



University of Fort Hare
Together in Excellence

**A Critical Assessment of the Legal Framework Regulating Gender-Based Violence in
South Africa**

by

Name: Hape Makhasane

Student Number: 201906092

**A mini-dissertation submitted in fulfilment of the requirements for the degree of Master
of Philosophy in Human Rights**

in the

Faculty of Law

of the

University of Fort Hare

Supervisors: Dr A Olaborede &

Prof A van Coller

ABSTRACT

The study seeks to examine the current legal framework that regulate Gender-based violence GBV in South Africa with the aim of identifying existing gaps and proposing appropriate solutions to this issue. The study will also employ a comparative analysis of the South African GBV-related legal framework to that of other jurisdictions, including India, Canada and the United States. This comparative analysis seeks to highlight areas where South African law can improve and better combat GBV. This study ultimately provides recommendations to develop South Africa's legal framework to ensure a more comprehensive approach in addressing GBV.

Keywords

Gender-Based Violence, Violence Against Women, Domestic Violence, Human Rights, Legal Framework, South Africa

DECLARATIONS

Declaration on Submission of Original Research

I, Hape Makhasane, student number, 201906092, declare that this mini-dissertation with the title “A Critical Assessment of the Legal Framework Regulating Gender-Based Violence in South Africa”, submitted for the award of the Master of Philosophy in Human Rights degree in the Faculty of Law at the University of Fort Hare, is my own work and has never been submitted for any other degree at this university or any other institution of higher learning.

Plagiarism Declaration

I, Hape Makhasane, student number, 201906092, hereby declare that I am fully aware of the University of Fort Hare’s Policy on plagiarism, and I have taken every precaution to comply with the regulations. This document has been submitted through a similarity detection software and the report was reviewed by my supervisor. I declare there is no plagiarism in this dissertation.

Declaration on Research Ethics

I, Hape Makhasane, student number, 201906092, hereby declare that I am fully aware of the University of Fort Hare’s Policy on research ethics, and I have taken every precaution to comply with the regulations. I have obtained an ethical clearance certificate from the Faculty of Law’s Research Ethics Committee.

H. Makhasane

Signature

ACKNOWLEDGEMENTS

I would like to express my sincerest gratitude to the following individuals and organisations for their invaluable support and contributions to this research:

- To Almighty God, for granting me the strength, wisdom, and resilience to undertake this research journey. I understand that I have reached this stage because of God's grace.
- To my loving family, I express deepest gratitude for their unconditional support and inspiration. My mother, Maneo Makhasane, and siblings Lemohang Makhasane, Karabo Makhasane and Thato Makhasane, provided unwavering encouragement during challenging times, instilling in me the determination to persevere. Their belief in me has been a constant source of motivation.
- To my supervisors, Dr Olaborede and Prof van Collar, for their expert guidance, constructive feedback, and unrelenting commitment throughout this journey. Their mentorship has truly been a blessing. They have equipped me with essential research methods, writing skills, and critical thinking abilities, while their patience, continuous feedback, and constant communication have been instrumental in the successful completion of my study. This has been a transformative learning experience, and their support has played an important role in my research development. I could not have achieved this milestone without their guidance.
- To my post-master's level colleagues, whose assistance, and advice has been valuable. Their advice and willingness to help have greatly facilitated the successful completion of this study.
- Lastly, to the Govan Mbeki Research and Development Centre (GMRDC), for supporting my research endeavours and the lessons for basic research and honing my research skills. As I was navigating to understand academic writing, research skills the GMRDC has provided a great deal of assistance in assisting me in navigating and carrying out my research effectively.

This study would not have been possible without the contribution and collective effort of these individuals and organisations. I am forever grateful for their contributions. May the Lord bless and keep them.

ABBREVIATIONS

ACDP	African Christian Democratic Party
ACHPR	African Charter on Human and Peoples Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
BDPfA	Beijing Declaration and Platform for Action
CDC	Centres for Disease Control and Prevention
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	United Nations Convention on the Rights of the Child
DA	Democratic Alliance
DPME	Department of Planning Monitoring and Evaluation
DVAA	Domestic Violence Amendment Act
FORSA	Freedom of Religion South Africa
GBV	Gender-based Violence
GBVF	Gender-based Violence and Femicide
GBVF-NSP	National Strategic Plan on Gender-Based Violence and Femicide
HIV	Human Immunodeficiency Virus
IRR	Institute of Race Relations
LGBTQ+	Lesbian, Gay, Bisexual, Transgender, Queer+
NCVS	National Crime Victimization Survey
NEASA	National Employers Association of South Africa
NGO	Non-governmental Organisation
OAU	Organisation of African Unity
OVW	Office on Violence Against Women

PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
POWA	People Opposing Women Abuse
PEP	Post-exposure Prophylaxis
RCMP	Royal Canadian Mounted Police
RCMA	Recognition of Customary Marriages Act
RSA	Republic of South Africa
SADC	South African Development Community
SADCC	Southern African Development Coordination Conference
SAGBVI	South African Gender-based Violence Initiative
SAHRC	South African Human Rights Commission.
SALRC	South African Law Reform Commission.
SAPS	South African Police Service
SASP	Sexual Assault Services Program
SCA	Supreme Court of Appeal
TCC	Thuthuzela Care Centres
UDHR	Universal Declaration of Human Rights
UN	United Nations
VAW	Violence Against Women
VAWA	Violence Against Women Act

Table of Contents

ABSTRACT	i
DECLARATIONS	ii
ACKNOWLEDGEMENTS	iii
ABBREVIATIONS	iv
CHAPTER ONE: BACKGROUND	1
1 1 Introduction.....	1
1 2 Statement of the Research Problem	4
1 3 Research Aims and Objectives.....	4
1 4 Research Questions	5
1 5 Literature Review	5
1 6 Research Methodology	9
1 7 Proposed Chapter Outline.....	10
1 8 Limitations	11
1 9 Ethical Consideration	11
CHAPTER TWO: INTERNATIONAL AND AFRICAN GENDER BASED VIOLENCE RELATED LEGAL FRAMEWORK.....	12
2 1 Introduction.....	12
2 2 INTERNATIONAL LEGAL FRAMEWORK.....	13
2 3 Universal Declaration of Human Rights	13
2 3 1 Pragmatic Application and Realisation of the UDHR.....	13
2 3 2 Critiques of the UDHR.....	14
2 4 Convention on The Elimination of All Forms of Discrimination Against Women	14
2 4 1 Scope and Purpose	14
2 4 2 State Responsibilities	15
2 4 3 Monitoring Compliance	16
2 5 Beijing Declaration and Platform for Action	17

2 5 1	<i>GBV Preventative Measures</i>	17
2 6	Summary	18
2 7	REGIONAL LEGAL FRAMEWORK:	18
2 8	African Charter on Human and Peoples’ Rights	18
2 8 1	<i>Scope and Purpose</i>	18
2 8 2	<i>Establishment of the African Commission on Human and Peoples Rights</i>	19
2 9	Protocols to The African Charter on Human and Peoples’ Rights to the Rights and Welfare of Women in Africa	20
2 9 1	<i>Development and Scope</i>	20
2 9 2	<i>GBV Prevention Measures</i>	21
2 10	Southern African Development Community Declaration on Gender and Development .	22
2 10 1	<i>Scope and Purpose</i>	22
2 10 2	<i>State Protection of Rights</i>	23
2 10 3	<i>Measures to Eradicate Violence Against Women</i>	23
2 11	Summary	24
CHAPTER THREE: COMPARATIVE ANALYSIS OF THE LEGAL FRAMEWORKS REGULATING GENDER BASED VIOLENCE		25
3 1	Introduction	25
3 2	Overview of Gender-Based Violence Legal Framework in Each Country	26
3 2 1	<i>The Constitution of India, 1950</i>	26
3 2 2	<i>Indian Panel Code Act 40 of 1960</i>	27
3 2 3	<i>Indian Criminal Law Amendment Act 63 of 2013</i>	29
3 2 4	<i>Indian Protection of Women from Domestic Violence Act 43 of 2005</i>	30
3 2 5	<i>Canadian Constitution, 1867</i>	33
3 2 6	<i>Criminal Code of Canada (R.S.C 1985 C-46)</i>	34
3 2 7	<i>Its Time: Canada’s Strategy to Prevent and Address Gender-Based Violence</i>	36
3 2 8	<i>The Constitution of the United States of America</i>	38
3 2 9	<i>Violence Against Women Act of 1994</i>	38
3 3	Comparative Analysis	42

3 3 1	<i>Comparison of Indian and South African Legal Framework</i>	42
3 3 2	<i>Comparison of Canadian and South African Legal Framework</i>	44
3 3 3	<i>Comparison of the United States and South African Legal Framework</i>	46
3 4	Summary	48
CHAPTER FOUR: SOUTH AFRICAN GENDER BASED VIOLENCE RELATED FRAMEWORK		50
4 1	Introduction	50
4 2	Constitutional and Human Rights Protection	50
4 2 1	<i>Scope and Purpose</i>	50
4 2 2	<i>Bill of Rights and Judicial Interpretation in Combating Gender-Based Violence</i>	51
4 3	South Africa's Compliance with International Law	55
4 3 1	<i>CEDAW: Committee on the Elimination of Discrimination against Women</i>	55
4 3 2	<i>African Charter on Human and Peoples' Rights</i>	56
4 3 3	<i>Maputo Protocol</i>	56
4 4	Legal Definitions and Scope of Gender-Based Violence	57
4 4 1	<i>Domestic Violence</i>	57
4 4 2	<i>Harassment</i>	60
4 4 3	<i>Sexual Offences and Femicide</i>	61
4 5	State Obligations	64
4 5 1	<i>Role of Police</i>	64
4 5 2	<i>Preventive Measures</i>	66
4 6	Remedies and Procedures	68
4 6 1	<i>Protection Order</i>	68
4 6 2	<i>Further Procedural Remedies</i>	71
4 7	Policy and Non-Legal Measures	72
4 7 1	<i>Medical Services</i>	72
4 7 2	<i>National Strategic Plan on Gender-Based Violence and Femicide (GBVF-NSP)</i>	72
4 7 3	<i>Non-Legal Measures to Combat Gender-Based Violence</i>	77

4 9	Summary.....	79
CHAPTER FIVE: FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS		81
5 1	Introduction.....	81
5 2	Research Findings.....	82
5 2 1	<i>Coordinated and Forward-Looking Approach in Addressing GBV</i>	<i>83</i>
5 2 1	<i>Socio-economic Development and Public Awareness</i>	<i>85</i>
5 2	Conclusion	87
5 3	Recommendations	89
BIBLIOGRAPHY		92

CHAPTER ONE: BACKGROUND

1 1 Introduction

The definition of gender-based violence (GBV) has changed over time. Initially, it focused on physical, sexual, psychological, and economic harm inflicted by men against women.¹ This understanding of GBV is predicated on the fact that women face disproportionately high rates of violence worldwide,² with their vulnerable position in society and inequalities making them even more susceptible to certain forms of violence.³

However, the definition of GBV evolved to incorporate various forms of violence, such as human trafficking, harmful traditional practices (e.g. female genital mutilation), child and forced marriage, as well as other forms of physical and emotional abuse.⁴ It also encompasses mental harm or suffering, including threats, coercion, and arbitrary deprivation of liberty, whether experienced in public or private life.⁵ The definition of GBV has become more inclusive over time, encompassing violence against individuals who identify as gender non-conforming, the lesbian, gay, bisexual, transgender and queer (LGBTQ+) community, as well as violence between and against men and boys.⁶

Several studies have connected the perpetration of GBV to several factors, including age, rural residency, witnessing familial violence as a child, educational status, marital conflict, and partner and personal use of drugs and alcohol.⁷ In the context of domestic violence and marital conflict, Maphosa contends that this form of violence is founded in patriarchal masculinities that give men authority and control over women.⁸ Within the socioeconomic issues, factors such as illiteracy, poverty, and geographical location (e.g. rural residence) can all impede access to justice.⁹ These socioeconomic inequalities can result in insufficient legal aid resources, inefficient operations, and a lack of understanding of legal rights and remedies.¹⁰

¹ Heise "Ending Violence Against Women" 1999 *CHGE* 01.

² Population Council "Sexual and Gender-Based Violence: Literature Review, New York 2008" https://knowledgecommons.popcouncil.org/departments_sbsr-rh/508/ (Accessed 11-03-2024).

³ Graaff "The Implications of a Narrow Understanding of Gender-Based Violence" 2021 *JCSCP* 02.

⁴ McSherry "Defining Sexual and Gender-Based Violence in the Refugee Context" 2019 *IRIS* 05.

⁵ Hynes "Sexual Violence against Refugee Women: Observations from the CDC" 2000 *JWHGBM* 819.

⁶ Graaff 2021 *JCSCP* 02.

⁷ Beyene "Gender-Based Violence among Female Youths in Educational Institutions of Sub-Saharan Africa: A Systematic Review and Meta-Analysis" 2019 *BMC* 02.

⁸ Maphosa "Tackling the 'Shadow Pandemic': the Development of a Positive Duty on Adults to Report Domestic Violence" 2022 *DJLJ* 89.

⁹ Maphosa 2022 *DJLJ* 91.

¹⁰ Greenbaum "Access to Justice for all: A Reality or Unfulfilled Expectations?" 2020 *DJLJ* 250.

The establishment of the Universal Declaration of Human Rights, 1948 (UDHR), marked the standard for the protection of human rights internationally. Even though the UDHR does not specifically mention protection from GBV, the preamble states that it sets a standard for everyone to enjoy equal fundamental rights.¹¹ Another instrument that deals with GBV is the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW).¹² The CEDAW, like the UDHR, does not particularise the issue of GBV. However, part of the adoption of the CEDAW highlighted the efforts by States to deter violence against women (VAW) since unequal treatment of women contributes to GBV.

The high prevalence of GBV attracted attention in the international space, leading the Copenhagen World Conference of the United Nations Decade for Women: Equality, Development and Peace to adopt a resolution on battered women and domestic abuse in 1980.¹³ The Third World Conference on Forward-looking Strategies for the Advancement of Women in Nairobi in 1985 advocated for concrete legal and policy measures to combat VAW.¹⁴

At the regional level, African treaties prohibit GBV these treaties include the African Charter on the Rights and Welfare of the Child, 1990 (ACRWC)¹⁵ and the Protocol to the African Charter on the Rights of Women, 2003 (Maputo Protocol).¹⁶ The ACRWC encourages equality, inclusion, and the best interests of the child as well as their survival and development. It further prohibits GBV-related conduct such as child abuse, child marriage, sexual exploitation, and human trafficking.¹⁷ Article 5 of the Maputo Protocol prohibits harmful cultural practices such as female genital mutilation and other forms of conduct that amount to GBV. Article 14 emphasises the importance of protecting women's rights, including health and reproductive rights. These instruments specify the conducts that constitutes GBV.

South Africa takes great pride in ensuring the promotion and protection of human rights, as stipulated in Section 7(2) of the Constitution of the Republic of South Africa, 1996, which imposes an obligation on the State to protect, fulfil, promote, and respect the rights enshrined

¹¹ Adopted by General Assembly resolution 217 A (III) of 10 December 1948.

¹² Adopted by the General Assembly resolution 34/180 of 18 December 1979 and entered into force 3 September 1981.

