention of violence, where possible, and support of victims of violence when it does happen.”

“Consider a rapist list like the paedophile list in order for people to be aware of crimes committed by repeat offender, in a name and shame style. As opposed to a deal penalty, implement a castration penalty for all repeat offenders of rape. Domestic violence offender and offenders of violent crime should face the harshest possible sentencing according to the law and become formalised in terms of punishment mandated to all offenders alike. More education initiatives from Government and initiatives such as safety and violence initiatives should be carried out to all communities, especially those regarded as ‘vulnerable communities’ in order to educate on rights’ access to justice and support’ social and governance processes like the national budget in order to equip communities with access to information and access to avenues of advocacy/revolution/recourse. Please do continue and create a sustainable ongoing dialogue facilitation sessions as you guys have done here.”

“More shelters/ safe houses in rural areas. For the SAPS to stop assaulting when doing arrests. Not to treat charges with disbelief and suspicion. To provide TCCs in rural areas. For Government to review the private property clause on farms, direct link to GBV. More of these organisations should come and operate in rural areas/ farms.”

“Ongoing therapeutic services for survivors of sex offences. More qualified staff is needed. The Justice Department should inform the survivors/affected persons about the case. No bail for the perpetrators. The government should fundraise for sexual offences funding to the non-governmental organisations. The police should get specialised training so that they can be able to deal with these cases.”

“You had people talking about everyone doing so much around this Act. Sixteen years later and you still have the same chance of a conviction as you did fifteen years ago. Things have changed but things are staying the same. Listening in the room, we are listening to the same problems: the lack of respect. There is a system that isn’t changing even though we have a fantastic policy framework. You have to ask then what it is. Do we go write another submission? What else can we be doing? I think it’s about political will [...] what is the political will to make it different? Yes, of all of the political parties but also in our communities and organisations [...] This is not just about the government failing. It’s about how we respond in community, it makes me cry the number of times I know that no one cares that this woman or this child has experienced rape and I don’t just mean the police. In terms of us being activists, we really should be questioning ourselves as much as we question government. We should organise ourselves. “We”, meaning Delft, or “we”, meaning the entire Western Cape.”

“Things have changed, but things are staying the same. Listening in the room – we are listening to the same problems. The lack of respect. There’s a system that isn’t changing even though we have a fantastic policy framework. You have to ask then what is it? Do we go write another submission? What else can we be doing? I think it’s about political will ... what is the political will to make it different. Yes, of all the political parties but also in our communities and organizations. This is not just about the Government failing. It’s about how we respond in community. It makes me cry the number of times I know that no-one cares that this woman or this child has experienced rape and I don’t just mean the police.”

“In terms of us being activists, we really should be questioning ourselves as much as we question Government. We should organize ourselves. “We” meaning Delft, or “we” meaning the entire Western Cape. We have to challenge and get more active more of the time”

“Training is useless if you don’t have the managers. I can train those uniformed officers. They say ‘my boss doesn’t want me to do that’, it’s only useful if you are looking at management. It’s a conversation about the quality of the people in those positions.”

“When you get paid to do a job you have to be accountable and, when you don’t, you should get in trouble. Make a complaint to the police station. If that doesn’t work, go up to the next level. The bottom line is: if you work for the State there are rules you have to follow. One of the biggest problems is that there aren’t any consequences.”

“Government knows what to do. We have seen projects that work. So why – if they know how to do it properly – are they not doing it? Where is the money? If you look at the policies around sexual offences and rape they say ‘within available

resources' and 'progressive realisation'. You can put a number on 'progressive realisation' but they have not. There is no will behind that policy. The law is just to make me feel better. You may have a sexual offences court ... but ... we know it won't happen. We won't have those courts and they won't work properly if you don't put money into those courts. There's nothing behind the law that is showing me we want change."

"We are missing parliament. Parliament is meant to be a place of elected representatives. Our Constitution says it's a "participatory space". I really think that if the issue is political will, parliament is just one of the places where we should look at how to change political will. I do think it's about being louder. We do the march outside but let's go inside. Be inside and outside, have different strategies. Let us ask to come and talk to them about what's going on. Unless we are noisy it's not going to change. We say "rape is terrible" and they say "there's a Sexual Offences Act". It's not good enough. They have constituency offices. You can go to the constituency office ... it's another useful space. You can call the media and do a march to the office even if the Member of Parliament is not there. We want to make change. We have to get our voice across wherever we can – not just focusing on those rapes that are so hectic you can't ignore them."

## CHAPTER 6

# RECOMMENDATIONS

*I would like this session to not end here in Delft only because we as South African citizens around the country ...are all crying. The opportunity ...gave me a lot of knowledge and ideas. (Delft resident)*

The primary objective of the 2007 SOA is to provide survivors of sexual offences “the maximum and least traumatising protection that the law can provide.” However, as discussed herein, critical implementation gaps exist. Despite the legislature’s intentions, the failure to budget and allocate resources appropriately for as well as otherwise implement the 2007 SOA has resulted in a traumatising lack of meaningful service delivery for many sexual offence survivors in South Africa.

It is concerning that despite South Africa’s legal reform in respect of sexual offences, many of the recommendations offered by civil society-based specialists in the field and the SALRC have not been implemented. This raises the question whether the Government is actually committed to preventing sexual offences and providing survivors of sexual offences with holistic access to justice and consistently available sexual offence-related services.

Based on the findings of the Summit and related research, several recommendations can be made that could lead towards effective implementation of the 2007 SOA, improved service delivery to sexual offence survivors and enhanced State accountability.

## PUBLIC EDUCATION

*We have aimed to familiarise our organisation with legislation [however] due to our lack of knowledge of these laws, we cannot successfully serve our clients. Therefore, the system has failed us and we have failed our clients. (Community-Based Organisation)*

From the Summit discussions as well as both the written and oral submissions, it became clear that many community members and some service providers do not feel that they possess sufficient information about the 2007 SOA or other sexual offences-related laws and/or policies, their rights and available services. While participants shared their own experiences and concerns, many were reticent to comment on policy content, development or implementation. This is further apparent from the written recommendations from participants, where very few participants made practical recommendations related to policy or implementation reform, instead they used the recommendation sheets as an opportunity to share personal stories, ask questions or ask for assistance.

The lack of knowledge regarding the 2007 SOA, and other sexual offences-related laws and policies, is particularly concerning given the expanded list of sexual offences and mandatory reporting duties for sexual offences against children and persons who have mental disabilities. These reporting requirements are not limited to service providers, they pertain to any person who has knowledge of offences and, hence, implicate the public more widely.

