**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 1478**

**DATE OF QUESTION: 10 JULY 2020**

**DATE OF SUBMISSION: 24 JULY 2020**

**Ms N N Chirwa (EFF) to ask the Minister of Justice and Correctional Services:**

1. Why (i) does he encourage women to break the silence on the scourge of gender based violence (GBV), but fails to protect them against arrest and criminalisation when they speak out against the abuse and violence they experience like has happened to Lerato Moloi, the South African model and television presenter, whose alleged perpetrator filed charges against her instead and (ii) are the victims, who have defied the silencing grip of sexual and GBV, charged before a court with greater speed and efficiency than is the case of a perpetrator of such violence;
2. what (i) recourse do victims of GBV have when the judicial system leaves them exposed to secondary abuse so that speaking out becomes a far more frightening option and (ii) are the reasons that he therefore encourages women to speak out against the violence they have experienced when the judicial system fails to protect them against secondary abuse?

**NW1849E**

**REPLY:**

1. (i) Reducing the secondary victimization or trauma of Gender-Based Violence

(GBV) survivors is a key pillar of the Department of Justice and Constitutional Development, as well as the National Prosecuting Authority (NPA)’s interventions to combat GBV. To reduce secondary victimization in court processes, the NPA has specifically included a module on social context sensitivity awareness in their training curricula dealing with GBV and Femicide related matters.

Victims of GBV must always be encouraged to speak out and report these offences, as this is the only way in which Criminal Justice System (CJS) can deal with the matter and ensure that justice is done. It requires laying a charge with the South African Police Service (SAPS), followed by prosecutor-guided investigations and related court processes. Victims of domestic violence and harassment can also apply for protection orders at their nearest court.

No two (2) GBV cases are ever exactly the same and therefore each case is handled on its merits, circumstances and complexities.

Another key pillar of our interventions is the provision of support services to victims. Dedicated Sexual Offences Courts make use of a number of interventions to reduce secondary trauma for victims, such as preparation services, pre-and post-trial trauma debriefing services, intermediary services, private testifying room/closed court services (via a closed-circuit TV system) and private waiting rooms for adult and child victims.

For victims of sexual offences, the Thuthuzela Care Centres (TCCs) have specifically been established as a mechanism to minimize secondary victimization, as the objective of the TCC model is to provide all related services (medical, psycho-social, statement taking, follow-up services) at a 24-hour One Stop Centre. There are currently 55 TCC-sites nationally, with six (6) additional sites in the process of being added to the list.

(ii) Each GBV matter and sexual offences matter is dealt with on its own merits.

They do generally take longer as they are often more complex in nature. As soon as the SAPS present a docket to the NPA, the prosecution arm is set in motion. Should the evidence contained in a docket prove a *prima facie* case against the alleged accused, such person will be prosecuted, either by putting a charge to the accused or by diverting the matter away from the court process, depending on the merits and the severity of the charge. In addition, it is worth noting that prosecutors, specifically in dealing with serious/contentious offences (as is the case with all GBVF matters), are required to have detailed consultations with witnesses to follow the court preparation program before they are to testify in court. These steps are vital for a successful prosecution, but they do, unfortunately, take time.

1. (i) The provision of support services and court preparation ensure well prepared

witnesses for court, which also minimizes the impact of secondary victimization. Effective preparation is more crucial when dealing with child witnesses and severely traumatized witnesses. The NPA has therefore appointed Court Preparation Officers who, inter alia, inform witnesses of the court environment, legal processes and terms. Their fears and concerns are addressed, and court preparation aims to reduce secondary victimization. In court, the victim has to once again relay their version of the events, and then they are also exposed to cross examination by the defense and questions from the bench. Service providers, and those within the NPA environment, prosecutors and TCC staff, are specifically trained and encouraged to minimize secondary victimisation, i.e. to minimize consultations, appoint one specific prosecutor to deal with a victim (which helps with rapport building, especially with younger victims), keep the victim updated as to the status of the case and to ensure that court preparation is provided, and that the necessary counselling has been offered.

Prosecutors also have a duty to inform victims of the various protective measures provided for in the Criminal Procedure Act of 1977, i.e. section 153, which provides a court to sit *in camera*, section 154, which prevents the personal details of the victim to be made public, section 158, which allows for adult persons to testify through as CCTV camera and section 170A, which allows, by application, for the use of an intermediary for persons under the biological or mental age of 18.

1. (ii) Victims of GBV are always encouraged to speak out as it the only way that we

can put a stop to GBV and to ensure that victims access support services. A lot is being done to prevent secondary victimisation in the broader criminal justice system. One of the principles that guides the implementation of the National Strategic Plan on GBV and Femicide’s programmes are a human rights-based, victim-centred, survivor-focused approach to the provision of services that reaches all, regardless of financial means. A victim-centred approach is the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a non-judgmental manner. It seeks to minimize traumatisation associated with criminal justice processes by providing support of victim advocates and service providers, empowering survivors as engaged participants in the process, and providing survivors an opportunity to play a role in seeing their offenders brought to justice.

There are also structures which aim to further assist and support specific vulnerable groups, such as victims of trafficking in persons and members of the LGBTI community when they are victims of GBV.

New legislation is also underway to further strengthen the rights and protection of victims of GBV. The Domestic Violence Amendment Bill is one of a package of three legislative interventions which are intended to contribute to the fight against the scourge of gender-based violence and femicide. The two other Bills seek to amend the statutory provisions in the Criminal Procedure Act, 1977 and the Criminal Law Amendment Act, 1997, dealing with bail and sentencing, as well as the National Register for Sex Offenders. Appropriate legislation to reduce and prevent GBV is of critical importance. It is envisaged that these Bills will be introduced into Parliament shortly and will go a long way in further combating and preventing all forms of GBV.

In addition to the legislation being prepared by my Department, the Department of Social Development is also working on a Victim Support Services Bill. The Bill was gazetted on 17 July 2020 and recognizes that victims experience secondary victimisation and therefore creates a prohibition against such. It provides that secondary victimisation needs to be prevented at all times through service provision and stipulates the various services to be provided to victims.