¹³ "World Conference of the United Nations Decade for Women 14-30 July 1980, Copenhagen, Denmark" World Conference of the United Nations Decade for Women: Equality, Development and Peace | United Nations (accessed 20-06-2023).

¹⁴ Rico "Gender-Based Violence: A Human Rights Issue" 1997 *LCL* 11.

¹⁵ Adopted by the Organisation of African Unity on 11 July 1990 and came into force on 29 November 1999.

¹⁶ Adopted July 11, 2003.

¹⁷ Adopted 27 June 1981, entered into force 21 October 1986.

in the Bill of Rights.¹⁸ The Constitution promotes multiculturalism, gender justice, and diversity. It advocates for vulnerable and victimised groups like LGBTQ+, women, and children while respecting diverse cultural practices.¹⁹ Interpreting and enforcing the Constitution means that the Courts should foster social transformation and move a country's political and social institutions toward democracy and the enforcement of equality.

The Constitution mandates the legislature to pass a pragmatic framework that guarantees the protection of human rights, and the judiciary ensures the interpretation and practical application of the framework in cases of human rights violations.²⁰ The legislature has full authority within its ambit to incorporate constitutional provisions, the Bill of Rights, and measures for enacting the rights and other constitutional provisions.²¹ Essentially, the legislature plays a critical role in the protection of human rights through its law-making function. This includes the enactment of the Domestic Violence Act,²² Protection from Harassment Act,²³ Protection of Equality and the Prevention of Unfair Discrimination Act²⁴ and the Criminal Law (Sexual Offences and Related Matters) Amendment Act.²⁵

The study involves a thorough and systematic assessment of the Constitution, legislation, policies, and non-legal measures related to GBV, as well as the Courts' interpretations of the laws governing GBV in South Africa. This is because, despite the establishment of a Constitution that protects and promotes human rights, there is still an issue with the State's relatively high rates of GBV.²⁶ The study seeks to identify gaps contributing to the disproportionately high levels of GBV against women and children. Further, the study seeks to evaluate the nature, significance and practical application of GBV-related laws in court. The study will also compare the South African legal framework to that of other jurisdictions, with a specific focus on intimate partner violence. This comparison is limited to intimate partner violence as it is the most widespread amongst the countries, and some forms can differ from country to country

¹⁸ The Constitution of the Republic of South Africa, 1996.

¹⁹ Klare "Legal Culture and Transformative Constitutionalism" 1998 *SAJHR* 155.

²⁰ Khan "The Role of Judiciary in the Protection and Promotion of Human Rights" 1993 *DUS* 106.

²¹ *Ibid.*

²² Act 116 of 1998.

²³ 17 of 2011.

²⁴ Act 4 of 2000.

²⁵ Act 32 of 2007.

²⁶ Gouws "Violence Against Women is Staggeringly High in South Africa" News 24 (02 December 2022) https://www.news24.com/life/relationships/love/her_story/violence-against-women-is-staggeringly-high-in-south-africa-20221202 (accessed 02-06-2023).

1 2 Statement of the Research Problem

There are high levels of GBV in South Africa, despite having a legal framework aimed at addressing the problem. The police report between July and September 2022 states that 13 000 women were victims of assault with the intent to cause grave injury, 1 220 women were victims of attempted murder, 10 000 rape cases were also open during this time frame, and 898 women were murdered.²⁷ The rate of VAW is also concerning as it is increasing rather than decreasing with time.

The problem lies in the implementation and enforcement of existing legislation related to GBV. While laws such as the Domestic Violence Act and the Sexual Offences Act provide important protections, victims often face challenges in accessing justice due to inadequate police response, poor investigations, and secondary victimisation within the criminal justice system.²⁸

Secondly, there are institutional and procedural weaknesses, including delays in prosecution, under-resourced courts, and a lack of specialised training for law enforcement officials.²⁹ These issues undermine the practical application of the law and contribute to low conviction rates for GBV-related offences.

Therefore, the core problem examined in this study is the disconnect between the legal framework and its effectiveness in practice, which contributes to the ongoing and excessive violation of the rights of women.

1 3 Research Aims and Objectives

The study aims to evaluate the South African legal framework, namely, the Constitution, legislation, policy, case law and other non-legal measures that address GBV and attempt to find potential solutions to GBV.

To achieve the aim of this study, the research will pursue the following objectives:

- Evaluating international and regional legal frameworks that address the issue of GBV.
- Evaluating the extent to which South Africa applies the international and regional framework.

²⁷ South African Government Website “Minister General Bheki Cele: Quarter Two Crime Statistics (2022/2023)” <https://www.gov.za/speeches/minister-general-bheki-cele-quarter-two-crime-statistics-20222023-23-nov-2022-0000> (accessed 25-06-2023).

²⁸ Simelane “Analysis of Institutional Response to Gender-based Violence and Femicide in the South African Police Service” 2023 IJSD 40 – 42.

²⁹ Simelane 2023 IJSD 43.

- Evaluating South African constitutional, legislative and other measures that are related to GBV.
- Evaluating South African landmark case law that addresses GBV to investigate from the date of the Constitution's enforcement, 1996 to 2023.
- Comparing the Constitution, legislation, and policy regulations of other jurisdictions, particularly India, Canada, and the United States, to the South African legal framework.

1 4 Research Questions

The primary research question of the study:

How does the South African legal framework, including the Constitution, legislation and their interpretation and application in case law, contribute to addressing and combating GBV?

The secondary research questions of the study:

- How do international and regional legal mechanisms contribute to the prevention and response to GBV in South Africa?
- How has South Africa complied with, and domesticated, the international and regional law instruments that protect GBV?
- How have South Africa's constitutional and legislative frameworks been interpreted and applied to combat GBV in South Africa? How have the Courts interpreted and enforced the law in addressing the issues related to GBV?
- How have other jurisdictions namely, the United States, Canada and India applied their legal framework to address GBV?
- Are there any further legal mechanisms available within the legal framework to evaluate and ensure accountability in addressing GBV, and how effective are these mechanisms?

1 5 Literature Review

GBV occurs within States, therefore, the State must implement a pragmatic framework that will effectively eliminate GBV. On this issue, Obokata argues that, once relevant human rights concerns have been identified, a human rights framework may be used to develop a plan of action for States to follow.³⁰ In addition, McGregor emphasises the importance of this issue, arguing that States must establish a framework that prevents human rights violations, establishes monitoring and oversight mechanisms as safeguards, holds those responsible

³⁰ Obokata "Human Rights Framework to Address Trafficking of Human Beings" 2006 *NQHR* 383.

accountable, and provides redress to individuals and groups who claim their rights have been violated.³¹

Although the Constitution does not explicitly address GBV, Mokone argues that Section 9 of the Constitution addresses unequal or unfair treatment of women. Additionally, this section promotes equality and prevents unfair treatment.³² Yusufu contends that Section 9 of the Constitution ensures equal rights to all citizens.³³ Yusufu further argues South Africa's government has prioritised implementing legislation against perpetrators of GBV due to increased victims and dedication to eradicating these crimes.³⁴

Maluleka argues that Section 15 of the Sexual Offences Act provides that the age of consent is 16, making it unlawful to engage in sexual penetration with someone under sixteen years.³⁵ Maluleka also notes that Section 12 of the Children's Act expressly forbids female genital mutilation and child circumcision and ensures that cultural and religious practices that could harm the child's well-being are prohibited.³⁶ Among other things, the Act prohibits child marriage.³⁷

According to Brahmapurkar child marriages increase the risk of pregnancy and birthing difficulties, which is one of the factors contributing to the death of young women and results in female children being victims of violence from their intimate partners.³⁸ Additionally, Nnadi, contends that in some circumstances, children who are given into marriage at a young age are incapable of negotiating safe sex, making them more susceptible to sexually transmitted diseases and domestic violence.³⁹

Furthermore, Van Coller emphasised how child marriage harms women disproportionately because they are more likely to experience early pregnancy, maternal death, educational difficulty, and lifetime domestic and sexual violence.⁴⁰ In his explanation, Van Coller asserts that the use of the terminology *paedogamy* to describe child marriage, where "*paedo*" stands

³¹ McGregor "International Human Rights Law as a Framework for Algorithmic Accountability" 2019 *ICLQ* 311.

³² Mokone "The Constitutional Role of the Judiciary in Cases of Sexual GBV: An Analysis of *Tshabalala v S; Ntuli v S* 2020 (5) SA 1 (CC)" 2021 *NMU* 407- 409.

³³ Yusufu "The Scourge of Gender-Based Violence (GBV) on Women Plaguing South Africa" 2022 *SSOAR* 93.

³⁴ *Ibid.*

³⁵ Maluleka 2012 *PELJ* 08.

³⁶ Maluleka "Culture, Custom, Tradition, Law and Gender Equality" 2012 *PELJ* 07.

³⁷ Section 12(2) (a) of the Children's Act 38 of 2005.

³⁸ Brahmapurkar "Gender Equality in India Hit by Illiteracy, Child Marriages and Violence: A Hurdle for Sustainable Development" 2017 *PAMJ* 02.

³⁹ Nnad "Early Marriage: A Gender-Based Violence and A Violation of Women's Human Rights in Nigeria" 2014 *JPL* 36.

⁴⁰ van Coller "Child Marriage - Acceptance by Association" 2017 *IJLPF* 364.

for child and "gamy" for the act of marriage, could influence people's attitudes towards the custom, making them less receptive to the practice.⁴¹

Hall argues that the issue of mitigating child marriage and, incidentally, GBV, the South African Law Reform Commission, which aims to research all areas of the law to advise the government on advancing, enhancing, modernising, or reforming the legal system,⁴² has recently announced that South Africa has to preserve South Africa's compliance with its international and regional treaties regulating child marriage, and it has been requested that changes be made to the legislation about the protection of minor children.⁴³ This would prohibit their parents from consenting to marriage on their children's behalf.⁴⁴ The panel intends to propose a law that will nullify or abolish child marriage and govern all marriages under one law.⁴⁵

The reason for this word choice is that the concept of marriage, as it were, is connected to functionally formal domestic relationships, whereas *paedogamy* results from inappropriate reasons that force the child to be outside of their family. In the context of South Africa, one of the motivating factors for this is, among other things, poverty, which divorces the concept of marriage.⁴⁶ Therefore, allowing children to enter marriage contributes to the increasing rates of GBV.

Spies assert that the enactment of the Domestic Violence Act⁴⁷ was significantly influenced by South Africa's new constitutional framework.⁴⁸ Its formulation resulted from a collaborative initiative involving the Department of Justice, the South African Law Reform Commission, and various non-governmental organisations, aiming to rectify the shortcomings of the Prevention of Family Violence Act.⁴⁹ The Act enables the issuance of protection orders,⁵⁰ which prohibit individuals from perpetrating acts of domestic abuse. Additionally, the

⁴¹ *Ibid.*

⁴² Government website "South African Law Reform Commission" <https://justice.gov.za/salrc/> (accessed 17-07-2023).

⁴³ "Law Reform Commission proposes new legislation criminalising forced and child marriages" News 24 (29 March 2022) <https://www.news24.com/news24/SouthAfrica/News/law-reform-commission-proposes-new-legislation-criminalising-forced-and-child-marriages-20220329> (accessed 17-07-2023).

⁴⁴ Hall *Children, Families, and the State: Collaboration and Contestation* (2018) 63.

⁴⁵ "Law Reform Commission proposes new legislation criminalising forced and child marriages" News 24 (29 March 2022) <https://www.news24.com/news24/SouthAfrica/News/law-reform-commission-proposes-new-legislation-criminalising-forced-and-child-marriages-20220329> (accessed 17-07-2023).

⁴⁶ van Coller 2017 *IJLPF* 365.

⁴⁷ 116 of 1998.

⁴⁸ Spies "Continued State Liability for Police Inaction in Assisting Victims of Domestic Violence: A Reflection on the Implementation of South Africa's Domestic Violence Legislation" 2019 *JAL* 55.

⁴⁹ Act 133 of 1993.

⁵⁰ Section 6 of the Domestic Violence Act 116 of 1998.

Domestic Violence Act adopts an expansive interpretation of both the conducts that constitute domestic violence and the nature of a domestic relationship.⁵¹

Swemmer contends that the Domestic Violence Act protects GBV primarily through the enforcement of protection orders. In terms of section 4 of the Act, where a party is unable to make an application themselves, such as in a case of minor, individuals with mental disability, or unconscious, another person may bring application on their behalf.⁵² Swemmer further states that the Act prohibits domestic violence, and section 17 of the Act stipulates that when domestic violence occurs or where a protection order is contravened, the offender will be dealt with by the Court by the applicable criminal punishments established by the Act.⁵³

Greenbaum argues that with the high rates of GBV among intimate partners and few protection orders being issued notwithstanding the existence of the Domestic Violence Act could result from one of two factors. First, victims may be unaware of the legal remedies provided by the Act, highlighting the need for campaigns to raise awareness of these systems.⁵⁴ Second, poverty may be a contributing factor, as victims are often financially dependent on the perpetrator, meaning that reporting could endanger their socio-economic well-being.

Kok argues that Sections 8(c) and (d) of the Promotion of Equality and Prevention of Unfair Discrimination Act give expression to sections 10, 30 and 31 of the Constitution. Section 10 guarantees the right to human dignity, while sections 30 and 31 protect the rights to culture, religion and language, including the rights of cultural, religious and linguistic communities to enjoy their practices collectively. When read together, these provisions oblige Courts to change and adapt the common law and customary law where it accords an inferior or degrading position to women.⁵⁵ The Act directly explicitly points out the protection from GBV, female genital mutilation, and any custom, tradition, or religious practice as grounds for unjust discrimination under sections 8(a), (b), and (d) of the Act.⁵⁶

⁵¹ Spies 2019 *JAL* 55.

⁵² Section 4 of the Domestic Violence Act 116 of 1998.

⁵³ Swemmer 2022 *ISS* 78.

⁵⁴ Greenbaum 2020 *DJLJ* 250.

⁵⁵ Kok "The Promotion of Equality and Prevention of Unfair Discrimination Act: Why the Controversy" 2001 *TSAR* 298.

⁵⁶ Act 4 of 2000.

Additionally, Bayene asserts that university students affected by GBV often experience poor academic performance, with some dropping out, limiting their future economic prospects.⁵⁷ This demonstrates that GBV is a critical factor contributing to poor socio-economic well-being.

The aforementioned scholars highlight the State's obligation and efforts in implementing effective legal and institutional frameworks to combat GBV. While the Constitution does not explicitly reference GBV its provisions as provided above serve a foundation for broader protection against unfair treatment particularly towards women. Legislative instruments play a crucial role in prohibiting harmful practises and offer for protection against GBV.

Further, the legislations discussed herein represent a significant legal tool for protecting victims of GBV. However, the effectiveness of these legal tools are limited by issues such as lack of public awareness of remedies and economic dependency, which deter victims from seeking assistance. These scholars also note the broader socioeconomic impact of GBV, such as poor educational outcomes and long-term financial instability, particularly amongst young women.

.

1 6 Research Methodology

The study will focus on the Constitution and legislation, as well as the Court's interpretation and application of the legal framework. It will additionally examine international and regional frameworks that address GBV and make a comparison between South Africa's legal framework and that of other jurisdictions. This study employs a doctrinal legal research methodology, which is appropriate for examining the content, scope, and application of legal rules and principles related to GBV. This method involves a detailed analysis of primary legal sources, such as the Constitution, legislation, case law, and policy instruments, as well as relevant secondary sources, including academic literature.⁵⁸ Given the study's focus on assessing the substantive and procedural dimensions of legal protection against GBV, a doctrinal approach allows for a systematic, critical appraisal of legal texts and judicial reasoning.