Furthermore, without having a basic understanding of SGBV-related laws and policies, individuals may not fully understand their rights in terms of the law, and certainly have limited recourse when their rights are violated or denied, including by Government or civil society service providers. For example, one participant wrote in her recommendation sheet: “I would like to ask, where do we complain if we have been mistreated by the police, and you have been in and out of their offices, even talked to their captain brigadiers?”; demonstrating that despite protracted interaction with the SAPS she was not yet aware of IPID, and with whom she could lodge a complaint about her experiences.

It is therefore recommended that:

- (i) **Government and civil society increase existing efforts to enhance public knowledge of the criminal justice system in general; and the provisions and responsibilities established in terms of the various sexual offences-related laws and policies in particular – including available oversight and complaints mechanisms.** This was stressed by Cape Mental Health and the Equal Education Law Centre



as especially important for educators, parents and social workers who are often in contact with children and “mentally disabled” persons. This can be done through civic education, and the Life Orientation Curriculum. It was seen as particularly important to educate children as to what is (in)appropriate sexual behaviour and what constitutes a sexual offence from as young an age as possible as well as where to access assistance, if required.

- (ii) **Space and resources be provided for community dialogues across South Africa in order to educate the public about sexual offences and combat the normalisation of sexual violence.** Many Summit participants recommended that awareness-raising occur in urban and rural as well as (under)resourced communities; and that such sessions be held in venues that are accessible to local community members as well as persons with disabilities. Discussion and feedback from the Summit suggest that having a forum with academics, civil society organisations and government officials as well as other criminal justice stakeholders is a good model for community outreach and education.
- (iii) **Government departments, academics and civil society organisations disseminate their findings and share sexual offences-related advocacy tools with marginalised communities.**

## BUDGETING

---

One of the largest barriers to victim-centred and holistic service delivery is inadequate budgeting for the implementation of sexual offences-related laws and policies. Currently, those responsible for the 2007 SOA’s implementation are not equipped with sufficient resources to meet its requirements; alternatively, they are inefficiently allocated and often wasted.<sup>248</sup> As indicated by Summit submissions, the lack of inter-departmental and multi-sectoral budgeting for the implementation of the various sexual offences-related laws and policies has serious and real consequences for sexual violence survivors, their loved ones, the public and the South African fiscus. Therefore, it is recommended that:

- (i) **Relevant government departments generate transparent, disaggregated and ring-fenced budgets in respect of SGBV prevention, protection and redress activities.** Providing for a transparent budget that ring-fences funds for SGBV should allow Parliament and civil society to monitor actual spending and service delivery as well as reduce wasteful spending.
- (ii) **Budgeting for services should follow from a comprehensive needs assessment and consultation with victims, diverse communities and service providers, including those who are civil society-based.** Ultimately, services should reflect the lived realities of South Africa’s communities and respond to their needs holistically and in a sustainable as well as a context-appropriate manner.
- (iii) **Resources should not only be based on post sexual offence service provision, but also be allocated to effective prevention programs.**
- (iv) **Resources be allocated specifically towards services for vulnerable groups.** Such services require sensitivity regarding the particular vulnerabilities involved, the intersectional discriminations as well as harms endured by these sexual offence survivors; and their complex service provision and justice needs.

## INTER-DEPARTMENTAL AND INTER-SECTORAL COLLABORATION

---

The 2007 SOA intends to “[protect] complainants of sexual offences and their families from secondary victimisation and trauma by establishing a co-operative response between all government departments involved in implementing an effective, responsive and sensitive criminal justice system relating to sexual offences.”<sup>249</sup> As many of the Summit submissions suggest, government departments are not effectively co-ordinating their services and operating within the spirit of collaboration. This is especially troubling given that the effectiveness of any law depends on collaboration among important stakeholders and all relevant implementing bodies. Therefore, it is recommended that:

- (i) **The DOJ&CD, DSD DOH, DOE, DCS and the SAPS strengthen their partnerships** and cooperate in

---

<sup>248</sup> Thorpe, Jen. (2014) *Financial Year Estimates for Spending on Gender-Based Violence by the South African Government. Parliament of the Republic of South Africa*

<sup>249</sup> *Emphasis added.*

relation to providing enhanced access to justice and service delivery for sexual offence survivors. This will provide for better and more efficient planning and better service delivery.

- (ii) Government departments develop and implement a unified case management and tracking system that easily and effectively communicates the status of a case to a survivor throughout the criminal justice and social development systems.** Better information-sharing and data-management can ensure that both service providers and clients are able to track cases and monitor services. The DSD is in the process of developing a 'uniform referral pathway' which is an electronic case tracking system. While this should be useful for facilitating collaboration, it is still awaiting implementation and would need to be inter-sectoral to meet its aims of meaningful and integrated service provision.
- (iii) Civil society and Government formally determine whether, in addition to the above, there is a need for a National Strategic Plan to Combat SGBV, and, if yes, to create and implement the plan.**<sup>250</sup>

## ACCOUNTABILITY

---

*Government should go to the people so that they can know what is really bothering them. We only see the government... when they want us to vote for them and they come and make empty promises because they come for them and they come and promise heaven and earth after they got our votes they disappear and all we get is bad service. If they say they have done A and B, they should come and do follow-ups on us. (Summit participant)*

In the experience of many Summit participants, representatives of local, provincial and national government are not held accountable for their (in)actions or failures to implement sexual offences-related laws and policies appropriately. Moreover, they averred that Government remains out of touch with the realities of South Africa's marginalised communities in this regard.

Accordingly, it is recommended that Government:

- (i) Establish and participate in community-based imbizos** in order to ascertain community perspectives regarding public policy, sexual offences-related prevention, protection and redress initiatives as well as reformation needs.
- (ii) Include within their performance appraisals, salary reviews and promotion considerations, the appropriateness of SGBV expenditure and service delivery.**
- (iii) Finalise and implement all outstanding and partly-drafted policies, regulations and protocols** within and across the various relevant government departments.
- (iv) Establish Parliamentary Portfolio Committee oversight of all government departments** in respect of their obligations to implement sexual offences-related laws and policies, with non-fulfilment of obligations being met with sanction.
- (v) Require its employees to execute their work in a manner that reflects that they are accountable to the public.**

## THE SOUTH AFRICAN POLICE SERVICE

---

In the aftermath of a sexual offence, the SAPS is often the gateway for survivors to access vital services. Thus, it is critical that sexual offence survivors receive informed, sensitive and helpful care from the SAPS. It is deeply concerning that many Summit participants, including sexual offence survivors, indicated that they received poor service and abuse at the hands of law enforcement officers, which, in turn, has led to secondary trauma and a loss of faith in the SAPS as a safe space for

