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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

**Joint written statement\* submitted by Edmund Rice  
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The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[02 June 2020]

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\* Issued as received, in the language(s) of submission only.

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## Gender based violence in South Africa

### Introduction

Gender Based Violence (GBV) is a longstanding cause for concern for civil society actors in South Africa. The response to the issue has been haphazard at the least and uncoordinated at best. This has resulted in a substantial increase in violence against women and children.

In 1990, Justice Albie Sachs speaking about the rights of women in post-apartheid South Africa raised questions relating to "violence against women both physical and mental, direct and indirect. This would include rape and domestic violence, but also sexual harassment in its manifold forms, the demeaning use of women in the media."<sup>1</sup>

South Africa has an adversarial legal system which offers limited protections to the victim and witnesses under cross examination. It is vital that the court system is viewed as effective and efficient. In order to achieve this, the criminal justice system must be reworked.<sup>2</sup> The low arrest and conviction rates are indicative of a system that is failing those deemed most vulnerable. The conviction rate varies considerably by type of offence. Violent crimes such as murder and rape have some of the lowest conviction rates, 54,5% and 50,4% respectively. Shoplifting, fraud and drug-related cases have the highest conviction rates, between 82% and 93%.<sup>3</sup>

The quest to effectively deal with the scourge of GBV in South Africa, requires a multi-faceted approach involving the law and community based-education.<sup>4</sup>

### Synopsis of the Problem

The legislative framework exists to allow for the protection of victims and for the investigation and prosecution of perpetrators. In terms of the multiple legislative instruments there is no lack of directive to investigate and prosecute. The issue is with the functionality of the system. The rate of successful prosecutions is substantially lower than the cases reported. This points to a deficiency from the point of contact with the police, the gathering of information, the presentation of the case to the court and all other processes in between. Statistics South Africa noted that 'satisfaction with the police declined in every province except the Western Cape and Free State, while satisfaction with the courts declined in every province except the North West.'<sup>5</sup> The Gender and Health Research Unit, in a 2017 study, reports less than 20% of reported rape cases go to trial and a low 8.6% of reported cases result in convictions. An ineffective justice system with the highest attrition levels at the police investigation phase of reporting have resulted in a low conviction rate.<sup>6</sup> This has led to a distrust of the criminal justice system in its ability to protect victims of violent crimes, especially women and children.

### Contextual Understanding: Constitutional Framework

The South African Constitution entrenches the principle of equality before the law in section 9(1) thereof. The right to life is enshrined in section 11 of the South African

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<sup>1</sup> Sachs, A., (1990). The Constitutional Rights of Women in a Post-Apartheid South Africa. Agenda: Empowering Women for Gender Equity. 7, p 1-11.

<sup>2</sup> Mistry, D. (1997). Victims and the Criminal Justice System in South Africa. Paper presented at the Centre for the Study of Violence and Reconciliation, Seminar No. 11, 29 October.

<sup>3</sup> Ibid.

<sup>4</sup> Chalira, N. and Ndimurwimo, L.A., (2018). Violence Against Women: A Comparative Analysis between Malawi and South Africa. *Speculum Juris*. 32 (2), 107-123.

<sup>5</sup> Maluleke, R. (2018). Victims of Crime Syrvey. Available: <http://www.statssa.gov.za/?p=11627>. Last accessed 2020/05/20.

<sup>6</sup> MercileneMachisa, RuxanaJina, Gerard Labuschagne, Lisa Vetten, Lizle Loots, Sheena Swemmer, Bonita Meyersfeld, Rachel Jewkes (2017). Rape Justice In South Africa: A Retrospective Study Of The Investigation, Prosecution And Adjudication Of Reported Rape Cases From 2012. Pretoria, South Africa. Gender and Health Research Unit, South African Medical Research Council.

constitution. Furthermore, sections 12(1)(c), establishes that all persons have the right to freedom from all forms of violence from either public or private sources; 12(1)(e) – freedom not to be treated or punished in a cruel, inhuman or degrading way and 12(2)(a) to (c) clearly allows any person to make decisions regarding their body and mind.