The research will focus on content analysis and comparative analysis to effectively compare the legal framework of South Africa with those of other States such as India, Canada, and the United States. India is one of the countries chosen because it is a developing country similar to South Africa and has high incidences of GBV. On the other hand, Canada and the United States are developed countries, and comparing their legal frameworks with that of South Africa can

⁵⁷ Beyene 2019 *BMC* 02.

⁵⁸ Van Hoecke *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline* (2013) 14.

potentially assist with the identification of gaps in the latter's legal framework and response to GBV.

Content analysis refers to a research technique used to analyse and interpret various legal texts such as case law, legislation, and various legal instruments.⁵⁹ Content analysis will be applied to the second and third chapters, with the second chapter evaluating international law and regional law, and the third chapter analysing the foreign legal framework from the United States, Canada and India.

The comparative analysis involves a comparison and analysis of the laws of different jurisdictions. It employs a logical and inductive approach to reasoning. It is valuable because it highlights the advantages and disadvantages of different methods, procedures, and institutions.⁶⁰ The fourth chapter will use comparative analysis to compare the legal frameworks of South Africa, India, Canada, and the United States.

This method is employed because several sources and data on this subject can be obtained from sites such as Hain Online, JSTOR, and SBINET for journal articles, and LexisNexis, JUTA, and other relevant sources for case law.

1 7 Proposed Chapter Outline

Chapter One:

This chapter introduces the study, presenting the topic within its appropriate context and presenting the research problem that the study aims to address. It also outlines the objectives, along with the research methodology and literature review.

Chapter Two:

This chapter will evaluate GBV-related frameworks from international law and regional law that deal with GBV in the international and African regional space.

Chapter Three:

This chapter evaluates the legal frameworks addressing GBV in three foreign jurisdictions, namely, the United States, Canada, and India, to understand how each country responds to GBV within its legal system.

⁵⁹ Salehijam "The Value of Systematic Content Analysis in Legal Research" 2018 *TLR* 34.

⁶⁰ Lomio *Legal Research Methods in a Modern World: A Coursebook* (2011) 55.

Chapter Four:

This chapter critically analyses the South African legal framework on GBV and conducts a comparative evaluation with selected foreign jurisdictions, namely, the United States, Canada, and India, to draw insights and identify potential areas for reform.

Chapter Five:

This chapter will provide key findings together with recommendations on addressing the issue of GBV in South Africa and a conclusion.

1 8 Limitations

The scope of this study is limited to a critical evaluation of the South African legal framework addressing GBV, with particular emphasis on how constitutional rights and values are interpreted and applied by the courts, alongside legislation that provides for practical enforcement mechanisms. Although international, regional, and selected foreign legal frameworks, namely those of the United States, Canada, and India, are considered, they serve a comparative and supportive function rather than forming the primary focus of analysis. The study further limits itself to doctrinal legal research, concentrating on statutes, case law, and statistics. As such, it does not incorporate empirical data, such as interviews or the lived experiences of victims, nor does it assess the impact of these laws on individuals. While this approach facilitates a rigorous legal analysis, it does not extend to examining the broader socio-economic and cultural dimensions of GBV.

1 9 Ethical Consideration

This research project fully complies with the University of Fort Hare Research Ethics Policy 2019. The research does not involve human or animal participants, and informed consent is thus not applicable. An application for Ethical Clearance has been completed on the Secondary Data Research Ethics Application Form (attached hereto). An application for ethical clearance (Secondary Data Research) has been submitted to the Faculty of Law Research Ethics Committee and was successful (Ref Number: OLA011SMAH01).

CHAPTER TWO: INTERNATIONAL AND AFRICAN GENDER BASED VIOLENCE RELATED LEGAL FRAMEWORK

2 1 Introduction

This chapter examines international and African legal frameworks addressing GBV, focusing on instruments to which South Africa is a signatory. These frameworks form the basis of international human rights with provisions related to GBV, highlighting international and regional provisions and initiatives to combat this widespread human rights violation.

The global campaign against GBV gained momentum in the 1980s. The 1980 Copenhagen World Conference of the United Nations (UN) Decade for Women: Equality, Development, and Peace adopted a resolution on abused women and domestic violence, marking the official beginning of this campaign, primarily targeting VAW.⁶¹ Similarly, the 1985 Nairobi Forward-looking Strategies for the Advancement of Women urged States to enhance support for GBV victims through shelter, counselling, legal aid, and other services.⁶²

Despite these early efforts, GBV remains prevalent worldwide. The UN and numerous non-governmental organisations (NGOs) have intensified their focus on GBV, driven by the feminist movement and the recognition of women's rights as human rights. Countless international instruments have since been established to address GBV,⁶³ necessitating an analysis of these legal frameworks to understand their effectiveness and limitations.

This chapter provides an analysis of the international and regional legal frameworks addressing GBV. It evaluates how these instruments, whether explicitly or implicitly, contribute to efforts to eliminate GBV, particularly in the South African context. While some instruments directly address violence against women, others promote broader human rights principles that can be interpreted as protective against GBV. This chapter aims to provide an analysis of the international and regional legal mechanisms addressing GBV. The analysis considers how these instruments establish binding and persuasive obligations on States and lays the foundation for evaluating their influence on South Africa's domestic legal commitments. The chapter concludes with a comprehensive analysis of the examined frameworks.

⁶¹ United Nations "World Conference of the United Nations Decade for Women 14-30 July 1980, Copenhagen, Denmark" <https://www.un.org/en/conferences/women/copenhagen1980> (accessed 05-06-2024).

⁶² United Nations "Report of the World Conference to Review and Appraise the Achievement of the United Nations Decade for Women: Equality, Development and Peace 15-26 July 1985 New York" <https://www.un.org/womenwatch/confer/nfls/Nairobi1985report.txt> (accessed 05-06-2024). Each Chapter to start on page 1 for ease of reference and to avoid confusion on cross-referencing.

⁶³ Ulrich "Confronting Gender-Based Violence with International Instruments: Is a Solution to the Pandemic Within Reach?" 2000 *IJGLS* 629.

2 2 INTERNATIONAL LEGAL FRAMEWORK

2 3 Universal Declaration of Human Rights

2 3 1 *Pragmatic Application and Realisation of the UDHR*

The UDHR sets a universal standard for protecting human rights. It should be considered as the starting point for efforts to prevent human rights violations worldwide, including GBV. Additionally, many international and regional treaties protecting human rights draw inspiration from the principles of the UDHR.⁶⁴ The UDHR, adopted by the United Nations on 10 December 1948, is recognised as the foundation of international human rights law. It is proclaimed “as the common standard of achievement for all peoples and all nations.” It marked a turning point in the history of human rights by guaranteeing universal protection of fundamental rights.⁶⁵

The preamble of the UDHR states that human dignity is the cornerstone of freedom, justice, and peace in the world. It promotes the recognition of the inherent dignity and the equal and inalienable rights of every member of the human family. The UN attempted to promote equality based on the early Western feminist notion that women should be treated equally with men.⁶⁶ Essentially, the UDHR sets out fundamental principles prohibiting violence and guaranteeing full equality for women. It acknowledges that unequal status between individuals is a major factor contributing to violence both within families and in society as a whole.⁶⁷

Although the UDHR does not specifically address GBV, it provides for rights that are directly linked to GBV. The UDHR addresses GBV through several key provisions. Article 1 highlights the value of equality and dignity, stating that ‘every person has the same rights and should be treated with respect, regardless of gender’. Article 2 prohibits ‘gender-based discrimination,’ addressing the root cause of GBV. The fundamental ‘right to personal security, which includes defence against violence,’ is provided for under Article 3. Article 4 prohibits the ‘slave trade,’ which is essentially connected to GBV, and Article 5 forbids all other types of ‘cruel treatment and torture,’ and Article 7, which demands ‘equal protection under the law.’⁶⁸ Collectively, these articles safeguard individuals' rights to dignity, freedom, and safety.⁶⁹

⁶⁴ Ozlar “The Universal Declaration of Human Rights at Seventy: Progress and Challenges” 2018 *EIA* 399.

⁶⁵ Sener “A Review of The Meaning and Importance of The Universal Declaration of Human Rights” 2021 *IJPS* 17.

⁶⁶ Etienne “Addressing Gender-based Violence in an International Context” 1995 *HWLJ* 147.

⁶⁷ Gupta “Equivalence between Domestic Violence with Torture” 2020 *JLA* 49.

⁶⁸ United Nations General Assembly. Universal Declaration of Human Rights. Resolution 217 A (III) of 10 December 1948.

⁶⁹ Sener *IJPS* 2021 22.

2 3 2 *Critiques of the UDHR*

While the UDHR provides essential principles for human rights protection, it lacks a clear method of implementation. Ozlar argues that the primary and most fundamental issue with the UDHR is its lack of a clear implementation method.⁷⁰ While the UDHR has had a profound influence on the development of international human rights law and has inspired numerous binding treaties, its non-binding nature remains a significant limitation. As a declaration rather than a treaty, it lacks direct legal enforceability, which undermines the implementation of its principles at both international and domestic levels. Olzar further asserts that this foundational limitation means that, despite its broad recognition and moral authority, the UDHR remains largely aspirational, articulating ideals without providing binding obligations, implementation mechanisms, or accountability frameworks.⁷¹

Charlesworth critiques the UDHR by noting that it does not explicitly address women's rights. While Article 16 mentions the rights of both men and women to marry and have children, and Article 25 acknowledges the need for special consideration and support for motherhood,⁷² Charlesworth argues that the UDHR's focus on the family reinforces a limited view of women's roles.⁷³ By focusing predominantly on traditional family structures, the UDHR fails to fully recognise and address the unique challenges and inequalities that women face, thus limiting its effectiveness in promoting true gender equality.⁷⁴

In summary, notwithstanding the critiques, it is essential to highlight that the UDHR is a declaration rather than a legally binding document. It remains a foundational instrument that has profoundly influenced the development of various international and regional human rights treaties with legally binding status. Many of the rights, standards, and principles enshrined in the UDHR are reflected in these binding instruments, which are designed for practical implementation and enforcement.

2 4 Convention on The Elimination of All Forms of Discrimination Against Women

2 4 1 *Scope and Purpose*

The CEDAW was the first international instrument specifically designed to address the barriers preventing women from fully enjoying their human rights.⁷⁵ Highlighting the specific barriers

⁷⁰ Ozlar 2018 *EIA* 399.

⁷¹ Ozlar 2018 *EIA* 400.

⁷² Adopted by General Assembly resolution 217 A (III) of 10 December 1948.

⁷³ Charlesworth "The Mid-Life Crisis of the Universal Declaration of Human Rights" 1998 *WLLR* 783.

⁷⁴ *Ibid.*

⁷⁵ Ulrich 2000 *IJGLS* 640.

and violations women face, it offers measures to address and resolve these issues, thereby strengthening protection mechanisms for women.⁷⁶ The international standards for women's rights established under CEDAW have influenced many contemporary human rights instruments, such as the Maputo Protocol and the Beijing Declaration and Platform for Action. As a comprehensive and legally binding treaty, CEDAW mandates the recognition and protection of women's rights on a global scale.⁷⁷

South Africa ratified CEDAW in 1995, committing to uphold its international obligations, ensure compliance with the Convention's provisions, assess the status of human rights protection, and monitor progress towards fulfilling the treaty's requirements, particularly concerning women's rights.⁷⁸ The Convention employs broad language to eliminate discrimination against women and to promote gender equality.⁷⁹ According to Charlesworth, 'CEDAW guarantees equal rights for women and men, ensuring both equal treatment and the prevention of gender-based discrimination.'⁸⁰ This ratification underscores South Africa's dedication to advancing women's rights and addressing the structural inequalities that perpetuate gender discrimination.

2 4 2 State Responsibilities

Several CEDAW's provisions explicitly address GBV within States, highlighting the Convention's comprehensive approach to combat discrimination against women. Article 2 requires 'States to take proactive measures to prevent discrimination against women.' Article 5 obliges 'States to reform cultural practices rooted in notions of female inferiority,' while Article 6 mandates the 'combating of prostitution and the trafficking of women through legislative and other means.' According to Article 7, 'States must take all necessary steps to eliminate discrimination against women in political and public life.'⁸¹ These clauses underscore

⁷⁶ Ibid.

⁷⁷ Luks "Important Steps and Instructive Models in the Fight to Eliminate Violence Against Women" 1995 WLLR 1109-1118.

⁷⁸ Commission for Gender Equality "The Bare Minimum: Commission for Gender Equality Report on South Africa's Compliance with CEDAW Committee 2011 Concluding Observations & Recommendations RESEARCH REPORT 2020" <https://cge.org.za/wp-content/uploads/2021/01/the-bare-minimum-cedaw-report-2020.pdf> (accessed 08-07-2024).

⁷⁹ Charlesworth 1998 WLLR 631.

⁸⁰ Charlesworth "Feminist Approaches to International Law" 1991 AJIL 632.

⁸¹ Adopted by the General Assembly resolution 34/180 of 18 December 1979 and entered into force 3 September 1981.

the significance of CEDAW in addressing the complex issues surrounding GBV and promoting gender equality.

According to Sarkin, States are required under CEDAW to take reasonable steps to prevent, look into, and punish acts of VAW in line with domestic law, regardless of whether the State or private parties are responsible for the actions.⁸² This duty encompasses enacting and enforcing relevant legislation, regularly reviewing and analysing its effectiveness in combating VAW, and ensuring that these laws are robust and responsive to the needs of victims. Additionally, States are required to prioritise the prevention of such violence, actively prosecute offenders, and implement protective measures for women who have experienced violence.⁸³ By mandating these actions, CEDAW seeks to hold States accountable for ensuring that women are safeguarded from violence and that justice is served when violations occur.

2.4.3 Monitoring Compliance

To oversee the implementation of the Convention within States, CEDAW established the Committee on the Elimination of Discrimination against Women, as outlined in Article 17(1).⁸⁴ According to Rana, the Committee is empowered by CEDAW to ‘fulfil its obligations, including monitoring States’ progress in implementing the Convention and addressing both individual and State complaints.’⁸⁵ This oversight mechanism plays a crucial role in ensuring that States are held accountable for their commitments under CEDAW, providing a platform for evaluating compliance and addressing complaints related to gender-based discrimination.⁸⁶

Among the Committee’s duties is the oversight of efforts to address and monitor GBV against women and girls. General Recommendation No. 35 on GBV against women emphasises the need to revise General Recommendation No. 19, underscoring the Committee’s ongoing dedication to tackling GBV affecting women and girls. The Committee acknowledges the contributions of the Special Rapporteur on VAW, particularly its influence on this

⁸² Sarkin 2018 *HRQ* 19.

⁸³ United Nations “Fourth World Conference on Women, 4-15 September 1995, Beijing, China” <https://www.un.org/en/conferences/women/beijing1995> (accessed 8 June 2024).

⁸⁴ Adopted by the General Assembly resolution 34/180 of 18 December 1979 and entered into force 3 September 1981.

⁸⁵ Rana “CEDAW: A Tool for Addressing Violence Against Women” 2019 *SDPI* 113.