<sup>250</sup> Prior to the 2007 SOA, the SALRC stressed the importance of inter-departmental and inter-sectoral collaboration and thus recommended a binding national strategy. Specifically, in 2002, the SALRC recommended that a: "National strategy for multi-disciplinary intervention relating to sexual offences should be agreed upon by incumbent Government Departments and nongovernmental organisations working in the field of sexual offences, in partnership with civil society... In order to ensure accountability without embodying such an agreement in legislation, it is further suggested that provision should be made in legislation for the development of such a basic framework and its purpose." See the South African Law Reform Coalition, Project 107, *Sexual Offences, Process and Procedure* <http://www.justice.gov.za/salrc/dpapers/dp102-execsum.pdf>. For an alternative view, see Vetten L, herein.

sexual offence survivors. Accordingly, it is recommended that the SAPS:

- (i) **Standardise station orders regarding sexual offences.** The SAPS should ensure that survivors who report a sexual offence to a police station are given consistent and reliable information and services.
- (ii) **Demand that service incentives and performance evaluations be responsive to the quality of service offered to sexual offence survivors.** Given that only one in nine women report their rape to the police<sup>251</sup>, a reduction in the number of rapes reported to the SAPS was indicative to civil society-based, sexual offence-related service providers not of the number of sexual offences being committed in South Africa decreasing, but rather of an increase in the barriers survivors face in seeking to report their cases. Consequently, the number of reported rapes is decreasing. Accordingly, Summit participants felt it is imperative that the SAPS delink bonuses from a reduction of reported sexual offences and, instead, provide incentives to law enforcement officers to remove barriers to reporting and increase reporting rates. Alternative monitoring and evaluation indicators could be put forward and independent evaluations of police stations and their services could be conducted by survivors.
- (iii) **Roll out FCS units to all police stations in South Africa.** Given the alarmingly high rates of SGBV in South Africa, the Summit participants stressed the need for dedicated FCS units throughout the country.
- (iv) **Increase the number of SGBV-sensitive officers and improve sensitivity training in respect of the needs and particular vulnerabilities of marginalised groups.** Specifically, Summit participants recommended that the sensitivity and interpersonal skills of officers be evaluated prior to being employed. Furthermore, it was recommended that increasing the number of detectives within the FCS Unit would facilitate better statement taking and ease the burden on existing detectives.
- (v) **Improve and enhance statement taking.** In order to determine the motive behind a sexual offence and whether or not it was a hate crime, Gender Dynamix and the Triangle Project suggest that during statement taking, police must ask survivors if anything was said to them before or during the sexual offence and record that information in the statement and any subsequent police report(s). In addition, survivors should not be denied the opportunity to write their own statements or be forced to give a statement to the police while in a state of trauma-based confusion/shock.
- (vi) **Provide regular debriefing for officers who work with sexual offences.** According to the SALRC's Discussion Paper 102, "police members should have the freedom of electing whether to be debriefed by professionals either retained in-house or externally, but not from within their own unit"<sup>252</sup>. Despite these recommendations, it is concerning that the SAPS has not yet taken the need for debriefing seriously as the effects of this failure may negatively impact service delivery to sexual offence survivors.
- (vii) **Deal with the SAPS officials who are unprofessional and poorly treat survivors in terms of the relevant misconduct and poor performance procedures that exist in law.** Furthermore, it is recommended that the SAPS submit incidents of non-compliance on the part of its officers with the provisions of sexual offences-related laws and policies to the relevant oversight and complaints bodies. Additionally, it was recommended that the powers of those bodies to ensure meaningful disciplinary and other corrective and/or remedial action be enhanced.
- (viii) **Report to Parliament regarding the appropriateness of services being offered to sexual offence survivors in police stations without victim-friendly rooms.**
- (ix) **Improve its relationship with schools to encourage the reporting of sexual offences.**
- (x) **Increase the number of accredited local community translators to provide services to complainants who are (im)migrants and thus feel more comfortable speaking in their home language.**

## DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

---

- **Revive sexual offences courts and roll these courts out nationally.** Survivors of sexual offences have specialised needs and thus require specific and specialised justice services<sup>253</sup>. Additionally, prosecutors should be committed to working with traumatised survivors and providing the best possible services for complainants. The National Treasury must provide a dedicated budget for the implementation and operation of sexual offences courts throughout the country.
- **Train and sensitise more lawyers, presiding officers and clerks of the court regarding SGBV and sexual**

<sup>251</sup> Medical Research Council and Department of Health, *South Africa Demographic and Health Survey (1999)*

<sup>252</sup> *South African Law Commission's Discussion Paper 102, P52*

<sup>253</sup> <http://www.justice.gov.za/reportfiles/othert/2013-sxo-courts-report-aug2013.pdf>

- offences.** Personnel working in these courts should receive sufficient sensitivity training and treat survivors with dignity.
- **Establish transparent budgets and ring-fenced funds for spending on SGBV.** It is concerning that the DOJ&CD, responsible for providing services to survivors, was named as the most responsible for fruitless and wasteful expenditure.
- **Ensure compliance with South Africa’s national, regional and international obligations as they relate to SGBV.** In this regard, it is concerning that the South African Government has eschewed its obligations to the International Criminal Court by allowing Sudan’s President Bashir to leave South Africa after the High Court Order issued for his arrest. While this is considered a blow to international justice, it should also be seen as the Government’s lack of commitment to survivors of sexual offences. Bashir is accused of crimes against humanity, including *inter alia* systematic rape.

## DEPARTMENT OF CORRECTIONAL SERVICES

---

The systemic nature of sexual offences within South African prisons, the mismanagement of sexual offences by the DCS and the culture of impunity within men’s correctional facilities was discussed. Accordingly, it is recommended that the DCS:

- (i) **Implement its own policy on sexual assault (The Policy Framework to Address the Sexual Abuse of Inmates in the Department of Correctional Services).** The Policy Framework establishes a zero-tolerance approach to SGBV within correctional facilities.
- (ii) **Sensitise employees about the contents and responsibilities set out in the Policy Framework** as well as the consequences resulting from failures to adhere thereto.
- (iii) **Collect disaggregated data on SGBV within male and female correctional facilities** in order to understand the scope of the SGBV that occurs and, thereafter, to allocate sufficient resources towards implementation of the Policy Framework and other relevant sexual offences-related laws and/or policies.