South African women and children suffer the most violence from both ‘private and public sources’. According to the South African Human Rights Commission, South African legislation, in particular the Domestic Violence Act, the responsibility is placed on state organs and in particular the South African Police Service (SAPS), to investigate crimes committed against women.<sup>7</sup>

The lack of institutional capacity of SAPS and its inability to investigate has contributed to the victim’s distrust of the criminal justice system. Statistics South Africa notes that, reports have consistently identified “police would do nothing or police can do nothing” as the main reasons for not reporting crime to the police.<sup>8</sup> According to Matthews and Abrahams, ‘studies have found that many police officers are unwilling to assist victims of GBV as they see these cases as a private matter between two partners/lovers’.<sup>9</sup>

### International Policy Framework

South Africa is signatory to many of the international human rights treaties that allow for the protection of all people, but in particular, women and children. However, there is no specific treaty that focuses on violence against women (VAW) or GBV. The Universal Declaration of Human Rights (UDHR) in articles 1, 3, 5, and 6 to 8 establishes foundational elements of equal treatment of all persons, regardless of sex.<sup>10</sup> Articles 9 to 11 and 21 create a system that allows for the protection of rights and for the ability of anyone to use the law to enforce and protect their rights. Furthermore, the Convention on the Elimination of Discrimination against Women (CEDAW), in articles 2, 3, 5 and 16, places the responsibility on states to create an environment within their borders and legislation that works to eliminate forms of discrimination in social, political, economic and cultural spaces. These documents do not address the issue of VAW specifically.

While we acknowledge CEDAW<sup>11</sup> and the Declaration on the Elimination of Violence Against Women (DEVAW)<sup>12</sup> (1993), there is no framework that compels states to establish a national framework to protect women from violence.

DEVAW encourages states - article 4(d) to develop penal sanctions in domestic legislation to punish and redress the wrongs of VAW; (e) to consider developing national plans of action to promote the protection of women against any form of violence; (h) include in government budgets adequate resources for their activities related to the elimination of VAW; (i) take measures to ensure that law enforcement officers and public officials, responsible for implementing policies to prevent, investigate and punish VAW, receive training to sensitize them to the needs of women, and lastly; (p) to facilitate and enhance the work of the women’s

<sup>7</sup> South African Human Rights Commission. (2018). Research Brief: Unpacking the Gaps and Challenges in addressing Gender Based Violence in South Africa. Available: <https://www.sahrc.org.za/home/21/files/SAHRC%20GBV%20Research%20Brief%20Publication.pdf>. Last accessed 2020/05/20.

<sup>8</sup> Maluleke, R. (2018). Crime Statistics Series Volume V. Available: <https://www.statssa.gov.za/publications/Report-03-40-05/Report-03-40-05June2018.pdf>. Last accessed 2020/05/20.

<sup>9</sup> Mathews, S. and Abrahams, N. (2003). Combining Stories and Numbers: An Analysis of the Impact of the Domestic Violence Act (no 116 of 1998). (Cape Town: The Gender Advocacy Programme and the Medical Research Council).

<sup>10</sup> United Nations (UN) General Assembly. (1948). "Universal declaration of human rights" (217 [III] A). Paris. Retrieved from <http://www.un.org/en/universal-declaration-human-rights/>.

<sup>11</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <https://www.refworld.org/docid/3ae6b3970.html> [accessed 21 May 2020].

<sup>12</sup> UN General Assembly, Declaration on the Elimination of Violence against Women, 20 December 1993, A/RES/48/104, available at: <https://www.refworld.org/docid/3b00f25d2c.html> [accessed 21 May 2020].

movement and non-governmental organisations and cooperate with them at local, national and regional levels.

## **Recommendations**

South Africa has made progress in terms of enacting legislation that defines and criminalises VAW in all its forms. This submission aims to highlight the ineffective implementation of legislation and policy directives, in particular the lack of police resources and the ineffective prosecution of offenders. The resources allocated to combat the issue are significant, however the distribution of resources is ineffective.

Edmund Rice International therefore recommends the following:

- To allocate resources to non-governmental and community based organisations to develop and implement along with local law enforcement agencies a multi-faceted approach towards community based-education on GBV;
- A stress in the training of police officials at the police academy levels, with a further training element for officers already in the field to adhere to article 4(i) of DEVAW;
- To increase resource allocation to units dealing with VAW with a focus on communities where VAW levels are high;
- To increase the number of trained police officers at the local community level;
- The training of prosecutors on legislation on the protection of women including GBV legislation and policies and human trafficking;
- To develop mechanisms to assist the media in their reporting of such cases;
- That the Special Rapporteur explores the possibility of a specific treaty that focuses on violence against women or GBV.

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The Justice Desk, A Human Rights NPO, Cape Town, South Africa; NGO(s) without consultative status, also share the views expressed in this statement.