⁸⁶ Adopted by the General Assembly resolution 34/180 of 18 December 1979 and entered into force 3 September 1981.

recommendation. It is recognised that GBV falls within the broader definition of discrimination against women as provided in Article 1 of the Convention.⁸⁷

While the Committee works alongside States to eliminate GBV, it remains the responsibility of each State to implement CEDAW as required by Articles 2(b), (c), (e), (f), (g), and 5(a) of the Convention. States must enact comprehensive laws that prohibit all forms of GBV and ensure that their domestic laws are aligned with the standards set by the Convention. The Committee ensures that women's rights are upheld within State legislation, which must include age- and gender-sensitive policies, robust legal protections, and appropriate remedies. States are required to safeguard victims, ensure their access to justice, and categorise sexual assault, including rape, as a violation of personal integrity and safety. In addition to trauma-informed healthcare services, States should provide financial support, affordable legal assistance, medical care, psychosocial support, education, housing, and other necessary measures.⁸⁸

2 5 Beijing Declaration and Platform for Action

2 5 1 GBV Preventative Measures

The Beijing Declaration and Platform for Action (BDPfA) plays a crucial role in combating GBV by addressing its root causes as part of a preventative strategy. Central to its approach is the recognition that the economic disempowerment of women can heighten their vulnerability to GBV, a concern emphasised in Chapter Two of the BDPfA. Chapter Two of the BDPfA underscores the feminisation of poverty and highlights the importance of economic empowerment as a fundamental factor in preventing GBV. Additionally, the BDPfA stresses the critical role of education in empowering women, viewing it as an essential step towards the eradication of GBV.⁸⁹

Chapter Four of the BDPfA recognises VAW as a significant barrier to achieving gender equality and calls for the strengthening of institutional frameworks to protect and promote the human rights of women, who are disproportionately affected by GBV. It advocates for the effective implementation and monitoring of policies specifically designed to combat GBV.⁹⁰

⁸⁷ United Nations "General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992)" file:///C:/Users/201906092/Downloads/CEDAW_C_GC_35-EN.pdf (accessed 07-08-2024).

⁸⁸ Adopted by the General Assembly resolution 34/180 of 18 December 1979 and entered into force 3 September 1981.

⁸⁹ Para 17, 27 and 112 of the Beijing Declaration, adopted by the Fourth World Conference on Women resolution 1 of 4-15 September 1995.

⁹⁰ United Nations "Fourth World Conference on Women, 4-15 September 1995, Beijing, China" <https://www.un.org/en/conferences/women/beijing1995> (accessed 8 June 2024).

These provisions emphasise the BDPfA's commitment to eradicating GBV by addressing the broader socio-economic factors that contribute to it and by advocating for policies that promote women's rights and gender equality. Critical factors for success include establishing a coordination mechanism, ensuring the availability of services such as shelters, and raising awareness at the community level. This approach necessitates the involvement of multiple stakeholders, including traditional authorities, and requires a collaborative effort between local and national mobilisation of women's organisations to address these challenges effectively.⁹¹

2 6 Summary

The provisions of these international instruments demonstrate an international commitment to combating GBV. States can build a safer and more equal environment for all people, including those who are vulnerable to GBV, by implementing and enforcing these provisions. These actions are critical to preserving human rights and fostering justice and equality. However, it is critical to recognise that, while international and regional frameworks provide important principles and standards for preventing GBV, their effectiveness is dependent on rigorous national implementation, strengthened monitoring mechanisms, and holistic methods that address cultural contexts and root causes of violence.

2 7 REGIONAL LEGAL FRAMEWORK:

2 8 African Charter on Human and Peoples' Rights

2 8 1 Scope and Purpose

The ACHPR was adopted by the member States of the Organisation of African Unity (OAU) in 1981, before the OAU's replacement by the AU in 2002. Initially, the OAU focused on asserting African States' rights to self-determination and combating colonialism, with less emphasis on human rights.⁹² Manjoo argues that the ACHPR highlights the importance of State sovereignty while introducing unique elements such as the protection of group and community rights, the enforcement of these rights within States, and the imposition of duties on individuals.⁹³ The African Charter addresses GBV by prohibiting discrimination on the grounds of sex and by placing a duty on States to eliminate discrimination against women. It

⁹¹ Soyibo "Stalled Gender Policy Renewal and the Effects of the Policy Gap on Malawi Government's Gender Agenda" 2021 *EWGE* 38.

⁹² Manjoo "Does Africa Need a Regional Treaty on Violence Against Women? A Comparative Analysis of Normative Standards in three Regional Human Rights Systems" 2020 *AJ* 200.

⁹³ *Ibid.*

also affirms the obligation of States to respect and promote women's rights as recognised under international human rights standards.⁹⁴

Mensah contends that the ACHPR provides a degree of protection for women by prohibiting discrimination and actively seeking to uphold, defend, and enhance women's rights while addressing inequality.⁹⁵ Under this framework, States are legally obligated to respect women's rights as stipulated in international agreements and to prevent discrimination against women.⁹⁶ Mensah further argues that gender discrimination is amongst the causes of GBV, impacting all women regardless of their financial status, race, culture, or geographic location.⁹⁷

2 8 2 *Establishment of the African Commission on Human and Peoples Rights*

The ACHPR established the African Commission on Human and Peoples' Rights to monitor State compliance with its provisions, examine State reports, investigate complaints of human rights violations, and uphold human rights across Africa.⁹⁸ Additionally, the ACHPR authorises the appointment of special rapporteurs, and Rule 23 of the African Commission's rules of procedure permits the creation of subsidiary mechanisms, including special rapporteurs.⁹⁹ As a result, the position of the Special Rapporteur on the Rights of Women in Africa was established in 1999.¹⁰⁰ This role is specifically tasked with promoting and protecting the rights of women across the continent, ensuring that States adhere to their obligations under the ACHPR and related international agreements.¹⁰¹

Mensah's arguments underscore the role of the ACHPR in providing legal protections for women and combating GBV. By prohibiting discrimination and imposing State obligations, the ACHPR lays a foundation for safeguarding women's rights. The establishment of monitoring mechanisms, such as the African Commission on Human and Peoples' Rights and the Special Rapporteur on the Rights of Women in Africa, further strengthens these protections.¹⁰² Collectively, these laws and mechanisms that protect women's rights and

⁹⁴ Organisation of the African Union. African Charter on Human and Peoples Rights, adopted on 27 April 1981. Entered into force on 21 October 1986 Article 2 & 18.

⁹⁵ Mensah "Women's Rights in Africa: The CEDAW and ACHPR in the 21st Century" 2024 *JSSPI* 81.

⁹⁶ *Ibid.*

⁹⁷ Mensah 2024 *JSSPI* 78.

⁹⁸ Organisation of the African Union. African Charter on Human and Peoples Rights, adopted on 27 April 1981. Entered into force on 21 October 1986 Article 30.

⁹⁹ African Union "Standard Operating Procedures on the Special Mechanisms of the African Commission on Human and Peoples' Rights" <https://achpr.au.int/index.php/sw/node/901> (accessed 10 June 2024).

¹⁰⁰ African Union "Standard Operating Procedures on the Special Mechanisms of the African Commission on Human and Peoples' Rights" <https://achpr.au.int/index.php/sw/node/901> (accessed 10 June 2024).

¹⁰¹ Manjoo 2020 *AJ* 204.

¹⁰² Mensah 2024 *JSSPI* 81.

combat GBV across the African continent demonstrate the ACHPR's commitment to promoting gender equality and addressing the root causes of VAW.¹⁰³

The African Commission addressed GBV in the case of *Egyptian Initiative for Personal Rights & INTERIGHTS v Egypt*, where four female journalists alleged human rights abuses by Egyptian security forces during the 2005 referendum to amend Article 75 of the Constitution.¹⁰⁴ The journalists reported severe physical and sexual violence, including being beaten, assaulted, and harassed. The complaints highlighted violations of various articles of the African Charter,¹⁰⁵ And the Commission condemned the violence, declaring that States are accountable for protecting women from GBV, whether perpetrated by State agents or third parties and must ensure such protection.¹⁰⁶

2 9 Protocols to The African Charter on Human and Peoples' Rights to the Rights and Welfare of Women in Africa

2 9 1 Development and Scope

The development of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol),¹⁰⁷ was preceded by a significant advocacy effort in 1995, spearheaded by non-governmental organisations (NGOs) championing women's rights. In 1999, this momentum led to the appointment of the first Special Rapporteur on the Rights of Women in Africa by the African Commission on Human and Peoples' Rights, who subsequently recommended the creation of a Protocol.¹⁰⁸

The initial idea was to establish and adopt a protocol advocating for women's rights instead of a separate treaty with a separate monitoring authority. Several draft clauses, including those on polygamy, detrimental customs, sexual orientation as a forbidden basis for discrimination, and women's autonomy over reproduction, caused controversy throughout the discussions.¹⁰⁹

¹⁰³ *Ibid.*

¹⁰⁴ Constitution of the Arab Republic of Egypt.

¹⁰⁵ African Charter on Human and Peoples Rights, adopted by the Organisation of the African Union on 27 April 1981. Entered into force on 21 October 1986.

¹⁰⁶ 323/06 AHRLR 64 (ACHPR 2011).

¹⁰⁷ African Union, Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, adopted on 11 July 2003, entered into force on 25 November 2005.

¹⁰⁸ Manjoo 2020 *AJ* 201.

¹⁰⁹ Rebouche "Health and Reproductive Rights in the Protocol to the African Charter: Competing Influences and Unsettling Questions" 2009 *WLJCRSJ* 80.

2 9 2 *GBV Prevention Measures*

Article 1 of the Protocol provides a crucial definition of discrimination against women as any distinction, exclusion, or restriction based on sex or gender that has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women of their rights. It further defines harmful practices as ‘all behaviour, attitudes, and practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education, and physical integrity.’¹¹⁰ These definitions are essential for identifying and addressing the root causes of GBV.

In essence, this provision explicitly identifies the restriction of fundamental rights in both public and private contexts as forms of discrimination against women.¹¹¹ Harmful practices are defined as actions, attitudes, or practices that violate the fundamental rights of women and girls, encompassing areas such as their life, health, dignity, education, and physical integrity. Article 1 lays the groundwork for a comprehensive approach to combating GBV, emphasising the need to address both discriminatory practices and harmful behaviours that undermine women's rights.¹¹² This foundational provision shows the Protocol's commitment to protecting women's rights and eliminating all forms of GBV.

Article 4 offers a comprehensive framework for Member States to address GBV through a multifaceted approach. It encompasses both legal and non-legal measures, including ‘the enactment of specific legislation to address GBV, the imposition of appropriate sanctions or punishments for acts of violence, and the allocation of sufficient budgetary resources to support these efforts.’¹¹³ Additionally, Article 4 emphasises the importance of implementing public education and awareness-raising initiatives aimed at ‘challenging and changing negative attitudes, traditions, and cultural practices that perpetuate harmful behaviours.’ It also calls for the ‘provision of essential services, such as justice, healthcare, and shelters, to support survivors of GBV.’ By integrating these measures, Article 4 provides a robust framework for

¹¹⁰ African Union, Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, adopted on 11 July 2003, entered into force on 25 November 2005.

¹¹¹ African Union, Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, adopted on 11 July 2003, entered into force on 25 November 2005.

¹¹² African Union, Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, adopted on 11 July 2003, entered into force on 25 November 2005.

¹¹³ African Union, Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, adopted on 11 July 2003, entered into force on 25 November 2005.

member States to effectively combat GBV and promote a safer, more equitable environment for all individuals.¹¹⁴

According to Harrington, Article 26 of the Maputo Protocol places an obligation on State parties to include in their periodic reports detailed information on the measures they have implemented to realise the rights of women as outlined in the Protocol.¹¹⁵ However, Manjoo argues that examining the submitted periodic reports reveals a general failure to adhere to them.¹¹⁶ This observation suggests that the reports lack the necessary detail and compliance with the Protocol, highlighting a broader issue of accountability and transparency in the reporting process.¹¹⁷ In addition, the Commission has been criticised for not being as effective as it ought to be, which makes the framework ineffective.¹¹⁸ Consequently, these shortcomings undermine the overall efficiency of the framework intended to protect and promote women's rights in Africa.

2 10 Southern African Development Community Declaration on Gender and Development

2 10 1 Scope and Purpose

The Southern African Development Coordination Conference (SADCC) was originally established in Lusaka in 1980. It was later renamed the Southern African Development Community (SADC) following a conference in Windhoek, Namibia, in 1992, where a treaty and declaration were signed.¹¹⁹ The main goals are to promote self-sustaining growth, interdependence, and self-reliance, as well as to create employment opportunities and alleviate poverty. According to Mlambo, the SADC Treaty also states that the community aims to strengthen and consolidate the long-standing historical, social, and cultural affinities and links among the people of the region, as well as to evolve common political values, systems, and institutions.¹²⁰

¹¹⁴ African Union, Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, adopted on 11 July 2003, entered into force on 25 November 2005.

¹¹⁵ Harrington "Special Rapporteurs of the African Commission on Human and Peoples' Rights" 2001 *AHRLJ* 266

¹¹⁶ Manjoo "Does Africa Need a Regional Treaty on Violence against Women? A Comparative Analysis of Normative Standards in Three Regional Human Rights Systems" 2020 *AJ* 204.

¹¹⁷ *Ibid.*

¹¹⁸ Sarkin "Reforming the role of the African Commission on Human and Peoples' Rights in advancing democratic principles and human rights in African countries: An examination using the lens of Swaziland/Eswatini" 2019 *SAPL* 10.

¹¹⁹ Southern African Development Community "History and Treaty" <https://www.sadc.int/pages/history-and-treaty> (accessed 15-06-2024).

¹²⁰ Mlambo "The Quest for Post-Colonial Regional Integration" 2020 *JAF* 25.

The Beijing Declaration and Platform for Action was the inspiration for the SADC's 1997 Declaration on Gender and Development and the 1998 Addendum to the Declaration on Violence Against Women.¹²¹ To achieve this, a task force composed of women from the government and NGO sectors was formed before the Beijing conference.¹²² Afterwards, it was reorganised as a Regional Advisory Committee. According to Kadzambiara, with this Committee's assistance, the SADC Council of Ministers adopted a policy and institutional framework for gender mainstreaming, and the group went on to adopt the SADC Gender and Development Declaration in 1997.¹²³

2 10 2 State Protection of Rights

Sarkin provides that this instrument calls for Member States to examine and update their criminal laws and protocols regarding sexual offences to remove gender prejudice and advance equity and justice for both the accused and the victim.¹²⁴ According to Snyman, this declaration is directly related to fulfilling the commitments outlined in the Maputo Protocol.¹²⁵ Specifically, it pertains to Articles 3(4) and 4(2), which safeguard women's rights to life, security, and integrity and call on governments to protect women from all forms of violence, including domestic abuse. Additionally, it is relevant to Article 5(d), which guarantees women equal access to a positive quality of life and economy.¹²⁶

2 10 3 Measures to Eradicate Violence Against Women

The Declaration recommends five broad categories for actions to eradicate VAW and children:

“(i) Legal actions; (ii) Social, economic, cultural, and political measures; (iii) Services, such as informing victims of available services; (iv) Measures involving education, training, and awareness-raising; and (v) Mandating States to adequately fund these services in their budgets.”¹²⁷

¹²¹ Adopted by the Fourth World Conference on Women, resolution 1 of 4-15 September 1995.

¹²² Kadzambiara *SADC Gender Monitor: Monitoring Implementation of the Beijing Commitments by SADC Member States* (1995) 1.

¹²³ Kadzambiara *SADC Gender Monitor* (1995) 01.

¹²⁴ Sarkin “A Methodology to Ensure that States Adequately Apply Due Diligence Standards and Processes to Significantly Impact Levels of Violence Against Women Around the World” 2018 *JHUP* 19.

¹²⁵ Snyman “Protecting Transgender Women within the African Human Rights System Through the Inclusive Reading of the Maputo Protocol and the Proposed Southern African Development Community Gender-Based Violence Model Law” 2022 *SLR* 78.

¹²⁶ Southern African Development Community, Declaration on Gender and Development, SADC, adopted on 8 September 1997.

¹²⁷ Southern African Development Community, Declaration on Gender and Development, SADC, adopted on 8 September 1997.

The framework provided in the Declaration and supported by Sarkin and Snyman is a proactive and vital approach to combating GBV. By revising legal frameworks, implementing broad societal measures, providing critical services, raising awareness, and assuring adequate finance, member States can establish an environment in which GBV is greatly reduced, if not eliminated. This strategy not only protects victims' rights and well-being but also promotes overall societal equality and justice.

2 11 Summary

In the African setting, regional legal mechanisms are critical in protecting women's rights and preventing GBV. They create frameworks for State commitments, assess progress, and describe complete programmes that include legal reforms, societal changes, and resource distribution. Despite challenges with implementation and monitoring, they work together to advance gender equality and promote women's rights across the continent. They also involve receiving State reports and monitoring State compliance. It is important to bear in mind that, despite the presence of international frameworks, States must ensure they adhere to these to fully combat the issue of GBV.

CHAPTER THREE: COMPARATIVE ANALYSIS OF THE LEGAL FRAMEWORKS REGULATING GENDER BASED VIOLENCE

3 1 Introduction

This chapter conducts an analysis of the legal frameworks in India, Canada, and the United States (US). The selection of these countries is based on specific factors that underscore their relevance to South Africa's context.

India was chosen for this comparison due to its constitutional focus on equality and non-discrimination,¹²⁸ which closely aligns with South Africa's legal framework. Indian women face considerable societal pressures to prioritise marriage over education or careers, while also bearing the burden of household responsibilities and domestic abuse.¹²⁹ These socio-economic and cultural challenges are similar to those in South Africa, providing valuable insights into both countries' systemic obstacles in effectively addressing GBV.

Canada was selected due to its similar constitutional provisions combating GBV.¹³⁰ The Constitution of Canada includes provisions that protect fundamental rights relevant to the prevention of GBV, such as the right to life and gender equality.¹³¹ Similar to South Africa, Canada faces an issue of disproportionately high incidence of GBV against women, even though it makes progress in addressing this issue.¹³² Canada continues to struggle to fully protect women and girls from GBV.¹³³ However, Canada has implemented numerous initiatives, including outreach programmes, awareness campaigns, and educational reforms, aimed at fostering a culture of consent, gender equality, and the prevention of sexual violence.¹³⁴ Examining Canada's legal framework and initiatives is vital, as it may offer valuable insights to strengthen South Africa's legal framework in addressing GBV.

Lastly, the US was selected due to its shared commitment to upholding constitutional rights that implicitly prohibit GBV.¹³⁵ While the U.S. Constitution does not explicitly guarantee gender equality, the Fifth and Fourteenth Amendments establish a framework for equal

¹²⁸ Articles 14, 15 and 16 of the Constitution of India, 1950.

¹²⁹ Roy "Gender-based Violence in India in Covid-19 Lockdown" 2021 *JCLA* 42.

¹³⁰ The Constitution of Canada, 1867.

¹³¹ Section 7 and section 28 of the Constitution of Canada, 1867.

¹³² Dale *A Report to Guide the Implementation of a National Action Plan on Violence Against Women and Gender-Based Violence* (2021) 108.

¹³³ *Ibid.*

¹³⁴ Chen "Canadian Gender-Based Violence Prevention Programs: Gaps and Opportunities" 2024 *SJ* 02.

¹³⁵ Fifth and Fourteenth Amendments of the Constitution of the United States.

protection under the law.¹³⁶ These amendments protect individuals from arbitrary State actions that could result in the deprivation of life, liberty, or property, thereby offering constitutional protection against GBV.¹³⁷

This chapter will analyse selected, as opposed to all, legal frameworks and initiatives from each country, focusing on key legal frameworks. The objective is to identify potential gaps in South Africa's legal framework addressing GBV. Where such gaps are found, the study will propose initiatives to enhance the effectiveness of South Africa's legal framework.

3 2 Overview of Gender-Based Violence Legal Framework in Each Country

3 2 1 The Constitution of India, 1950

The Indian Constitution incorporates several provisions that prevent various conduct that amount to GBV, advancing substantive equality and empowering women in all aspects of life. As Bahl argues, these constitutional guarantees are crucial for safeguarding women's rights and fostering conditions conducive to their full participation in society. Tyagi asserts that the constitutional provisions protect women from discrimination, safeguard their well-being, and ensure their equal engagement in political, economic, and social spheres.¹³⁸ The Preamble establishes the principle of equality of status and the promotion of dignity for all individuals.¹³⁹ Alongside the fundamental rights that protect against GBV, various other constitutional provisions create both broad and specific protection designed to ensure that women's rights are safeguarded.¹⁴⁰

Article 14 of the Constitution of India mandates that the State shall not deny any person equality before the law or equal protection of the laws in India.¹⁴¹ It guarantees equality before the law and equal protection of the laws for all individuals, thereby ensuring that women receive equal legal protection against any GBV crimes.¹⁴² Bahl asserts that this essential provision paves the way for the introduction of various laws designed to protect and enforce women's rights in India.¹⁴³ In essence, this article reinforces the commitment to creating a more equitable society for women, ensuring that they can seek redress and justice without fear or favour. Article 15

¹³⁶ Vojdik "Conceptualising Intimate Partner Violence and Gender Equality: A Comparative Approach" 2008 *FILJ* 499.

¹³⁷ Fifth and Fourteenth Amendments of the Constitution of the United States of America, 1787.

¹³⁸ Tyagi "Gender Violence, Gender Justice and Gender-Based Laws: An Analysis of Pattern and Policies in India and Indonesia" 2020 *BLJ* 144.

¹³⁹ Preamble of the Constitution of India, 1950.

¹⁴⁰ Bahl 2017 *IJRPS* 2279.

¹⁴¹ Article 14 of the Constitution of India, 1940.

¹⁴² Bahl 2017 *IJRPS* 2280.

¹⁴³ *Ibid.*

prohibits discrimination based on religion, race, caste, sex, or place of birth, thus reinforcing protections against GBV. It also allows the State to create special provisions for women and children, acknowledging their specific needs.¹⁴⁴ This article upholds the constitutional commitment to equality, although effective implementation remains a challenge.¹⁴⁵ In addition to the fundamental rights in Part III of the Constitution, Article 51(A)(e) requires every person to renounce practices that undermine women's dignity.¹⁴⁶ Together, these provisions create a strong legal framework to promote justice and equality for women in India.

The provisions play an important role in combating GBV in India. Tyagi asserts that the Indian Constitution explicitly addresses concerns related to gender justice, incorporating numerous provisions aimed at improving the status and position of women.¹⁴⁷ These provisions collectively reflect a commitment to enhancing gender equality and safeguarding the rights of women in the workforce.

3 2 2 *Indian Penal Code Act 40 of 1960*

The Indian Penal Code Act deals with rape crime and makes it punishable by law.¹⁴⁸ In India, rape continues to pose a serious social and legal issue because of ingrained concerns about VAW and their protection.¹⁴⁹ Rape cases, however, continue to increase dramatically despite the establishment on the legal framework. With almost 93 Indian women becoming victims of rape every day, this horrific crime is among the worst transgressions against women.¹⁵⁰ Essentially, the ongoing increase in rape cases, despite strict legislation, underscores the urgent need for comprehensive interventions beyond legal provisions.

Section 375 of the Indian Penal Code defines rape as an act of penetrating a penis or any object into a woman's vagina, mouth, or anus, or making her do so; manipulating any part of her body to cause such penetration; or applying his mouth to her vagina, or anus.¹⁵¹ This is considered rape if it occurs against the victim's will, consent, or with the consent obtained through fear, deceit regarding marital status, or when she is unable to consent due to unsoundness of mind, intoxication, or age under 18. Consent must be unequivocal and voluntary, and a lack of

¹⁴⁴ Article 15 of the Indian Constitution, 1950.

¹⁴⁵ Brahmapurkar "Gender Equality in India Hit by Illiteracy, Child Marriages and Violence: A Hurdle for Sustainable Development" 2017 *PAMJ* 02.

¹⁴⁶ Article 51(A)(e) of the Constitution of India, 1950.

¹⁴⁷ Tyagi 2020 *BLJ* 145.

¹⁴⁸ Act 45 of 1960.

¹⁴⁹ Tyagi 2020 *BLJ* 151.

¹⁵⁰ Habiba "Persecution of Indian Women: An Analysis on The Most Heinous Cases of Rape and Sexual Abuse of Women" 2020 *JARSS* 06.

¹⁵¹ Section 375 (a)(b) and (c) of the Indian Penal Code Act 45 of 1960.

physical resistance does not imply consent. Exceptions include medical procedures and marital intercourse with wives over 15.¹⁵²

According to the Indian Penal Code, any individual who commits rape, except in specified circumstances, faces a minimum of seven years imprisonment, potentially extending to life imprisonment, along with a fine.¹⁵³ Heightened penalties apply to police officers, public servants, armed forces members, and those in positions of trust who commit rape under specific conditions, such as on minors or vulnerable individuals. These offenders face a minimum of ten years' imprisonment, which may also extend to life, alongside a fine, ensuring accountability for this serious crime.¹⁵⁴

The Indian Penal Code provides the punishment that is subjected to anyone who assaults a woman or engages in any other conduct that violates her dignity or modesty. This section provides that any individual who assaults or uses unlawful force against a woman to outrage her or knowing that doing so will violate her dignity faces a minimum of one year in prison and a maximum of five years in prison, in addition to a fine.¹⁵⁵

Further, the Indian Penal Code encompasses conducts including causing inappropriate physical advances, requesting sexual favours, revealing pornography to women against their consent, and stating offensive words about women. Section 354A offers a maximum of one year of imprisonment for sexually suggestive comments.¹⁵⁶

Stalking is the persistent pursuit or communication with a woman despite her clear disinterest or internet activity monitoring. Such conduct is considered unlawful under Section 354D of the Indian Penal Code. The section provides exceptions where such conduct is justified, such as for law enforcement or crime prevention purposes. Upon first conviction, the offender may face a prison sentence of up to three years and a fine. For a second or subsequent conviction, the penalty increases to a maximum of five years imprisonment and a fine.¹⁵⁷

Under the law, a husband or his relative who subjects a woman to cruelty can face up to three years imprisonment and a fine. Cruelty includes conduct likely to drive the woman to suicide or cause serious harm to her mental or physical health.¹⁵⁸ It also encompasses harassment aimed

¹⁵² Section 375 (a), (b), (c) and (d) of the Indian Penal Code Act 45 of 1960.

¹⁵³ Section 376 of the Indian Penal Code Act 45 of 1960.

¹⁵⁴ Section 376 (2) (a), (b), (c), (d) and (e) of the Indian Penal Code Act 45 of 1960.

¹⁵⁵ Section 354 of the Indian Penal Code Act 45 of 1960.

¹⁵⁶ Section 354A (1)(2)(3) of the Indian Penal Code Act 45 of 1960.

¹⁵⁷ Section 354A (1)(2)(3) of the Indian Penal Code Act 45 of 1960.

¹⁵⁸ Section 498A of the Indian Penal Code Act 45 of 1960.

at coercing her or her family into meeting unlawful demands for property or security. Additionally, anyone committing culpable homicide not amounting to murder faces up to life imprisonment or ten years, depending on intent and knowledge.¹⁵⁹

In summary, the Indian Penal Code Act provides a comprehensive legislative framework that criminalises various forms of GBV, including rape, sexual harassment, stalking, and domestic abuse. These provisions are not only punitive but are also integral to fulfilling the constitutional mandate of non-discrimination. Specifically, the Indian Penal Code enables the realisation of the rights provided in the Indian Constitution, namely equality before the law, prohibition of discrimination on the grounds of sex and protection of life and personal liberty.

By criminalising conduct that undermines women's dignity, safety, and autonomy, the Code serves as a mechanism to give effect to constitutional protections and to dismantle gender inequality. Furthermore, it ensures that perpetrators of GBV are held accountable, thus reinforcing the State's obligation to protect women from discrimination and violence.

3.2.3 Indian Criminal Law Amendment Act 63 of 2013

The Criminal Law (Amendment) Act represents an important development in combating GBV in India by expanding the scope of crimes against women and enhancing legal protections.¹⁶⁰ It ensures a more victim-sensitive legal process, incorporating key recommendations from the Verma Committee while also responding to long-standing demands from feminist groups regarding sexual violence laws.¹⁶¹ Importantly, the Act criminalises a wider range of non-penetrative sexual offences, demonstrating a more holistic approach to addressing sexual violence.¹⁶² By targeting various forms of GBV, this legislation is instrumental in both preventing such violence and securing justice for victims.

The Criminal Law (Amendment) Act defines sexual harassment and outlines the punishment therein. This clause outlines several conducts that constitute sexual harassment, including 'forcibly showing pornography, unwanted sexual conduct, asking for sexual favours, uttering sexually suggestive comments, and engaging in any other unwanted physical, verbal, or nonverbal behaviour.' It prescribes 'up to one year's imprisonment or a fine for sexually suggestive remarks, forcing the display of pornography, and unwanted sexual verbal and

¹⁵⁹ Section 304 of the Indian Penal Code Act 45 of 1960.

¹⁶⁰ Dash "Rape adjudication in India in the aftermath of Criminal Law Amendment Act, 2013: findings from trial courts of Delhi" 2020 *ILR* 244.

¹⁶¹ Kalra "Justice Verma Committee Report Summary" <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary> (accessed 07-10-2024)

¹⁶² Dash 2020 *ILR* 244.

nonverbal behaviours.’ It also imposes ‘up to five years of imprisonment or a fine for physically unwanted conduct that suggests a physical, sexual undertone, demands, or demands for sexual favours.’¹⁶³

The Criminal Law (Amendment) Act extends the definition of assault to include ‘acts of criminal force against a woman with the intent to disrobe her or compel her to be naked in a public place.’ The provision stipulates that ‘any individual who engages in or abets such acts will face severe legal consequences.’ The prescribed punishment is a term of ‘imprisonment of no less than three years, which may be extended to seven years, along with a fine.’¹⁶⁴ This provision aims to safeguard the dignity and bodily integrity of women, ensuring that acts of public humiliation or degradation are met with appropriate punitive action.

The Criminal Law (Amendment) Act, stalking is defined as following or contacting someone frequently despite their obvious lack of interest, monitoring their online activity, or causing mental or emotional disturbances by surveillance. Nonetheless, this infraction does not apply to activities carried out in the interest of law enforcement, crime prevention, or reasonable circumstances. Stalking carries a potential fine in addition to a one-to-three-year prison sentence.¹⁶⁵ The purpose of this clause is to shield people from unwelcome, upsetting behaviours that invade their privacy and mental well-being.

Furthermore, the Criminal Law (Amendment) Act provides a clear legal definition of ‘sexual assault,’ categorising acts such as non-consensual penetration or the touching of intimate parts as criminal offences. This clause emphasises the need for express and voluntary consent, listing circumstances in which it cannot be given, including coercion, intoxication, or when the victim is under the age of 18. In addition, if the wife is older than 16, then a husband and wife may engage in sexual activity without penalty.¹⁶⁶ This provision acts as a critical safeguard for bodily autonomy by defining the necessity of clear and voluntary consent and outlining conditions under which consent is regarded invalid.

3 2 4 *Indian Protection of Women from Domestic Violence Act 43 of 2005*

The Protection of Women from Domestic Violence Act aims to ensure more effective protection of women's rights as enshrined in the Constitution, particularly for those subjected

¹⁶³ Section 134A (2)(i) -(v) and (3) of the Criminal Law (Amendment) Act 13 of 2013.

¹⁶⁴ Section 354B of the Criminal Law (Amendment) Act 63 of 2013.

¹⁶⁵ Section 354D of the Criminal Law (Amendment) Act 63 of 2013.

¹⁶⁶ Section 357 of the Criminal Law (Amendment) Act 63 of 2013.

to any form of violence within the family.¹⁶⁷ Protection Officer responsibilities are outlined in Section 9, including supporting Magistrates, preparing domestic incident reports and forwarding them to appropriate authorities, filing applications for protection orders, ensuring legal aid is provided, and keeping track of local service providers. Protection Officers are also accountable for securing victims' shelter and medical attention, making sure financial relief orders are enforced, and carrying out other prescribed duties under the Act to protect the rights and safety of the aggrieved party.¹⁶⁸

Roy provides that the Protection of Women from Domestic Violence Act is particularly valuable due to its inclusive definition of domestic violence.¹⁶⁹ The Act recognises domestic violence not only as physical harm but also includes acts of omission or commission that result in verbal, emotional, sexual, or economic abuse. This approach encompasses a wide range of abusive behaviours, from name-calling, insults, and humiliation to controlling actions, physical assaults, and sexual violence.¹⁷⁰ By doing so, the Act addresses the diverse forms of abuse women may experience within the household, ensuring more holistic protection and recourse for victims.

Domestic violence is defined in section 3 of the Protection of Women from Domestic Violence Act as 'any act or omission on the part of the respondent that causes bodily or mental injury to the victim, including verbal, physical, sexual, emotional, and financial abuse.' It also includes 'threats and other unlawful conduct, as well as compulsion for property or dowry. Economic abuse 'deprives victims of money, property, or access to the basics of life.' Physical abuse comprises 'physical injury or threats.' Sexual abuse 'violates or degrades a woman's dignity.' Verbal abuse involves 'insults or ridicule.' This provision offers a detailed definition of domestic violence, encompassing 'all forms that could harm a victim's dignity, health, and well-being, whether mentally, physically, emotionally, or economically.' These definitions establish the sphere within which the Act functions, addressing a broad range of GBV concerns in South Africa.¹⁷¹

When police officers, protection officers, service providers, or magistrates receive a domestic violence complaint or witness an occurrence, they are required by Section 5 to advise the victim of her rights. These include requesting several forms of relief such as orders for compensation,

¹⁶⁷ Preamble of the Protection of Women from Domestic Violence Act 43 of 2005.

¹⁶⁸ Section 9 of the Protection of Women from Domestic Violence Act 43 of 2005.

¹⁶⁹ Roy "Gender-based Violence in India in Covid-19 Lockdown" 2021 *JCLA* 42.

¹⁷⁰ *Ibid.*

¹⁷¹ Section 3(a)(b)(c)(d) of the Protection of Women from Domestic Violence Act 43 of 2005.

protection, financial relief, access to protection officers and service providers, receiving free legal aid, and having the ability to file a complaint under Section 498A of the Indian Penal Code. Police personnel are nonetheless required by law to respond to punishable crimes.¹⁷²

Section 12 provides that ‘a person who feels victimised, a protection officer, or anyone acting on their behalf can apply to a magistrate for remedy and the magistrate must consider any domestic incident reports before issuing an order.’¹⁷³ According to Section 18 of the Act, ‘an application for a protection order may be made, and a magistrate may grant one after hearing from both parties and concluding that domestic violence has occurred or is likely to occur.’ The protection order forbids the respondent from harming the victim's dependents or those who assist them, from entering specific locations such as the victim's place of employment or child's school, from communicating with the victim, and from alienating joint assets.¹⁷⁴

The victim's right to stay in the shared household may be protected by a residency order issued by the magistrate in circumstances when domestic abuse is confirmed. The order may forbid the respondent from interfering with the victim's possession of the house, removing the respondent from the family, or limiting their access. The magistrate may also require the respondent to pay rent or find the victim alternate housing. To protect the victim, the Court may also impose requirements, such as mandating police protection or asking the defendant to return the victim's belongings.¹⁷⁵

These provisions incorporate the duties of the State in addressing GBV among individuals living in close proximity. They are comprehensive, considering the socio-economic factors that may impact victims of domestic abuse, and extend to offering various remedies for those affected. By recognising these complexities, the provisions aim to ensure that victims receive adequate support and protection, thereby promoting a more effective response to the pervasive issue of GBV.

In summary, the Act gives concrete expression to the Indian Constitution's guarantees of equality and dignity by recognising the gendered nature of domestic abuse, facilitating victim-centred access to justice, and mandating institutional support. By addressing not only violence but also the underlying power imbalances and socio-economic vulnerabilities that perpetuate

¹⁷² Section 5 (a)(b)(c)(d)(e) of the Protection of Women from Domestic Violence Act 43 of 2005.

¹⁷³ Section 12(1) of the Protection of Women from Domestic Violence Act 43 of 2005.

¹⁷⁴ Section 18 (a)-(g) of the Protection of Women from Domestic Violence Act 43 of 2005.

¹⁷⁵ Section 19 (1)-(8) of the Protection of Women from Domestic Violence Act 43 of 2005.

it, the Act serves as a vital legislative tool in advancing substantive equality and fulfilling India's constitutional and international obligations to eliminate GBV.

3.2.5 *Canadian Constitution, 1867*

Canada, much like South Africa, operates under the authority of its Constitution.¹⁷⁶ Furthermore, it is important to note that Canada is a federation that includes a constitutionally recognised central or federal government, along with ten decentralised provincial governments. This system of governance is commonly known as federalism.¹⁷⁷

The Constitution of Canada allows for the State and provinces to establish frameworks and initiatives to Combat GBV. The Canadian Constitution grants provinces exclusive authority over public health, social services, education, and the enforcement of legal frameworks that fall within the constitutional framework.¹⁷⁸ These areas are considered provincial responsibilities, reflecting the division of powers within Canada's federal structure.

The Charter of Rights in the Constitution guarantees every individual is entitled to equal treatment and protection under the law, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.¹⁷⁹ Furthermore, this provision does not prevent laws, programmes, or activities aimed at improving the conditions of disadvantaged individuals or groups, particularly those affected by these specific forms of discrimination.¹⁸⁰

This Charter of Rights in the Constitution explicitly affirms that rights are guaranteed equally to all individuals, regardless of gender. As a result, section 28 guarantees both men and women the same rights and freedoms, reinforcing the principles of equality and non-discrimination.¹⁸¹ This provision reflects a commitment to upholding everyone's rights equally, promoting a just and equitable society.

Essentially, similar to South Africa, Canada also protects fundamental rights that implicitly address GBV. Like South Africa's right to life and human dignity,¹⁸² Canada's section 7 safeguards life, liberty, and personal security. Comparable to South Africa's section 9,¹⁸³

¹⁷⁶ The Constitution of Canada, 1867.

¹⁷⁷ Deber "Case Studies in Canadian Health Policy and Management" 2014 *TUP* 397.

¹⁷⁸ Section 92(7) of the Constitution of Canada, 1867.

¹⁷⁹ Section 15 (1) of the Canadian Charter for Human Rights in the Constitution of Canada, 1982.

¹⁸⁰ Section 15 (2) of the Canadian Charter for Human Rights in the Constitution of Canada, 1982.

¹⁸¹ Section 28 of the Canadian Charter for Human Rights in the Constitution of Canada, 1982.

¹⁸² Section 10 and 11 of the Constitution of the Republic of South Africa, 1996.

¹⁸³ Section 9 of the Constitution of the Republic of South Africa, 1996.

section 15 of the Canadian Constitution ensures equality by prohibiting discrimination and guaranteeing equal treatment under the law. In line with South Africa's commitment to equal rights, Canada's Charter of Rights, section 28 affirms gender equality, reinforcing protection against gender-based violence and discrimination.¹⁸⁴

3.2.6 *Criminal Code of Canada (R.S.C 1985 C-46)*

Under Section 264 of the Criminal Code of Canada, criminal harassment is defined as engaging in conduct that knowingly or recklessly causes another person to fear for their safety. Prohibited behaviours include repeatedly following, communicating with, or watching the victim, as well as making threats towards them or their family. Violators may face up to 10 years' imprisonment for an indictable offence. Courts must consider aggravating factors during sentencing, such as breaches of existing orders, and must provide reasons if they choose not to apply these factors.¹⁸⁵

The Criminal Code of Canada defines assault as 'a serious offence that can result in an indictment and a maximum sentence of five years imprisonment or a summary conviction.' This legal system guarantees that 'those who commit acts of violence will suffer the proper penalties,' underscoring the seriousness with which Canadian law treats these offences. This section also covers other types of assault, such as sexual and aggravated assault.¹⁸⁶

The severity of the offence is increased for assaults involving weapons or physical harm under Section 267. If found guilty of these offences, a person could get a summary conviction or a maximum sentence of 10 years in imprisonment.¹⁸⁷ Section 268 explicitly addresses aggravated assault, which includes 'acts that seriously injure the victim or put their life in serious imminent danger.' Aggravated assault carries a maximum sentence of 14 years imprisonment, which reflects the seriousness of the offence and the desire to shield victims from serious injury. As explained in subsection 3 of this section, the term wounds or maims includes specific mutilation unless there are specific medical circumstances.¹⁸⁸

Section 271 of the Criminal Code of Canada lists several sexual assault charges. According to this clause, anyone found guilty of sexual assault faces up to 10 years imprisonment as a

¹⁸⁴ Sections 15 and 28 of the Constitution of Canada, 1867.

¹⁸⁵ Section 264 (1)(2)(3)(4)(5) of the Criminal Code of Canada (R.S.C 1985 C-46).

¹⁸⁶ Section 266(a) of the Criminal Code of Canada (R.S.C 1985 C-46).

¹⁸⁷ Section 267(a)(b) and (c) of the Criminal Code of Canada (R.S.C 1985 C-46).

¹⁸⁸ Section 268 (1)(2)(3)(a) and (b) of the Criminal Code of Canada (R.S.C 1985 C-46).

maximum punishment for an indictable offence. The term can increase to a maximum of 14 years if the victim is younger than 16 years old, with a minimum penalty of six months.¹⁸⁹

Aggravated sexual assaults those in which the offender uses a weapon, threatens someone else, or causes physical harm, are covered by Section 272.¹⁹⁰ Persons found guilty risk severe consequences, such as a maximum 14-year prison sentence. First-time offenders have a minimum penalty of five years, while repeat offenders face a minimum sentence of seven years. The provision provides heightened minimum punishments for perpetrators who use firearms or are affiliated with criminal organisations. The laws are especially strict when it comes to victims who are younger than 16 years old, as the maximum penalty increases to life in prison.¹⁹¹

Aggravated sexual assault is specifically addressed in Section 273, which defines the offence as one in which the assailant wounds, maims, disfigures, or endangers the life of the victim. Individuals convicted of this crime are subject to severe penalties, including life imprisonment, particularly when a firearm is involved.¹⁹² The minimum punishment for first-time offenders in such cases is five years, while subsequent offences carry even stricter minimum sentences.¹⁹³ This structured legal response aims to safeguard vulnerable populations and reinforce the judiciary's commitment to addressing serious crimes of sexual violence.

The Canadian legal provisions addressing GBV are significant as they criminalise a broad spectrum of abusive conduct, thereby contributing meaningfully to national efforts to combat GBV. Notably, many of these forms of conduct such as sexual assault and harassment are also explicitly prohibited under South African legislation. For example, in South Africa, sexual assault is criminalised under section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act,¹⁹⁴ which defines and penalises non-consensual sexual acts. Similarly, the Protection from Harassment enables victims to obtain protection orders aimed at preventing continued or future harassment.¹⁹⁵ The overlap between these jurisdictions illustrates a shared recognition of the need to address various forms of GBV through specific

¹⁸⁹ Section 271 (a)(b) of the Criminal Code of Canada (R.S.C 1985 C-46).

¹⁹⁰ Section 272 (1)(a)(b)(c) (c.1) of the Criminal Code of Canada (R.S.C 1985 C-46).

¹⁹¹ Section 272 (2)(a)(i)(ii) of the Criminal Code of Canada (R.S.C 1985 C-46).

¹⁹² Section 273(1)(2)(a)(i)(ii) of the Criminal Code of Canada (R.S.C 1985 C-46).

¹⁹³ Section 273(3)(a)(b) of the Criminal Code of Canada (R.S.C 1985 C-46).

¹⁹⁴ Act 32 of 2007.

¹⁹⁵ Act 17 of 2011.

legislative interventions, affirming both countries' constitutional commitments to dignity, equality, and personal security

3.2.7 *Its Time: Canada's Strategy to Prevent and Address Gender-Based Violence*

This policy serves as an enabling framework that guides and strengthens the application of legal instruments such as the Criminal Code in combating GBV. The policy defines GBV as violence directed at individuals based on their gender identity, gender expression, or perceived gender, and it identifies both interpersonal and structural forms of violence. This broad definition encompasses physical, sexual, emotional, psychological, financial, and technology-facilitated abuse, underscoring the diverse manifestations of GBV and their far-reaching effects on individuals and communities. By framing GBV in these comprehensive terms, the policy enables the effective interpretation and enforcement of criminal provisions, ensuring that the legal response remains inclusive, survivor-centred, and aligned with the principles of equality and dignity.¹⁹⁶

This policy aims to employ a comprehensive government-wide approach to eradicate GBV, coordinating all federal initiatives while supporting the efforts of provincial and territorial governments. To ensure its effectiveness and relevance, the Strategy incorporates ongoing consultations with experts, advocates, and, crucially, survivors. This policy is a pragmatic initiative that tackles GBV effectively through preventive strategies aimed at reducing the future incidence of GBV, provides counselling for survivors of this human rights violation, and seeks to address the issue across various sectors of society.¹⁹⁷ All of this is addressed through three pillars: GBV prevention, support for survivors and their families, and the promotion of a responsive legal and justice system.

Pillar 1 focuses on several key initiatives to effectively combat GBV. First, it aims to increase funding for programs that address issues, including child abuse and teen dating violence, as well as for their implementation and testing. To guarantee that successful preventive measures are broadly adopted, policymakers and service providers must share best practices and practical information. It is imperative to involve young people, especially men and boys, in conversations about GBV-related issues, given that they are essential in preventing violence through awareness campaigns. The Urban Programming for Indigenous Peoples supports

¹⁹⁶ Freedman *Gender-Based Violence in Migration: Interdisciplinary, Feminist and Intersectional Approaches* (2022) 90.

¹⁹⁷ Canadian Government "Its Time: Canada's Strategy to Prevent and Address Gender-Based Violence" https://publications.gc.ca/collections/collection_2017/cfc-swc/SW21-172-2017-5-eng.pdf (accessed 09-10-2024).

services and programs designed specifically to fulfil the needs of Indigenous people living in urban areas.¹⁹⁸ Lastly, the pillar keeps supporting a range of preventative initiatives targeted at various groups, such as Indigenous families, guaranteeing a thorough strategy to address GBV in all areas.¹⁹⁹

Pillar 2 emphasises that financing is a crucial instrument for enhancing support to meet the diverse needs of GBV victims. The policy describes the Government of Canada's intentions to provide additional funds to support organisations that cater to the special needs of survivors, such as those with disabilities, LGBTQ+ and gender non-conforming individuals, Indigenous Peoples, and immigrant families. In addition, this strategy aims to address the issue of online child sex exploitation, facilitate better housing access for women who are escaping domestic abuse, and organise a national symposium on women and housing. Initiatives will also enhance mental health support for First Nations and Inuit communities, safeguard survivors' jobs in federally regulated workplaces, and give service providers trauma-informed training for the victims to receive effective care.²⁰⁰

Pillar 3 highlights the significance of the legal and justice systems in responding to GBV better to reduce its incidence and increase survivors' confidence in these establishments. To make these advancements, it is essential to take survivors' demands and experiences into account. This pillar also outlines the goal of the Canadian government, which is to increase the family justice system's response to family violence by supporting specific services and providing federal law enforcement officers with enhanced training that is gender- and culturally sensitive. In addition, the pillar aims to strengthen criminal law measures targeting sexual assault, human trafficking, and IPV. This pillar also points out the aim of providing training for judges on gender and diversity issues.²⁰¹

The framework detailing Canada's initiatives to address GBV is comprehensive and considers various root causes of the issue. These frameworks are essential as they aim to reduce future

¹⁹⁸ Canadian Government “Urban Programming for Indigenous Peoples” <https://www.sac-isc.gc.ca/eng/1471368138533/1536932634432> (accessed 09-10-2024).

¹⁹⁹ Canadian Government “Its Time: Canada’s Strategy to Prevent and Address Gender-Based Violence” https://publications.gc.ca/collections/collection_2017/cfc-swc/SW21-172-2017-5-eng.pdf (accessed 09-10-2024).

²⁰⁰ Canadian Government “Its Time: Canada’s Strategy to Prevent and Address Gender-Based Violence” https://publications.gc.ca/collections/collection_2017/cfc-swc/SW21-172-2017-5-eng.pdf (accessed 09-10-2024).

²⁰¹ Canadian Government “Its Time: Canada’s Strategy to Prevent and Address Gender-Based Violence” https://publications.gc.ca/collections/collection_2017/cfc-swc/SW21-172-2017-5-eng.pdf (accessed 09-10-2024).

occurrences of GBV through established measures. They provide crucial services for survivors and ensure that proper training is implemented within the justice system to tackle this issue effectively. Overall, these initiatives address the challenges Canada faces concerning GBV and outline the strategies in place to mitigate its prevalence.

3 2 8 The Constitution of the United States of America

Similar to Canada, the United States operates as a federal system governed by its Constitution.²⁰² According to Hauser, the U.S. federal Constitution recognises certain civil and political rights but offers limited recognition and enforcement of economic and social rights.²⁰³ Rights such as access to housing, health care, or social security during unemployment, illness, or old age are seldom addressed in State constitutions or expressed in vague, aspirational terms. This constitutional gap has serious implications for women affected by GBV. Without enforceable socio-economic rights, survivors of GBV may struggle to access safe housing, health care, or financial support, critical services that are often essential to escape abusive environments and rebuild their lives.²⁰⁴ As such, the absence of these protections undermines the broader legal and policy efforts to combat GBV and safeguard women's rights to dignity, equality, and security.

As mentioned above, the Fifth and Fourteenth Amendments to the United States Constitution guarantee everyone the right to equal treatment under the law and protection from the State's arbitrary deprivation of life and liberty. The U.S. Constitution does not expressly guarantee the right to gender equality.²⁰⁵ The Fifth Amendment, particularly Section 5.1 on individual rights, mandates that no person shall be deprived of life, liberty, or property without due process of law, applying this safeguard to the federal government.²⁰⁶ The Fourteenth Amendment, particularly section 1, stipulates, among other provisions, that no State shall deprive any individual of life, liberty, or property without due process of law, nor deny any person the equal protection of the laws.²⁰⁷

3 2 9 Violence Against Women Act of 1994

The Violence Against Women Act (VAWA) is a significant piece of federal legislation that plays a crucial role in addressing GBV in the United States.²⁰⁸ Vojdik states that the Act

²⁰² The Constitution of the United States of America, 1787.

²⁰³ Hauser "Human Rights and Social Policy in the 21st Century. by Joseph Wronka" 1993 *AJIL* 682.

²⁰⁴ Hauser 1993 *AJIL* 682.

²⁰⁵ Vojdik "Conceptualizing Intimate Violence and Gender Equality: A Comparative Approach" 2008 *FILJ* 499.

²⁰⁶ Fifth Amendment, amendment 5.1 of the Constitution of the United States of America, 1787.

²⁰⁷ Fourteenth Amendment, section 1 of the Constitution of the United States of America, 1787.

²⁰⁸ Act of 1994.

provides a federal civil rights remedy for victims of domestic violence and that many States have adopted mandatory arrest policies to remove police discretion in enforcing domestic violence laws.²⁰⁹ Therefore, this speaks to the instrumentality of this legislation in combating GBV in the United States, with several States adopting its provisions.

This legislation addressed congressional concerns about violent crime, particularly crimes against women, through several key provisions. The Act introduced tougher sentences for repeat federal sex offenders, ensured restitution for victims, and allocated funding to State, local, and tribal law enforcement agencies to support the investigation and prosecution of violent crimes against women, among other measures.²¹⁰

This legislation was amended by the Violence Against Women Reauthorization Act, which seeks to prevent violent crime, respond to the needs of crime victims, enhance knowledge about crime, and shift public attitudes through a collaborative effort involving the criminal justice system, social service agencies, research organisations, schools, public health bodies, and private entities. The federal government primarily seeks to achieve these objectives through federal grant programmes that provide funding to State, tribal, territorial, and local governments, as well as non-profit organisations and academic institutions.²¹¹

The Violence Against Women Reauthorization Act strengthens efforts to prevent and respond to GBV by providing funds and establishing uniform arrest policies. Section 101 allocates resources to State, municipal, and tribal authorities, focusing on training law enforcement officers, prosecutors, and judges, while promoting interstate cooperation in enforcing protection orders.²¹² Section 102 establishes standardised arrest policies for domestic violence, sexual assault, and stalking, prioritising victims' safety and ensuring perpetrator accountability.²¹³ These provisions promote coordinated community responses and consistent law enforcement practices across jurisdictions, ensuring comprehensive protection and support for victims.

The Violence Against Women Reauthorization Act provides critical assistance to victims of sexual assault and women with disabilities. Section 201 establishes the Sexual Assault Services Program (SASP), which funds crisis intervention, counselling, and comprehensive services for

²⁰⁹ Vojdik 2008 *FILJ* 503.

²¹⁰ Sacco *The Violence Against Women Act (VAWA): Historical Overview, Funding, and Reauthorization* (2019) 01.

²¹¹ *Ibid.*

²¹² Section 101 of the Violence Against Women Reauthorization Act of 2013.

²¹³ Section 102 of the Violence Against Women Reauthorization Act of 2013.

victims, ensuring access to both emergency and long-term support, irrespective of age or location.²¹⁴ Section 203 addresses the heightened vulnerability of women with disabilities to domestic abuse and sexual assault by mandating specialised assistance and training programmes.²¹⁵

These provisions reflect a recognition of the compounded forms of discrimination that certain groups of women face and aim to ensure tailored, inclusive support. By addressing the specific needs of marginalised victims, the Act advances substantive equality and reinforces the rights to dignity, safety, and access to justice for all women, particularly those disproportionately affected by GBV.

Sections 301 and 303 focus on the prevention and education of sexual violence, particularly among young people and university students. Section 301 provides funding for rape prevention and educational initiatives, aiming to promote a culture of consent and respect through collaboration with schools, community organisations, and youth agencies.²¹⁶ Section 303 addresses the prevalence of sexual violence on university campuses, mandating educational institutions to implement preventive programmes and offer training for campus security and law enforcement personnel.²¹⁷

These provisions demonstrate a preventative, rights-based approach to GBV, recognising the importance of early intervention and education in reshaping societal attitudes, promoting bodily autonomy, and reducing the normalisation of sexual violence among youth. By targeting younger populations, the Act seeks to dismantle harmful gender norms and foster environments of accountability and respect.

Sections 401 and 402 focus on evaluating and reducing GBV through research and grants. Section 401 mandates the CDC to conduct a comprehensive review of existing violence reduction strategies and develop evidence-based preventive measures, using public health data to address risk factors and improve intervention methods.²¹⁸ Section 402 allocates preventive grants to State and local governments, non-profits, and other organisations to fund educational, outreach, and community engagement initiatives.²¹⁹

²¹⁴ Section 201 of the Violence Against Women Reauthorization Act of 2013.

²¹⁵ Section 203 of the Violence Against Women Reauthorization Act of 2013.

²¹⁶ Section 301 of the Violence Against Women Reauthorization Act of 2013.

²¹⁷ Section 303 of the Violence Against Women Reauthorization Act of 2013.

²¹⁸ Section 401 of the Violence Against Women Reauthorization Act of 2013.

²¹⁹ Section 402 of the Violence Against Women Reauthorization Act of 2013.

These provisions underscore the importance of an evidence-based, data-driven approach to addressing GBV, recognising that effective prevention requires understanding its root causes and contextual dynamics. By institutionalising research and supporting community-led interventions, the Act aligns with a human rights-based approach that values participation, responsiveness, and accountability in the fight against GBV.

Section 501 consolidates funding to improve the healthcare system's response to GBV, with a focus on training healthcare personnel to recognise and assist victims of domestic abuse, dating violence, sexual assault, and stalking. Recognising that healthcare workers are often the first point of contact for victims, this section ensures that healthcare settings offer safe spaces where individuals can disclose abuse and access both medical and psychological support.²²⁰ Sections 601 and 602 provide essential housing protections for survivors of domestic abuse, dating violence, sexual assault, and stalking. Section 601 prohibits housing discrimination against victims, ensuring they cannot be evicted or penalised as a result of acts of violence committed against them, thereby removing a significant barrier to escaping abusive situations.²²¹ Section 602 offers transitional housing assistance to support victims fleeing abusive circumstances, helping them secure safe and temporary shelter.²²²

Section 701 establishes the National Resource Centre on Workplace Responses, which provides businesses with guidelines to support the economic security of victims of domestic and sexual violence. Recognising that victims often face significant economic challenges, such as job loss, reduced productivity, and absenteeism, this provision encourages employers to implement supportive policies.²²³ Given that the socio-economic well-being of individuals to a certain extent makes them victims of GBV, this provision mitigates that by ensuring that victims are economically independent to limit or decreasing the level of GBV.

In essence, this legislation is a robust and commendable initiative to combat GBV, as it addresses various contributing factors and ensures that victims are provided with the means to escape violence through initiatives such as housing, economic assistance, healthcare, and education about GBV. These initiatives are crucial and provide significant support in addressing this issue.

²²⁰ Section 105 of the Violence Against Women Reauthorization Act of 2013.

²²¹ Section 601 of the Violence Against Women Reauthorization Act of 2013.

²²² Section 602 of the Violence Against Women Reauthorization Act of 2013.

²²³ Section 107 of the Violence Against Women Reauthorization Act of 2013.

3 3 Comparative Analysis

3 3 1 *Comparison of Indian and South African Legal Framework*

Article 14 of the Constitution of India mandates that the State shall not deny any person equality before the law or equal protection of the laws in India.²²⁴ This provision is similar to section 9 of the South African Constitution, which caters to the right to equality for everyone and the right to equal protection by the law.²²⁵ Both these provisions play a pivotal role in advancing gender equality and combating GBV through the application of the law; in essence, these provisions implicitly protect against GBV and stand as powerful instruments in the ongoing efforts to combat GBV and advance gender equality in both States.

In addition to the fundamental rights in Part III of the Constitution, Article 51(A)(e) requires every person to renounce practices that undermine women's dignity.²²⁶ Section 10 of the Constitution also contributes to addressing GBV by guaranteeing the right to human dignity and mandating the respect and protection of every individual's inherent dignity.²²⁷ These provisions are also similar in reinforcing the protection of human dignity and strengthening the legal framework aimed at eradicating GBV.

The difference in the Constitutions of these States is the fact that the Indian Constitution is more explicit in addressing the rights of women who are disproportionately affected by GBV and eradicating the systematic discrimination against women. Provisions such as Article 243D (3) mandate the reservation of seats for women in all Panchayati Raj institutions, while Article 243D (4) extends this reservation to the offices of Chairpersons in Panchayats. Similarly, Article 243T (3) reserves seats for women in municipalities, and Article 243T (4) provides for the reservation of Chairperson offices. Together, these provisions create a strong legal framework to promote justice and equality for women in India.²²⁸

The aforementioned constitutional provisions are vital in addressing the issue of GBV in both countries. However, progress towards gender equality has been insufficient in South Africa.²²⁹ This is largely due to difficulties in the effective implementation and enforcement of these

²²⁴ Article 14 of the Constitution of India, 1940.

²²⁵ Section 9(1) of the Constitution of the Republic of South Africa, 1996.

²²⁶ Article 51(A)(e) of the Constitution of India, 1950.

²²⁷ The Constitution of the Republic of South Africa, 1996.

²²⁸ Article 51, 243D (3), 243D (4) and 243T (3) of the Constitution of India, 1950.

²²⁹ Mtotyana "A Conceptual Framework of Gender-Based Violence and Femicide Drivers in South Africa" 2023 *IJBSS* 320.

rights. Scholars argue that the inability of these provisions to combat GBV is due to factors such as resource limitations and systemic challenges within the justice system.²³⁰

In both States, there are several laws in place to deter all forms of GBV. The Indian Penal Code offers provisions that protect against rape,²³¹ assault,²³² sexual harassment,²³³ stalking and domestic violence.²³⁴ On the other hand, in the SA context, the Criminal Law (Amendment) Act offers protection against sexual harassment,²³⁵ stalking and assault.²³⁶ In South Africa, the aforementioned forms of GBV are addressed in different legislations. The South African Criminal Law (Sexual Offences and Related Matters) Amendment Act provides for the protection against rape and sexual assault.²³⁷ The Domestic Violence Amendment Act protects against sexual harassment.²³⁸

The Indian Protection of Women from Domestic Violence Act contains critical provisions that address the socio-economic well-being of victims of domestic violence. Notably, the Act includes a residence order, which allows a magistrate to mandate that the respondent either pay rent or secure alternative housing for the victim.²³⁹ This provision is vital in protecting victims who are economically dependent on the respondent, as it alleviates applicants' concerns about their financial stability when considering whether to report incidents of domestic violence.