## DEPARTMENT OF HEALTH

---

Survivors of sexual offences are introduced to South Africa’s health system through a variety of entry-points. Oftentimes, sexual assault survivors enter the healthcare system in order to receive vital services such as emergency contraception, PEP, testing for sexually transmitted diseases and HIV/AIDS, termination of pregnancy and treatment for other violence-related injuries. Moreover, a survivor may seek healthcare related to injuries incurred during the commission of the sexual offence. Survivors may undergo a forensic examination in order to gather evidence that may be useful should justice processes follow. In order to provide appropriate healthcare services and reduce the possibility of secondary trauma for survivors, it is recommended that:

- (i) **The DOH train and sensitise medical professionals and other healthcare workers to the need for sensitive service provision.** Currently, there is not enough training provided or required of healthcare workers in relation to the content or their roles and responsibilities in terms of the 2007 SOA and other sexual offence-related DOH guidelines for the handling of sexual offences cases. Moreover, there is insufficient training provided in relation to the conduct of forensic examinations, the completing of ‘J88’ medical incident reports, and/or appropriate sexual offence-related trauma care.
- (ii) **The DOH train relevant service providers so as to enable them to give more meaningful expert testimony in sexual offences cases.** Improving service providers’ knowledge of the 2007 SOA and the health-related impact of sexual offences may aid in improving the outcomes of sexual offences cases for survivors. While considering the provisions of the then draft 2007 SOA, the SALRC recommended that medical personnel work with the investigating team in criminal matters.
- (iii) **Appropriately trained forensic medicine specialists be privy to crime scene information and be consulted regarding the evidence that needs to be collected** from both the survivor and/or the alleged offender as well as from the crime scene.<sup>254</sup>
- (iv) **The DOH incentivise healthcare students to take an interest in forensic medicine and SGBV-related service provision.** As was submitted at the Summit, there is a serious lack of medical professionals who are committed to forensic medicine and thus, rape examinations are often performed by non-specialists who may or may not be able to procure the necessary evidence nor provide sufficient information and care to sexual offences survivors.

<sup>254</sup> <http://www.justice.gov.za/salrc/dpapers/dp102-execsum.pdf> P5

## THUTHUZELA CARE CENTRES

---

Summit participants averred that the number of TCCs operating in South Africa currently is insufficient and that the quality of care varies greatly between TCCs. Accordingly, it is recommended that:

- (i) **The number of TCCs nationwide be increased.**
- (ii) **TCCs improve and standardise service provision.**
- (iii) **TCCs increase their staff compliment and infrastructure in rural and peri-urban areas.**
- (iv) **TCCs expand and improve services for male and LGBTI sexual offence survivors** as sexual offence-related services are often heterosexual women-centred.

## DEPARTMENT OF SOCIAL DEVELOPMENT

---

The DSD is an implementing body of the 2007 SOA. With its mission of enabling vulnerable and excluded populations and promoting a caring South Africa, assisting survivors of sexual offences should be a priority. In this regard, Summit participants felt that the DSD has room for improvement. In order to provide more survivor-friendly services, it is recommended that the DSD:

- (i) **Review its budgeting and resource allocation policy to guarantee that it is appropriately and equitably funding sexual offence-related services.** As discussed in the report, the current DSD funding model gives provinces the autonomy to determine the amount of money they allocate to service providers. In this model, there is no minimum allocation to service providers and large discrepancies exist between the remuneration received by State versus civil society-based service providers as well as between provinces. Additionally, despite the provisions of the Victim Empowerment Programme (“VEP”), not all DSD VEP funds reach the service provision organisations for whom they are intended. Therefore, Government and civil society should carefully monitor DSD expenditure and resource allocation to ensure consistent service provision to all sexual offence survivors across the country and equitable remuneration for service providers, whether they be employed by DSD or civil society-based service provider organisations.
- (ii) **Increase the number of emergency safe-houses and short, medium and long-term housing options for SGBV survivors.** Additionally, Summit participants recommended that access thereto be expanded for survivors who test positive for drug and alcohol use. It was averred that some DSD funded shelters restrict access by performing drug and alcohol tests. Accordingly, Summit participants recommended that survivors who test positive for drugs and alcohol use should be allowed access to shelters and appropriate measures put in place to accommodate their shelter and safety needs.
- (iii) **Train all social workers and other civil society-based sexual offence-related service providers on the provisions of the 2007 SOA and other relevant laws and policies, including those relating to sexual offences committed against children.** Recognising that the focus of social work is broad, and that social workers may not be equipped with in-depth knowledge of the 2007 SOA or other related laws and policies, it is recommended that social workers be familiarised therewith, and specifically in relation to their mandatory reporting obligations.
- (iv) **Increase the number of trained and accredited forensic social workers.** Forensic social workers play an invaluable role in providing expert testimony in sexual offences cases and referring sexual offence survivors to appropriate psycho-social support.
- (v) **Develop a referral protocol to be used to refer survivors between DSD programmes as well as by social workers to other Government and civil society-based services.** No mechanism exists that tracks sexual offences cases across different government service providers or determines whether a survivor has received relevant services. This is furthermore important to ensure the provision of appropriate follow-up services to sexual offence survivors.
- (vi) **Establish a ‘life course’ approach to violence prevention as part of DSD services.** Summit participants recommended that violence prevention and empowerment should be a focus of all DSD programmes and for those relating to sexual offence survivors more specifically.

## CIVIL SOCIETY

---

- (i) **Increase intra-sectoral and inter-sectoral collaborations and engage in more multi-stakeholder collaborations** with Government to move beyond the feeling that organisations persist in working “in silos”.
- (ii) **Improve collaboration and relationships between civil society and key parliamentary groups.** Despite the need to hold politicians accountable, in order to improve the implementation of the 2007 SOA and related laws and policies, it is recommended that civil society engage consistently with Members of Parliament, parliamentary researchers and relevant parliamentary portfolio committees as well as with advocacy and policy reform endeavours.
- (iii) **Identify feminist allies in the media and contact them to pitch stories, provide comments on news and sensitivity training workshops for relevant media personnel involved with reporting on sexual offences.** It was thought that improving civil society’s relationship with key media professionals may also help in holding Government accountable and positively influence the public’s knowledge regarding their rights, the criminal justice system and where to access sexual offence-related services.

## MEDIA

---

Ideally, the media should play an important role in the improvement and implementation of sexual offences-related laws and policies. This can be done by a) holding Government and service providers accountable for deficient service delivery, b) educating members of the public regarding their rights and available services as well as c) providing appropriate, sensitive and nuanced reporting on sexual offences.

However, it was submitted that, all too often, media reporting on sexual offences is sensationalised and framed in disrespectful terms that are harmful not only to sexual offence survivors but also in leading to public misinformation relating to sexual offences and the experiences of survivors. Accordingly, it is recommended that the South African media:

- (i) **Establish and improve relationships with practitioners in the SGBV field, well-established NGOs, academics, activists as well as community-based organisations that specialise in sexual offence-related service provision.**
- (ii) **Include features on the resilience of survivors in feature articles or news clips, what the panellists described as “against all the odds” stories.** All too often, survivors of sexual offences are framed as passive victims of brutal sexual offences. Such stories, however, require particular sensitivity in the manner in which they are reported so as not to ignore or downplay the harms suffered or give the false impression that the impact of sexual offences on survivors is not that bad. This is important as it has the potential to impact both societal perceptions and the sentencing of perpetrators in sexual offences cases.
- (iii) **Stress the sensitivity of reporters’ use of language by providing training to reporters who cover sexual offences stories.** Summit participants averred that much of the language used by reporters in relation to sexual violence is offensive and damaging. For example, the media often refers to schoolgirls “falling pregnant” (including when this is a result of sexual violence), men having been “sodomised” (instead of raped) and complainants in sexual offences cases as “victims” when they may not self-identify as such. Accordingly, it is recommended that the media report sexual offences with the necessary sensitivity and with due regard being given to the language in which reports are framed and the message being disseminated.



## CHAPTER 7

# CONCLUDING COMMENT

---

Through the bringing together of diverse stakeholders and interest groups, the Summit provided a space for meaningful, inter-sectoral engagement, critical reflection and experience-based recommendations aimed at enhanced access to justice and service provision for sexual offence survivors.

Persistent findings emergent from Summit submissions and open discussions confirm the very real need for a holistic and co-ordinated approach to victim support and service provision which includes inter-departmental as well as inter-sectoral co-operation and appropriate budgeting; coupled with consistent service provision and accountability on the part of all relevant role-players. The findings further confirm the ongoing need to address a lack of knowledge on the part of both community members and service providers regarding the legal framework relating to sexual offences in South Africa, the rights of sexual offence survivors and the availability of psychosocial as well as other sexual offences-related support services.

Lastly, the Summit recognised, and sought to further, the importance of participatory democracy and continuing community engagement in needs-responsive policy (re)formation and service provision - specifically, acknowledging the articulation of civil society and community-based dialogues as transformative and relevant to ensuring access to as well as the advancement of justice for sexual offence survivors.

# ANNEXURE A: SUMMIT BROCHURE

## THE CHALLENGE

December 2014 marked 7 years of the passing of the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007 and, accordingly, it is time for the hard questions to be asked and, more importantly, answered with a view to constructive and participative problem solving with respect to the deficient implementation of the Act. While national coalitions have been effective in raising public awareness about the challenges set out above, challenges remain in engaging the State in meaningful dialogue and debate.

The Summit provides a space to discuss service delivery and improved access to justice for survivors of sexual assault. Furthermore we hope to facilitate dialogue amongst civil society, service providers as well as the community at large. We will be compiling a report comprising submissions which will be distributed among participants and government.



### Contact Information:

Email: [sexualoffencesummit@gmail.com](mailto:sexualoffencesummit@gmail.com)  
 Website: [sexualoffencesummit.co.za](http://sexualoffencesummit.co.za)  
 Tel: (021) 406-6948  
 Fax: (021) 406-6020

## Civil Society-led Summit Regarding the Implementation of Sexual Offences Legislation, Improved Access to Justice and Service Delivery for Survivors of Sexual Assault in South Africa

Participants include:



## INTRODUCTION

The Gender Health and Justice Research Unit (UJCT) together with the Centre for Disability Law and Policy (UWC) and additional project partners are convening a civil society-led Summit regarding the implementation of Sexual Offences Legislation, improved access to justice and service delivery for survivors of sexual assault in South Africa.

## BACKGROUND INFORMATION

The primary objective of the Criminal Law (Sexual Offences and Related Matters) Amendment Act ("the Act") of 2007 is to provide victims of sexual offences the "maximum and least traumatising protection that the law can provide". A range of research reports aimed at investigating the implementation of the Act have found a lack of substantive knowledge on the part of State actors about the Act, as well as operational failures at almost every level. In addition to the lack of effective implementation, the operational structures envisaged by the Act (including directives, training and committees) have not been fully realised. While it is disconcerting that the provisions included in the Act to ensure the effective implementation

## CONTINUED

of the legislation and to safeguard the interests of persons who have experienced sexual violence have not materialised, it is even more disturbing that the accountability measures are similarly failing.

Civil society organisations have attempted both individually and as part of larger coalitions to bring to light the sluggish and inconsistent implementation of the Act through research, national monitoring and public awareness campaigns. The State has been largely unresponsive or defensive about the complexity of the Act's implementation.

Attempts to secure information and discussions regarding the progress of (i) particular policies or directives related to the Act; (ii) the establishment, composition and objectives of the Inter-Sectoral Committee for the Management of Sexual Offence Matters; (iii) Department specific training relating to the Act; (iv) the finalisation of the National Policy Framework; (v) plans for parliamentary monitoring and oversight and other critical operational issues have been met with silence or deferrals. This sends the message to civil society organisations that they have no meaningful role to play in the structural or institutional management or implementation of the Act, apart from providing supplementary services to the State where it cannot itself deliver, for example: victim and court support services.

## AIMS

The aims of the Summit are:

- (i) to promote government accountability, particularly where it has committed itself through law to ensuring fair, equitable and speedy access to justice in relation to sexual offences;
- (ii) to do so through a process that recognises civil society as transformative and relevant to ensuring meaningful service delivery and access to justice for victims/survivors of sexual offences;
- (iii) to provide a safe space for the sharing of experiences, concerns, needs and recommendations about the law regarding sexual offences and its implementation; and
- (iv) to ensure that the intended conversations are open and transparent.

## PARTICIPANTS

Participation will be diverse and inclusive of a range of stakeholders. Participants include: individual members of the public, researchers, academics, experts, practitioners in the field of sexual offences, community-based and non-governmental organisations, medico-legal service providers as well as relevant Government Departments and other stakeholders.

## ANNEXURE B: PUBLIC INVITATION TO THE SUMMIT

---



PO Box 13914, Mowbray 7705  
Level One, Entrance One, Falmouth Building, Anzio Road, Observatory 7925  
Tel: +27 (0) 21 406 6021 Fax: +27 (0) 21 406 6020  
E-mail: Kelley.Moult@uct.ac.za  
Internet: www.ghjru.uct.ac.za

**January 2015**

### **Invitation to Attend and Participate in a Civil Society-Led Summit Regarding the Implementation of Sexual offences legislation in South Africa**

The *Gender Health and Justice Research Unit (UCT)* together with the *Centre for Disability and Law (UWC)* and additional project partners wish to invite you and other members of your organisation to attend and participate in a civil society-led summit regarding the implementation of the sexual offences legislation in South Africa.

The Summit will take place at the **Delft Central Sports Ground Hall, Delft Main Road, Delft** (a few hundred metres past the Delft Police Station).

The objectives of the summit are:

- (i) To promote government accountability, particularly where it has committed itself through law to ensuring fair, equitable and speedy access to justice in relation to sexual offences;
- (ii) To do so through a process that recognises civil society as transformative and relevant to ensuring meaningful service delivery and access to justice for victims/ survivors of sexual offences;
- (iii) To provide a safe space for the sharing of experiences, concerns, needs and recommendations about the law on sexual offences and its implementation;
- (iv) To ensure the intended conversations are transparent and open.

Participants include: individual members of the public, researchers, experts and practitioners in the field of sexual offences, community-based and non-governmental organisations, medico-legal providers as well as relevant government departments and other stakeholders. Participation will be diverse and inclusive of a range of stakeholders. Your organisation is invited to (i) attend, and/or (ii) make submissions. Submissions may be written, joint, or individual, anonymous or named, artistic or photographic. The Summit will be followed by the writing of a report of the submissions as well as evidence-based recommendations for enhanced service delivery.

#### **FOR FURTHER INFORMATION AND TO CONFIRM ATTENDANCE CONTACT:**

**TELEPHONE: 021 406-6949 Fax: 021 406-6020**

**Website: [www.sexualoffencesummit.co.za](http://www.sexualoffencesummit.co.za) Email: [sexualoffencessummit@gmail.com](mailto:sexualoffencessummit@gmail.com)**

Yours sincerely,

**Hayley Galgut**

Senior Researcher, Gender Health and Justice Research Unit, University of Cape Town

**Professor Lillian Artz**

Director, Gender Health and Justice Research Unit, University of Cape Town

**Professor Helene Combrink**

Centre for Disability Law and Policy, University of Western Cape

## ANNEXURE C: SUMMIT PROGRAMME WITH SPEAKER BIOGRAPHIES

### DAY 1

10:00-10:30 **Lisa Vetten** (*The Shukumisa Campaign*)  
*Contradictions, Expectations and Awaiting Finalisation(s): The Status of the Sexual Offences Act*

After a number of years spent working in women's organisations **Lisa Vetten** joined WiSER as an honorary research associate in 2014. She holds a Master's degree in Political Studies and has undertaken a range of research projects around violence against women. Her current work examines rape and the criminal justice system, as well as the politics of funding services to women who have experienced violence. Committed to building relations between academia and women's community organisations, she is a member of the *Shukumisa Campaign's* steering committee and trains member organisations to monitor police stations, courts and health facilities' compliance with sexual offences' policy and legislation. Ms Vetten often provides expert testimony on different aspects of violence against women and is also the specialist on violence against women appointed to the Commission for Gender Equality's section six committee. Ms Vetten also writes for the Mail & Guardian's *Thought Leader* blog.

10:30- 11:10 **The Women's Legal Centre**  
*Legal Accountability: Existing Case Law, Gaps and Future Challenges*

**The Women's Legal Centre** is a non-profit, independently funded law centre, started by a group of women lawyers. The WLC, as we are known, seeks to achieve equality for women in South Africa. The WLC provides a range of free legal services, including:

- Litigation which advances women's rights and is in the public interest, particularly constitutional cases
- Provision of legal advice to women and girls
- Advocacy campaigns and activities that advance women's rights

11:50-12:10 **Thoko Madonko** (Alternative Information and Development Centre) and **Lorenzo Wakefield**  
Consortium on Crime and Violence Prevention (APCOF/CJCP)  
*Gender Responsive Budgeting and its Linkages with Gender-Based Violence and the Deficient Implementation of Sexual Offences Legislation*

**Thoko Madonko** currently works at the Alternative Information and Development Centre, Cape Town. She has worked in a range of civil society organisations, including Section 27, the People's Health Movement-South Africa, the International Budget Partnership and the Centre for Social Accountability (CSA).

**Lorenzo Wakefield** holds an LLB and LLM (International Criminal Law and Human Rights) from the University of the Western Cape. He has experience in research, advocacy, training and lecturing in children's rights (especially child justice) and gender rights (particularly gender-based violence). He has published widely on children's rights in South Africa and internationally. He previously worked as a researcher in children's rights at the Community Law Centre, University of the Western Cape and on children's rights and the rights of persons with disabilities in the National Assembly in the Parliament of the Republic of South Africa.

13:30-13:50 **Naomi Thomas** (Witzenberg Rural Development Centre)  
*Case Study Elucidating the Linkages between the Implementation of Gender Based Violence-Related Legislation and Housing Subsidy Policies*

**Naomi Thomas** works at the Witzenberg Rural Development Centre, which provides advice on human rights issues to focus on early childhood development and capacity building on relevant topics.

14:10-14:30 **Solminic Joseph** (Equal Education Law Centre)  
*Implementation of Sexual offences Legislation in Respect of Gender-Based Violence in Schools*

**Solminic F.D Joseph** graduated with an LLB at UWC in 2012. While at university, Solminic worked as a Senior Peer Educator at the UWC HIV/AIDS Programme. He was also a beneficiary of the Canon Collins Educational and Legal Assistance Trust's Leigh Day Scholarship, as well as the University Scholarship for South African Students. In 2012 Solminic was employed as a senior research fieldworker with HealthWise South Africa and as a programme assistant and coordinator for the UWC HIV/AIDS Programme's iCare Initiative. Currently he is completing his Articles of Clerkship with the Equal Education Law Centre.

14:30-15:30 *Children and the Implementation of Sexual Offences Legislation:*  
• **Christina Nomdo** – RAPCAN  
• **Prof. Shanaaz Mathews** – Children's Institute (UCT)

**Christina Nomdo** is the Executive Director of Rapcan (Resources Aimed at the Prevention of Child Abuse and Neglect). She has a MA in Gender Studies from the University of Cape Town and has been involved in the children's sector for over 15 years. RAPCAN is widely recognised for its contribution towards creating a safe society where children are acknowledged as rights-holders, and the rights of all are respected. It strives for a society where adults take responsibility for the safety of children, where children participate in the realisation of their rights and are able to achieve their full potential.

**Prof. Shanaaz Mathews** is the Director of the Children's Institute at the University of Cape Town, which focuses on child policy research and advocacy in South Africa. Her expertise includes the areas of children & violence, child protection, child abuse, gender policy, gender-based violence, and evidence-based programming.

## DAY 2

9:00-9:30 **Prof. Lorna Martin** (Department of Forensic Medicine, University of Cape Town)  
*Sexual Offences and Rape Homicide: Experiences of a Forensic Pathologist in Cape Town*

**Prof. Lorna J Martin**, is Head of the Division of Forensic Medicine at the University of Cape Town. Her research predominately focuses on combating violence against women and children, including studies on femicide and the medico-legal management of rape survivors.

9:30-10:20 **Dr Genine Josias** (Khayelitsha Thuthuzela Forensic Centre)  
*Gender, Health & Justice: Thuthuzela Care Centres and Service Delivery to Victims/ Survivors of Sexual Offences*

**Dr Genine Josias** is the Medical Coordinator at the Khayelitsha Thuthuzela Forensic Centre. She has been involved in providing and coordinating medical and psychological support to victims of sexual violence for many years.

10:40-11:10 **Kathleen Dey** (Rape Crisis Cape Town Trust)  
*Victim Impact of Gender-Based Violence and the Deficient Implementation of Sexual Offences Legislation*

**Kathleen Dey** is the Director at Rape Crisis Cape Town Trust. She has a background in social work with more than 30 years' experience in the field of gender-based violence service provision.

12:00-12:30 **Carol Bosch** (Sexual Assault Victim Empowerment Programme, Cape Mental Health)  
*The Implementation of Sexual Offences Legislation from the Perspective of People with Intellectual Disabilities*

**Carol Bosch** is the coordinator for the Sexual Assault Victim Empowerment (SAVE) Programme, at Cape Mental Health Society. She is responsible for the daily running of the SAVE programme which offers victims and their families psychological counselling and the same access to justice as the general population.

14:00-14:20 **Dr Marlise Richter** (Sonke Gender Justice)  
*The Deficient Implementation of Sexual Offences Legislation in Respect of Men and Male Prisoner Sexual Assault Survivors*

**Dr Marlise Richter** is a senior member of Sonke Gender Justice's Policy, Development and Advocacy Unit where she manages Sonke's prison reform advocacy, serves as coordinator of Sonke's partnership with Sweat, which is aimed at the full decriminalisation of sex work, and also manages the Sonke-UCLA Health and Human Rights LLM fellowship programme.

14:20-14:40 **Ishtar Lakhani** and **Ayanda Denge** (SWEAT with Sisonke)  
*Sex Workers Experiences and Sex Workers Ability to Access Services and Justice*

**Ishtar Lakhani** is the Human Rights and Lobbying Officer at Sex Worker Education and Advocacy Taskforce. In the past she was the national co-ordinator of *One in Nine Campaign*, is responsible for mobilising direct action around particular cases of sexual violence, as well as organising programmes that serve to engage women activists in getting their word out in the media.

14:40-15:00 **Sharon Cox** (Triangle Project with Gender Dynamix)  
*LGBTI Blind Spots and the Implementation of the Sexual Offences Act*

### DAY 3

9:30-10:00 **Women on Farms Project** – Sharon Messina and two Women on Farms Health Team members

**The Women on Farms Project** strives to strengthen the capacity of women who live and work on farms to claim their rights and fulfil their needs. They do this through socio-economic rights-based and gender education, advocacy and lobbying, case work and support for the building of social movements of farm women.

10:00-10:30 **Tendai Bhiza** (PASSOP)  
*Refugees', Asylum Seekers' and Undocumented (Im)migrants' Experiences of Accessing Sexual Offence-Related Services and Justice*

**Tendai Bhiza** works at PASSOP. She is a Zimbabwean refugee who fled the political instability in Zimbabwe in 2004. Before joining PASSOP she worked as a self-employed African curios salesperson at Greenmarket square. She joined PASSOP after being introduced to the organisation at several protest actions at Parliament and the Home Affairs Office.

11:20-11:40 **Nolusindiso Dyantyi** (Afrika Tikkun, Delft)  
*Community Perspectives Regarding Service Provision and Access to Justice for Sexual Offence Survivors*

12:00-12:20 **Rebecca Davis** (Journalist, Daily Maverick) and **Janine Cameron** (Assignments Editor, ETV News)  
*The Media and Gender-Based Violence Reporting*

**Rebecca Davis** is a journalist who lives in Cape Town. She is a staff writer for the Daily Maverick and a frequent contributor to other South African publications. She can also be heard weekly on Cape Talk.

13:30-14:30 Government perspectives  
Guest speakers: Western Cape Department of Justice and Constitutional Development; IPID and the Department of Health

14:30-15:00 **Samantha Waterhouse** (The Parliamentary Programme, Dullah Omar Institute, UWC):  
*Identifying Gaps in Practice and Strategies for Enhanced Implementation of the Sexual Offences Act*



## ANNEXURE D: TEMPLATE FOR SUBMISSIONS

---

# CIVIL SOCIETY-LED SUMMIT RE: THE IMPLEMENTATION OF SEXUAL OFFENCES LEGISLATION IN SA

## TEMPLATE FOR SUBMISSIONS

---

This template is a guide intended to assist you in preparing the structure and content of your submissions.

Kindly,

- (i) answer as many of the questions below as you can; and
- (ii) add any further information you consider relevant.

Should you wish to send us your submission(s), need advice or assistance in preparing your submission(s) or have any questions, please do not hesitate to contact the Summit conveners at:

sexualoffencesummit@gmail.com or by telephone on 021 650 1066

### HEADINGS TO GUIDE YOUR SUBMISSIONS:

1. In which language would you like to make your submission(s)?
2. What kind of submission would you like to make? For example: oral and/or written and/or artistic and/or photographic and/or video or other type of submission or more than one kind of submission?
3. Are you making this submission as:
  - (i) an individual member of the public in your own name, or
  - (ii) in the name of an organisation; or
  - (iii) on behalf of someone else? If you are making this submission of behalf of someone else, what is your relationship to that person/those people?
4. Do you wish your name to be on your submission or do you wish to make your submission anonymously? If you are happy for your name to be on your submission, please tell us your name.
5. Do you wish to receive a copy of the Summit Report? If yes, please give us your contact details.
6. If your submission is in the name of an organisation, please describe your organisation:
  - Organisation name.
  - What is your position in the organisation?
  - What kind of work does your organisation do? What services does your organization provide?
  - Who is the organisation's target group? To whom does your organisation provide services?
  - In what (geographical) area(s) does your organisation work?
  - Contact details: address, contact number, website address, email address of you or your organisation.
7. Please tell us why you think it is important to you/your organisation to participate in the Summit and make a submission?
8. Do you work with sexual offence-related laws, policies and/or services? If yes, please tell us which laws, policies and/or services do you work with?
9. In your experience, are sexual offence-related laws, policies and services responding meaningfully to sexual assault survivors' needs? Please explain.
10. How have the ways in which sexual offences-related laws, policies and/or services are being implemented impacted on you, those to whom you provide services or those on whose behalf you are making this submission?  
For example:
  - Think of sexual offence survivors who you know or have worked with. How would you describe their access to sexual offence-related services?
  - Think of sexual offence survivors who you know or have worked with. How would you describe their access to justice? What have been some of the challenges, obstacles and good practices that you or your organisation

have encountered in reporting a sexual offence?

- Please share with us any specific case studies/examples that you or your organisation have dealt with or know of that help to illustrate the answers you have given so far. When sharing the details of such cases/examples with us, please protect the privacy of those whose experiences you are describing by changing their names and keeping their real names private and anonymous.

**11.** What needs to change?

- What do you think should be done to improve sexual offence-related laws and/or policies?
- What do you think should be done to improve the implementation of sexual offences-related laws and/or policies?
- What do you think should be done to improve service delivery to sexual offence survivors and who do you think should be doing it?
- Does civil society have a role(s) to play? If yes, what role(s) do you think civil society should play?
- What do you think should be done to improve Government accountability regarding the meaningful implementation of sexual offences-related legislation, policies and services?
- Is, and should, civil society be accountable for the meaningful implementation of sexual offence-related legislation, policies and services?
- What do you think should be done to improve civil society accountability regarding the meaningful implementation of sexual offences-related legislation, policies and services?
- How do you think these improvements can be achieved?
- Do you have questions that you would like Government to answer? Please list them here:
- Do you have questions that you would like civil society to answer? Please list them here:

**12.** Is there anything else you wish to raise, share with us or suggest? If yes, please do so.

## ANNEXURE E: PARTICIPANT QUESTIONS AND RECOMMENDATIONS

---

Do you have any questions that you would like to ask Government in general and/or any specific government departments?

- Police
- NPA
- Or any other relevant role player/ service provider

Please list your questions in the space below:

Do you have any recommendations for improving service delivery?

- Improved service delivery for survivors of sexual offences
- Improved justice and access to justice for survivors of sexual offences
- Improved Government accountability
- Or any other practical recommendations

Please list your recommendations in the space below:

## ANNEXURE F: FEEDBACK FROM PARTICIPANTS ON THE SUMMIT

---

“The summit was very informative and well organised. As a public servant I did not know that there were so many organisations who can assist us in delivering our services speedily to our clients.”

**(IPID)**

“A summit like this needs to be brought to every community, especially the rural communities” **(IPID)**

“The best part was that the summit was held in a disadvantaged community which allowed for community participation. Judging from the presentations and group discussions there is still a huge need for people to access information, better understand the services offered to them and that there are ways to complain if the services offered are not offered appropriately or not at all.” **(Aniela from the Shukumisa Campaign)**

“The summit was a great opportunity and it was very resourceful. It gave me perspective on life and even to want to respect my wife. This summit gives a bigger voice to the community in Delft [...] the community needs this intervention”. **(Community member)**

“Thank you for a good summit with loads of spaces for us to speak about poor service delivery [...] I hope that the process will not just end here as a talk shop and that this process challenges the provincial and national ministers [...] to own up to the gaps in their services.” **(NGO Member)**

“The summit was so productive. We learned a lot from different people and the information I get here I will implement with my clients that I am working with”.

“This type of engagement is dire needed in more communities, so that it helps grassroots NGOs and CBOs with information and capacity building.

## ANNEXURE G: LIST OF PARTICIPANTS

---

1. Action Aid South Africa (AASA)
2. Africa Development Group (ACVV) Oudtshoorn
3. Africa Development Group (ACVV) Dyssseldorp
4. Afrika Tikkun
5. AIDS Legal Network
6. Alternative Information and Development Centre (AIDC)
7. Cape Mental Health
8. Cape Town Family Violence, Child Protection and Sexual Offences (FCS) Unit
9. Center for the Study of Violence and Reconciliation (CSVR)
10. Childline South Africa
11. Community Development Workers Program (CDW) Local Government
12. Community Law Centre
13. Community Work Programs (CWP)
14. Cultural, Religious and Linguistic Rights Commission (CRL)
15. Daily Maverick (Rebecca Davis)
16. Delft South African Police Service
17. Department of Correctional Services (DCS)
18. Department of Health (DOH)
19. Western Cape Department of Health
20. Department of Justice and Constitutional Development (DOJ&CD)
21. Department of Social Development (DSD)
22. Embrace Dignity
23. Equal Education Law Centre (EELC)
24. Etafeni
25. Family and Marriage Society of South Africa (FAMSA) Karoo
26. Forum for the Empowerment of Women (FEW)
27. Foundation of Community Work (FCW)
28. Gender and Sex Project (GASP)
29. Gender Dynamix
30. Grandmothers Against Poverty and AIDS (GAPA)
31. Health Cape Winelands
32. HIV/AIDS, STIs and TB (HAST)
33. Hosken Consolidated Investment Foundation (HCI)
34. Independent Police Investigation Directorate (IPID)
35. Khulani Khayelitsha
36. Kraaifontein FCS Unit
37. Legal Resource Center (LRC)
38. Magdalena Huis
39. Mercy Care Center
40. Mfesane
41. Mitchell's Plain Hospital

## ANNEXURE G: LIST OF PARTICIPANTS

---

42. Mosaic
43. National Prosecution Authority (NPA)
44. Ndifuna Ukwazi (NU)
45. Network of Care
46. Networking HIV,AIDS Community Of South Africa (NACOSA)
47. NICRO
48. Nikilitha Safe Space
49. NLC (National Lotteries Commission)
50. People Against Suffering, Oppression and Poverty (PASSOP)
51. People Opposing Women Abuse (POWA)
52. Philisa Abapazi Bethu
53. Rape Crisis Cape Town Trust (RCCTT)
54. Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN)
55. Sisonke
56. South Africa Family and Friends Institute (SAFFI)
57. The Safety and Violence Initiative (SAVI)
58. The *Shukumisa Campaign*
59. Social Justice Coalition
60. Sonke Gender Justice
61. Sex Worker Education and Advocacy Team (SWEAT)
62. Thuthuzela Care Center (TCC) Bellville, Karl Brenner Hospital
63. TCC, Khayelitsha
64. TCC, Victoria Hospital
65. Triangle Project
66. The Children's Radio Foundation
67. The Women's Circle
68. The Women's Legal Center
69. TB/HIV Care Association
70. University of Cape Town, Children's Institute
71. University of Cape Town, Division of Forensic Medicine
72. University of Cape Town, Faculty of Law
73. Wellness Foundation
74. Young Urban Women (Wellness Foundation and ActionAid)
75. Witzenberg Rural Development Centre
76. Women on Farms Project (WFP)
77. Women GRCLS
78. Plus many individual members of the public





