

**Legislation relating to violence against women in South Africa and the challenges relating to its implementation and success****9 April 2013****1. Introduction**

Between 2004 and 2012, 535 768 sexual offences were reported to the South African Police Services (SAPS).¹ Failure to prosecute perpetrators, and to use legislation effectively, has the effect of creating a culture of impunity, and "sends a message to society that male violence against women is both acceptable and inevitable."² Every eight hours a woman is killed by her intimate partner,³ and other forms of domestic violence (economic abuse, emotional abuse) are prevalent. Violence against women thus takes many forms.

Violence is not only a reality for adult women, but for very young girls and adolescents as well. Many girls are subject to sexual bullying, rape and harassment in schools and this is perpetrated both by teachers and fellow learners.⁴ Some studies report that 30% of girls are raped within schools, and many suffer more than one incident of violence against them.⁵ Furthermore, many men who will ever go on to rape do so for the first time in their teens.⁶ A 2011 study found that the perpetration of school sexual bullying is strongly associated with a subsequent rape.⁷

This paper makes clear the legislative responses of the South African Government regarding violence against women, and addresses some of the challenges regarding legislation.

2. The legislative response to violence against women

South African legislation regarding violence against women is extensive. Legislation is supported by supplementary legislation and policy that serve to provide guidelines for

¹ The South African Police Services. (2012). *Crime Research and Statistics. Total Sexual Offences in RSA for April to March 2004/5 to 2011/2012*.

² United Nations General Assembly. (2006). In-depth study on all forms of violence against women. Report of the Secretary-General.

³ Abrahams et al. (2012).

⁴ South African Council of Educators. (2011). School based violence report: An overview of school based violence in South Africa.

⁵ Ibid.

⁶ Jewkes, R. (2012).

⁷ Jewkes, R, et al. (2011).



criminal justice system role players to provide support and services to victims. Legislation that exists regarding violence against women is listed below.

- The Domestic Violence Act 116 of 1998. This Act placed positive duties on police regarding the protection of women in domestic partnerships, and provides for women to apply for protection orders in order to force a separation between themselves and their abuser. The Act also broadly defines domestic violence in order to include an extensive list of abuses.
- The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. This Act expanded the definition of rape and created a number of new crimes in order to cover the extent of violence against women in South Africa. The Act removed the cautionary rule, where rape survivors' testimony was to be regarded with suspicion, and ensured that rape within marriage is classified as rape. In addition, the act specifies minimum sentences for certain categories of sexual violence, unless substantial and compelling circumstances exist. A minimum life sentence must be imposed in cases of rape or compelled rape where:
 - The victim was raped more than once;
 - The victim was raped by more than one person (acting with a common purpose or conspiracy);
 - The offender has been convicted of two or more offences of rape, but has not yet been sentenced in respect of such convictions;
 - The offender knows he has HIV/AIDS,
 - The victim is under the age of 16;
 - The victim is physically disabled;
 - The victim is mentally ill;
 - The rape involves the infliction of grievous bodily harm.
- The Protection from Harassment Act 17 of 2011. This Act protects women from harassment and provides for them to apply for protection orders in this regard. This Act also applies to online harassment.
- The Prevention and Combating of Trafficking in Persons Bill 7B of 2010 (adopted 18 March 2013 by the Select Committee on Security and Constitutional Affairs). The Bill introduces trafficking as an offence and sets up mechanisms to offer support to victims of trafficking.

Legislation has very clear benefits as a response to sexual violence.⁸ Firstly, legislation has a better chance of securing budgetary allocations than policy or other agreements. Legislation is also a useful tool in specifying the responsibilities of various state bodies in implementing legislation, which facilitates clear accountability chains.

⁸ Dey, K, *et al.* (2011).



3. Current challenges in the application and implementation of legislation

In the South African context, the presence of clear and detailed legislation has not resulted in a substantial reduction in the incidences of violence against women or sexual offences. This is for two important reasons:

- Legislation and policy cannot address the root causes of violence against women, and thus do not prevent violence against women from occurring; and
- Legislation and policy are poorly implemented resulting in poor service delivery to victims of sexual offences.

3.1. Causes of violence against women, and possible strategies to address these

Intersecting social challenges have the result of increasing the risks of violence against women and increasing the chance that men will perpetrate violence in the South African context. Male dominance and female subordination has typified South African gender relations. In addition, women in South Africa face a long history of oppression in terms of race, class and gender. High levels of violence and inequality have always been part of South Africa's history, both during colonial times and during apartheid.⁹ The same conditions and gender norms that make it more likely that men will perpetrate violence against women make it more likely that women will accept violence. In order to be successful, legislation requires a change in the societal norms that encourage rape and sexual violence. It also requires broader strategies. For example:

- Strategies and programmes aimed at preventing rape should be age group specific as the risk factors that encourage the perpetration of sexual violence vary between children, adults and adolescents.
- Strategies should target boys before they rape.
- Strategies should aim at strengthening bonds between parents and children, and should address parental intimate partner violence.
- Strategies aimed at youth should look at delinquency by the promotion of healthy recreation with the aim of reducing gang formation and recruitment. These interventions should include the transformation of ideals of masculinity.
- Strategies, programmes and policy should challenge inequitable, violent masculinities.
- Strategies should address issues like alcohol and drug abuse, and gun use, in the context of inequitable gender relations.

⁹ Jewkes, R, et al. (2009).



- Strategies should take into consideration broader structural inequalities that increase women's dependence on men that abuse them.

3.2. Implementation challenges and strategies to address them

Each Department should have comprehensive legislation and policy relating to assistance for victims. Despite this, many victims of sexual offences experience a gap between law and implementation, and the accessibility of these bodies varies greatly depending on whether the victim is from a rural or urban area. Dey *et al.*, identified that when legislation and policy does not clearly explain how departments are supposed to work together or lead one another, it results in ineffective action on the part of these departments, and does not result in service delivery for victims of violence against women.¹⁰

3.2.1. The National Policy Framework on Sexual Offences has not been finalised, and should be finalised as a matter of urgency

In terms of Section 62 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, a National Policy Framework (NPF) must be developed to ensure the efficient and effective management of sexual offences. The aim of the NPF was to "establish coordinated planning, resource allocations, and execution of services within the sexual offences sector".¹¹ The NPF was due to be finalised in 2009 in accordance with the legislation. As of June 2012 this document was still in draft format.¹² The current draft of the NPF sites that the delays in publishing the final version were caused by a long consultative process that had to incorporate many stakeholders.¹³ Civil society organisations such as Sonke Gender Justice suggest that the current draft of the NPF does not incorporate procedures to empower rape victims throughout the whole criminal justice system process, nor does it clarify or incorporate the role of civil society organisations in ensuring that rape victims' rights are progressively realised.¹⁴

Without this overarching policy document, the implementation of legislation will continue to be fragmented and will depend on the political will within each Department. It is thus unsurprising that service efforts have been uncoordinated and have not encouraged reporting

¹⁰ Dey, K, *et al.* (2011).

¹¹ The Department of Justice and Constitutional Development. 2012. Final Draft. National Policy Framework: Management of Sexual Offence Matters. Amended first edition. June 2012. Pretoria, The Department of Justice and Constitutional Development.

¹² Author not specified. 2011. "SA still has no sexual offences policy."

¹³ The Department of Justice and Constitutional Development. 2012.

¹⁴ Keehn, E. (Date not specified). "Shukumisa: Civil Society Pushes Improved Implementation of the Sexual Offences Act." Sonke Gender Justice E Newsletter, Issue 8.



by survivors, and have not achieved high levels of successful convictions. This framework should be finalised as a matter of urgency and should incorporate the role of civil society organisations into the framework.

3.2.2. Victims do not know their rights to access services, and thus do not access legislation, or complain when it is not implemented

If a victim of violence against women does not know about legislation and her rights to report, the legislation will have no use at all. Few women in South Africa will have had the opportunity to read the relevant legislation as more women than men remain functionally illiterate.¹⁵ In addition, women in South Africa have varying access to services depending on where they live. Rural women have more restricted access to the criminal justice system because of the long distances they must travel to report, thus the legislation designed to protect them often does not reach them.

To improve victims' awareness of their rights, information about these rights should be incorporated into the school curriculum.¹⁶ In addition, Jewkes (2012) recommends the inclusion of information about gender based violence prevention. The curriculum should thus address gender attitudes and consent, should work on deconstructing problematic gender norms, and should target both girls and boys.¹⁷ In this way, boys and girls will be aware of the norms that promote rape, and teachers will be able to identify harmful behaviour in schools. A large scale public awareness campaign is also required if the most vulnerable women are to be made aware of their rights, and rights to access services.

3.2.3. Domestic violence is not categorised as a stand-alone crime and thus statistics are difficult to access

According to the National Instructions 7/1999¹⁸ relating to the implementation of the Domestic Violence Act 116 of 1998 in police stations, all domestic violence incidents must be recorded in a Domestic Violence register. Before the third working day of each month the station commissioner at each station must submit a report to the area commissioner detailing the number of incidents of domestic violence reported, the number of cases referred for counselling or medical support services, the number of staff members trained on dealing with instances of domestic violence, and the number of criminal case dockets opened and

¹⁵ Ibid.

¹⁶ Dey *et al.* (2011).

¹⁷ Jewkes, R. (2012).

¹⁸ The South African Police Services. The National Instructions 7/1999, Domestic Violence. <http://www.tlac.org.za/wp-content/uploads/2012/02/national-instruction-domestic-violence-act.pdf>



registered. Before the seventh working day of each month this consolidated data must be sent from the area commissioner to the provincial commissioner, and by the tenth working day, the provincial commissioner should send the statistics to the divisional commissioner. Effectively what this means is that it should be possible to access domestic violence statistics from the South African Police Services (SAPS) monthly. However, the domestic violence register reports are not available anywhere online, nor have they been referenced in the police statistics. A strategy to address this would be to require the Minister of Police to report monthly on the statistics regarding domestic violence, and the use of the domestic violence registers. In this way, better allocation of resources such as police vehicles, trauma rooms, and shelters could be made.

4. Conclusion

Solutions require leadership and accountability. In the 2013 State of the Nation Address, President Zuma described the need for “unity in action to eradicate this scourge” of violence against women.¹⁹ Political leadership can set the example that norms and practices around masculinity are shifting, and that violence against women will no longer be tolerated.²⁰ Addressing the challenges in implementing legislation requires the allocation of sufficient financial and human resources to implement legislation, as well as strategies, policies and programmes to address the causes of violence against women in South Africa.

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¹⁹ Zuma, J. (2013). The State of the Nation Address.

²⁰ Jewkes, R, et al. (2009).



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