Many victims of domestic violence may hesitate to report their cases due to fear of compromising their economic security. This makes provisions for alternative shelters vital, as they play a crucial role in encouraging victims to seek assistance and escape abusive situations. In contrast, South Africa's protection orders under the Domestic Violence Act do not adequately account for the socio-economic factors that might dissuade victims from seeking protection orders.²⁴⁰ Swemmer observes that more than 25% of applications for protection orders are not granted, leaving applicants vulnerable and potentially in life-threatening circumstances with limited resources.²⁴¹ Therefore, it is evident that while India's legal

²³⁰ Mtotyana 2023 *IJRBS* 320.

²³¹ Section 375 (a)(b) and (c) of the Indian Penal Code Act 45 of 1960.

²³² Section 354A (1)(2)(3) of the Indian Penal Code Act 45 of 1960.

²³³ Section 354A (1)(2)(3) of the Indian Penal Code Act 45 of 1960.

²³⁴ Section 498A of the Indian Penal Code Act 45 of 1960.

²³⁵ Section 354A of the Criminal Law (Amendment) Act 63 of 2013.

²³⁶ 354B and 234D of the Criminal Law (Amendment) Act 63 of 2013.

²³⁷ Sections 3 and 5 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

²³⁸ Section 2(v) of the Domestic Violence Amendment Act 14 of 2021.

²³⁹ Section 19 (1)-(8) of the Protection of Women from Domestic Violence Act 43 of 2005.

²⁴⁰ Section 5(1) of the Domestic Violence Act 116 of 1998.

²⁴¹ Swemmer "Protecting Fido Protecting the Family: Development of Domestic violence Laws to Include Animals" 2022 *ISS* 78.

framework offers more robust remedies that consider victims' socio-economic realities, South Africa's framework may fall short in providing sufficient protection for those in precarious situations.

Although both India and South Africa have similar legislative provisions aimed at protecting individuals from GBV, the Indian legislation explicitly addresses various forms of GBV primarily against women. In contrast, South Africa's legal framework provides broader protections that encompass all individuals, regardless of gender. This distinction highlights a significant difference in approach, where South Africa's legislation recognises the need for comprehensive protection against GBV for all persons.

This distinction in protection removes the progressive element in the Indian legal framework addressing GBV. These legal frameworks predominantly frame GBV as an issue affecting only women, overlooking the fact that GBV can impact individuals of all genders.²⁴² Consequently, the law does not provide equal protection for all but rather focuses on women. While it is undeniable that women are disproportionately affected by GBV in both South Africa and India, human rights protections must be extended to every individual. The legal framework should ensure that all individuals, regardless of gender, are equally safeguarded against violence.

Although both States have legislative provisions that protect against GBV, there is still an issue of relatively high rates of GBV in both States. Ntlama asserts that South Africa faces high incidents of GBV, both public and private spaces have been dominated by the persistent expressions of gender inequality, particularly violent crimes that have a profound impact on all facets of women's lives.²⁴³ Similarly, Tyagi asserts that VAW remains a pervasive issue in India, where women frequently endure abuse and violations of their fundamental human rights.²⁴⁴ This speaks to the ineffectiveness of legal frameworks addressing GBV in both States.

3 3 2 *Comparison of Canadian and South African Legal Framework*

Similar to South Africa, the Canadian Constitution does not explicitly protect from GBV. However, the rights enshrined within it implicitly safeguard against such violations. Section 7 guarantees the right to life, liberty, and security for all individuals, forming a fundamental basis for protection.²⁴⁵ Sections 15(1) and (2) of the Charter ensure equal treatment and protection

²⁴² Graaff "The Implications of a Narrow Understanding of Gender-Based Violence" 2021 *JCSCP* 02.

²⁴³ Ntlama "Gender-Based Violence Ignites the Re-emergence of Public Opinion on the Exercise of Judicial Authority" 2020 *DJLD* 287.

²⁴⁴ Tyagi "Gender Violence, Gender Justice and Gender-Based Laws: An Analysis of Pattern and Policies in India and Indonesia" 2020 *JLS* 143.

²⁴⁵ Section 7 of the Canadian Charter for Human Rights in the Constitution of Canada, 1982.

under the law, prohibiting discrimination on grounds such as race and sex, whilst enabling laws or programmes to benefit disadvantaged groups. Additionally, Section 28 affirms gender equality, ensuring that men and women enjoy the same rights and freedoms, reflecting a firm commitment to non-discrimination and the promotion of an equitable society.²⁴⁶

Section 7 of the Canadian Constitution is similar to the rights provided under Sections 11 and 12 of the South African Constitution, which guarantee the right to life and the security and freedom of the person.²⁴⁷ Section 15 of the Canadian Constitution mirrors Section 9 of the South African Constitution by prohibiting discrimination and ensuring equal treatment under the law. Both countries' constitutions share a commitment to gender equality, with Canada's Section 28 reinforcing protections against gender-based violence and discrimination, aligning with South Africa's emphasis on equal rights.²⁴⁸

The Canadian Criminal Code protects against various forms of assault, with penalties proportionate to the severity of the offence. This legal framework addresses sexual assault, imposing penalties of up to 10 years' imprisonment for indictable offences, and up to 14 years where the victim is under 16, with a minimum sentence of six months.²⁴⁹ Aggravated sexual assault involving weapons or threats carries sentences ranging from 5 to 14 years, with the possibility of life imprisonment if the victim is under 16.²⁵⁰ The most serious category of assault causing grievous harm can result in life imprisonment for severe cases.

In South Africa, these conducts are protected by the Criminal Law (Sexual Offences and Related Matters) Amendment Act, particularly sections 5 and 6. The difference between the provisions is that the Sexual Offences Act also catered for compelled sexual assault which is an act of forcefully and unlawfully compels another person to engage in sexual violation without either party's consent.²⁵¹ Additionally, unlike the Canadian Criminal Code, the South African Sexual Offences Act does not prescribe penalties for the offences it outlines. Instead, the punishment for such offences is set out in the Criminal Law Amendment Act.²⁵² Section 51(2) of the Criminal Law Amendment Act imposes imprisonment for assault, with sentences ranging from 10, 15, to 20 years, depending on the severity of the offence.²⁵³

²⁴⁶ Sections 15(1)(2) and 28 of the Canadian Charter for Human Rights in the Constitution of Canada, 1982.

²⁴⁷ Section 11 and 12 of the Constitution of the Republic of South Africa, 1996.

²⁴⁸ Section 9 of the Constitution of the Republic of South Africa, 1996.

²⁴⁹ Section 271 (a) and (b) of the Criminal Code of Canada (R.S.C 1985 C-46).

²⁵⁰ Section 272 of the Criminal Code of Canada (R.S.C 1985 C-46).

²⁵¹ Section 5 and 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 Of 2007.

²⁵² Act 150 of 2007.

²⁵³ Section 51(2) of the Criminal Law Amendment Act 150 of 2007.

In Canada, a comprehensive policy strategy aimed at addressing GBV incorporates several key elements to effectively tackle this pressing issue. Known as *It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence*, the approach is structured around three fundamental pillars. The first pillar focuses on prevention, employing awareness campaigns designed to mitigate both current and future instances of GBV. The second pillar is dedicated to supporting survivors by providing essential housing and healthcare programmes. Lastly, the third pillar seeks to enhance the justice system through the implementation of stronger criminal law measures that target sexual assault, human trafficking, and domestic or intimate partner violence. Together, these pillars form a holistic framework for combating GBV in Canada.²⁵⁴

This policy shares similarities with the South African National Strategic Plan. However, it encompasses five strategic pillars, in contrast to the Canadian approach. The first pillar emphasises accountability, coordination, and leadership, aiming to enhance institutional, strategic, and operational coherence across various governance areas while securing and allocating sufficient funding for diverse programmes and interventions. The second pillar focuses on prevention and the rebuilding of social cohesion, addressing pervasive patriarchal norms, social gender norms, gender attitudes, women's subordination, childhood exposure to violence, substance abuse, education, and economic dependence. Another pillar centres on justice, safety, and protection, to improve the justice system and eliminate any factors that impede the fair and proper distribution of justice. The fourth pillar highlights response, care, support, and healing, ensuring that survivors have ongoing access to care and resources to alleviate the effects of gender-based violence on their well-being. Finally, the last pillar aims to restore economic power to women and transform their social status by addressing their unique vulnerabilities to various forms of GBV.²⁵⁵

3 3 3 Comparison of the United States and South African Legal Framework

The Constitution of the United States, like the South African Constitution, does not explicitly cater to the protection from GBV, but its provisions implicitly afford the protection from GBV. The Fifth Amendment, particularly section 5.1 on individual rights, mandates that no person shall be deprived of life, liberty, or property without due process of law, applying this safeguard

²⁵⁴ Canadian Government “*Its Time: Canada’s Strategy to Prevent and Address Gender-Based Violence*” https://publications.gc.ca/collections/collection_2017/cfc-swc/SW21-172-2017-5-eng.pdf (accessed 09-10-2024).

²⁵⁵ South African Government “*National ‘ Strategic Plan on Gender-Based Violence & Femicide Human Dignity and Healing, Safety, Freedom & Equality in our Lifetime 11 March 2020*” [INSP ON GBV&FEM 2020-2030rev3 \(www.gov.za\)](https://www.gov.za) (accessed 20-06-2024).

to the federal government.²⁵⁶ The Fourteenth Amendment, particularly section 1, stipulates, among other provisions, that no State shall deprive any individual of life, liberty, or property without due process of law, nor deny any person the equal protection of the laws.²⁵⁷ These provisions are similar to the South African provisions, namely, sections 9 and 11 of the Constitution, which provide for the right to equality and equal treatment under the law and the right to life.²⁵⁸

The American VAWA is very instrumental in combating GBV in the United States. This legislation offers a unique perspective in addressing GBV. In essence, it addresses violent crime, particularly crimes against women, through several key provisions. The Act introduced tougher sentences for repeat federal sex offenders, ensured restitution for victims, and allocated funding to State, local, and tribal law enforcement agencies to support the investigation and prosecution of violent crimes against women, among other measures.²⁵⁹

The Violence Against Women Act (VAWA) adopts a comprehensive approach to addressing GBV by focusing on all aspects related to this issue. It aims to enhance and develop various initiatives that effectively tackle GBV within the United States.²⁶⁰ The provisions of this Act require improvements in law enforcement practices and allocate funding for these initiatives,²⁶¹ which are essential for responding to GBV complaints and crimes. Furthermore, the Act seeks to enhance health services for victims of GBV,²⁶² thereby reinforcing the healthcare system's capacity to support those affected.²⁶³ Additionally, it includes provisions for safe houses and financial assistance for domestic violence victims, enabling them to escape abusive situations.²⁶⁴ The Act also encourages employers to implement initiatives that support victims in their workplace.²⁶⁵

The VAWA encompasses several initiatives that align with the South African National Strategic Plan, which seeks a holistic approach to addressing GBV.²⁶⁶ The South African

²⁵⁶ Fifth Amendment, amendment 5.1 of the Constitution of the United States of America, 1787.

²⁵⁷ Fourteenth Amendment, section 1 of the Constitution of the United States of America, 1787.

²⁵⁸ Section 9 and 11 The Constitution of the Republic of South Africa, 1996.

²⁵⁹ Sacco *The Violence Against Women Act (VAWA): Historical Overview, Funding, and Reauthorization* (2019) 01.

²⁶⁰ Sacco (2019) 01.

²⁶¹ Section 101 of the Violence Against Women Reauthorization Act of 2013.

²⁶² Section 201 of the Violence Against Women Reauthorization Act of 2013.

²⁶³ Section 105 of the Violence Against Women Reauthorization Act of 2013.

²⁶⁴ Sections 601 and 602 of the Violence Against Women Reauthorization Act of 2013.

²⁶⁵ Section 701 of the Violence Against Women Reauthorization Act of 2013.

²⁶⁶ Government “National ‘ Strategic Plan on Gender-Based Violence & Femicide Human Dignity and Healing, Safety, Freedom & Equality in our Lifetime 11 March 2020” [INSP ON GBV&FEM 2020-2030rev3 \(www.gov.za\)](https://www.gov.za) (accessed 20-06-2024).

National Strategic Plan targets similar areas to enhance the fight against GBV within the country. For instance, Pillar Three of the National Strategic Plan aims to overcome the infrastructural and resource-related barriers that have impeded the effective delivery of justice to survivors.²⁶⁷ This is comparable to Section 101 of VAWA, which emphasises the training of law enforcement officers, prosecutors, and judges, while also promoting interstate cooperation in the enforcement of protection orders.²⁶⁸

Given the evidence presented in the above section demonstrating the effectiveness of the approach outlined in the VAWA, it is reasonable to conclude that the United States' holistic approach to combating GBV is effective.²⁶⁹ Similarly, if the South African National Strategic Plan is implemented correctly, it has the potential to make significant progress in addressing the issue of GBV in South Africa.

3 4 Summary

The Indian legal frameworks are intended to protect women and girls against various forms of GBV. However, these laws are significantly ineffective in addressing GBV due to deeply entrenched cultural and societal norms, particularly those rooted in conservative values. In many cases, family members, guided by traditional notions of honour and social propriety, either discourage or actively prevent victims from seeking legal redress under these provisions.²⁷⁰ These socio-cultural issues affect the application of these laws, leading to high rates of GBV.

The Canadian and American legal frameworks were developed with careful consideration of the impact GBV has on individuals. These frameworks were designed to mitigate such issues while also considering the socio-economic well-being of GBV victims. Canadian legal framework sends a clear message that GBV is a serious crime and also plays an instrumental role in transforming societal norms to ensure that victims and survivors receive effective protection of their human rights.²⁷¹

The VAWA unites the criminal justice system, social services, research institutions, educational bodies, and public health organisations to prevent violent crime, support victims,

²⁶⁷ Healing, Safety, Freedom & Equality in our Lifetime 11 March 2020” 1NSP ON GBV&FEM 2020-2030rev3 (www.gov.za) (accessed 20-06-2024).

²⁶⁸ Section 101 of the Violence Against Women Reauthorization Act of 2013.

²⁶⁹ Gover “The 1994 Violence Against Women Act: A Historic Response to Gender Violence” 2020 *SJ* 14.

²⁷⁰ Tyagi 2020 *JLS* 153.

²⁷¹ Beck “Systems and legal frameworks to address gender-based violence” 2023 *OECD* 85.

promote research, and change public attitudes. Federal agencies, including the Office on Violence Against Women (OVW)²⁷² and the Centres for Disease Control and Prevention (CDC),²⁷³ oversee grant programs that are crucial to achieving these aims. Since 1995, over \$8 billion in grants have been distributed to governments, charities, and academic institutions, illustrating the government's commitment to tackling GBV.²⁷⁴ These efforts have not been in vain as they have made progress in decreasing GBV in the United States.

²⁷² United States Government website “Office on Violence Against Women” <https://www.justice.gov/ovw> (accessed 12-10-2024).

²⁷³ United States Government website “Centres for Disease Control and Prevention” <https://www.cdc.gov/index.html> (accessed 12-10-2024).

²⁷⁴ Sacco “The Violence Against Women Act (VAWA): Historical Overview, Funding, and Reauthorisation” 2019 *CRS* 12.

CHAPTER FOUR: SOUTH AFRICAN GENDER BASED VIOLENCE RELATED FRAMEWORK

4 1 Introduction

This chapter analyses South Africa's legal framework in addressing GBV, with particular attention to the State's responsibility in combating this widespread issue through constitutional, legislative, policy, and judicial measures. The prevalence of GBV in South Africa necessitates direct and effective State intervention. