



Amnesty International’s submission in relation to the National Council on Gender-Based Violence and Femicide Bill [B31 - 2022]

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Introduction

1. Amnesty International is a global movement of people who campaign for a world where human rights are enjoyed by all. Today, Amnesty International is the largest human rights movement with over 10 million members, supporters and activists who take injustice personally. Amnesty International has evolved to become a global community of human rights defenders based on the principles of international solidarity, effective action for the individual victim, global coverage, the universality and indivisibility of human rights, impartiality and independence and mutual respect.
2. As a human rights organisation, Amnesty International investigates human rights violations and regularly makes recommendations on how abuses can be prevented. Our recommendations are based on our independent research and aligned with international human rights laws and standards.
3. We are independent of any government, political ideology, economic interest, or religion and are funded mainly by our members and public donations.
4. Our vision is for everyone to enjoy all the rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international human rights laws and standards.
5. We welcome the opportunity to make this submission relating to the National Council (hereafter referred to as “the Council”) on Gender-Based Violence and Femicide Bill (hereafter referred to as “the Bill”).¹ The Bill is a step towards fulfilling the resolution made at the 2018 Presidential Summit Against Gender-Based Violence and Femicide (GBVF) to establish a national, multi-sectoral coordinating body to oversee and coordinate the response to GBV and to serve as the custodian of the National Strategic Plan (NSP) on GBVF.²
6. We welcome the establishment of the Council and support section 3(1) of the Bill which does so.

¹ Department of Women, Youth and Persons with Disabilities, 2022, *National Council on Gender-Based Violence and Femicide Bill*. Available at:

https://www.parliament.gov.za/storage/app/media/Bills/2022/B31_2022_National_Council_on_Gender_Based_Violence_and_Femicide%20Bill/B31_2022_National_Council_on_Gender_Based_Violence_and_Femicide%20Bill.pdf

² The Presidency, *Declaration of the Presidential Summit Against Gender-Based Violence and Femicide, 2 November 2018*. Available at: <https://www.thepresidency.gov.za/content/declaration-presidential-summit-against-gender-based-violence-and-femicide>

7. We recognise the need to establish the Council, to ensure the implementation of the NSP, especially at a time when statistics on reported cases of GBVF continue to show an upward trend. The most recent quarterly crime statistics (October to December 2022) show a 22.1% increase in murders of women with 1,101 women murdered, compared to the same reporting period the previous year. Sexual offences increased by 9.6% and reported rape cases by 9.8% during this same period.³
8. Furthermore, we welcome Section 18 of the Bill which creates provision for funds to be allocated towards the functioning of the Council, and Sections 3(4) and 20 which state that the Public Finance Management Act and Public Audit Act respectively apply to the Council.
9. In this submission, we raise concerns related to:
 - a) Section 1 which provides for the definitions within the context of the Bill. This relates to the definition of “civil society”, “femicide”, and “gender-based violence”.
 - b) The lack of clarity regarding the powers of the Council and the relationship it has with other stakeholders responsible for the implementation of the NSP. These relate to Sections 4 and 5.
 - c) Section 9(1)(a) which provides information on the term of office.

Concerns relating to definitions

The narrow definition of civil society

10. The current definition of civil society reads as follows:

‘Civil Society’ includes non-governmental organisations, labour and structures or institutions that represent the interests of citizens in the field of gender-based violence and femicide.

11. Deeply concerning is that this definition is limited to the interests of citizens. GBVF affects all those who live in South Africa, including refugees, asylum seekers, and undocumented persons⁴ and the country’s Constitution protects the rights of “all people”.⁵
12. Also concerning is that the current definition excludes people who are not part of non-governmental organisations, labour and structures or institutions but also have experience and knowledge in tackling GBVF (i.e. community activists, people who are currently out of work but has experience and expertise in fighting GBVF, or are consulting in an individual capacity).

Recommendations

13. We suggest the replacement of the term “citizens” with the words “all people living in South Africa” to ensure that no one is excluded in the fight against GBVF.
14. We suggest the inclusion of the term “individuals” in this definition. This will cater for people who are independent and not part of an organisation, labour and structures or institutions, but have the necessary experience and expertise, and represent the people’s interests in the

³ South African Police Service, 2023, *Police recorded crime statistics: Third Quarter of 2022-2023 Financial year (October 2022 to December 2022)*, Available at: <https://www.saps.gov.za/services/downloads/October-2022-to-December-2022.pdf>

⁴ Freedman, J., Crankshaw, T. & Mutambara, V., 2020, *Sexual and reproductive health of asylum seeking and refugee women in South Africa: understanding the determinants of vulnerability*. Available at: <https://www.tandfonline.com/doi/full/10.1080/26410397.2020.1758440>

⁵ Constitution of the Republic of South Africa, 1996, sections 7(2) and 29. Available at: <https://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng-02.pdf>

field of GBVF. This will make them eligible to serve on the board of the Council. The amended definition will read as follows:

*‘Civil Society’ includes non-governmental organisations, labour, **individuals** and structures or institutions that represent the interests of **all people living in South Africa** in the field of gender-based violence and femicide.*

The definition of femicide

15. The current definition of femicide reads as follows:

‘Femicide’ means the killing of a female person or perceived female person on the basis of gender identity, whether committed by a person within a domestic relationship, interpersonal relationship or by any other person.

16. Gender identity is not a visible sign of a person, but rather their self-identification.

17. Gender identity refers to each person’s deeply felt internal and individual experience of gender. This may or may not correspond with the sex assigned at birth, or with the way a person is made to express their gender, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical, or other means) and other expressions of gender, including dress, speech, and mannerisms.

Recommendation

18. We suggest amending the definition of ‘femicide’ to read as follows:

‘Femicide’ means the killing of a woman (cis or trans) because of their gender and/or gender identity, whether committed by a person within a domestic relationship, interpersonal relationship or by any other person.

The definition of gender-based violence

19. The current definition of gender-based violence reads as follows:

‘Gender-based violence’ means violence associated with gender, which includes physical, sexual, verbal, emotional, economic, educational or psychological abuse or threats of such acts of abuse in public or private life.

20. This definition is narrow by limiting violence to that which is “associated with gender”.

Recommendation

21. We suggest the definition be amended to be more comprehensive and inclusive and to read as follows:

‘Gender-based violence’ means any harmful act against a person or a group of people, or which disproportionately affects them, because of their gender, sexual orientation, or gender identity or expression. Such violence includes physical, sexual, verbal, emotional, economic, educational or psychological abuse or threats of such acts of abuse in public or private life.

Lack of clarity in relation to the Council’s relationship with key stakeholders and its powers

22. We support Sections 4 and 5 of the Bill, which provide the objects of the Council and the functions of the Council, respectively.

23. We welcome Section 5(1)(a)(ii) which provides for the Council to set indicators to be complied with by all relevant stakeholders, and Section 5(1)(1)(iii) which provides for regular

monitoring and evaluation of the implementation of the NSP by all relevant stakeholders. These provisions will particularly help improve accountability, but could be further strengthened (see recommendations below).

24. However, we are concerned that these sections of the Bill do not clearly articulate the relationship between all relevant stakeholders. We also note that the NSP states that the Council will be reporting to the President through the Minister in the Presidency for Women, Youth and Persons with Disabilities, while the Bill states that the Council will report to the Inter-Ministerial Committee on GBVF (IMC) and all relevant stakeholders. Clarity is needed.
25. Furthermore, the Bill does not outline the powers of the Council to ensure that government departments, which fail to implement the NSP, are held accountable.
26. Given that some of the same departments that are responsible for the implementation of the NSP, will also be members of the Board of the Council which is supposed to provide oversight and hold departments accountable, and also sit on the IMC who the Council are supposed to report to as per Section 5(1)(j), it is unclear how departments will be held accountable on the implementation of the NSP, and how necessary oversight will be achieved.

Recommendations

27. We suggest that the Bill be strengthened by clearly outlining the relationship the Council will have with the Presidency; the IMC; the Department of Women, Youth and Persons with Disabilities; the Commission for Gender Equality; the NSP Collaborative; and other relevant stakeholders.
28. We further suggest that the Bill be reviewed to outline the powers the Council has to ensure that government departments and/or Ministers, which fail to implement the NSP, are held accountable. The President of South Africa has the power to hold Ministers accountable and the Bill must clearly indicate how the Council will report to the President.
29. We recommend that the words “and timelines” be included to strengthen Section 5(1)(a)(ii) and to improve accountability mechanisms. The amended 5(1)(a)(ii) will read as follows:

*Set indicators **and timelines** to be complied with by all relevant stakeholders.*

30. We further recommend that the words “on a regular basis” be replaced with “on an annual basis” for Section 5(1)(a)(iii) to provide more specific parameters in which monitoring and evaluation will occur. The amended subsection will read as follows:

*Monitor and evaluate the implementation of the National Strategic Plan by all relevant stakeholders **on an annual basis**.*

Concern relating to the term of office

31. Section 9(1)(a) currently reads as follows:

Subject to sections 11 and 12, a member holds office for a period not exceeding three years, but is eligible for re-appointment for one consecutive term, not exceeding three years, and is also eligible for an extension of office for a period not exceeding six months.

32. The NSP focuses on “Five-Year Outcomes”⁶ and shorter terms in office may result in instability and institutional memory being lost.

Recommendation

33. We submit that the members of the Board serve for a period of five years, and be eligible for re-appointment for one consecutive term, not exceeding five years. This will ensure stability and preserve institutional memory in an effort to achieve greater impact.

Conclusion

34. The state has an obligation to respect, protect, promote, and fulfil the rights to life, security of the person and dignity, which are recognised by South Africa’s Constitution and the Universal Declaration of Human Rights.

35. The Council, as the custodian of the NSP, has the potential to play a significant role in the fight against GBVF, but that can only happen if its powers are clearly outlined to ensure accountability.

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⁶ The Presidency, 2018 , *National Strategic Plan on Gender-Based Violence and Femicide*. Available at: https://thepresidency.gov.za/sites/default/files/NSP%20GBVF%202020-2030P-FINAL_0.pdf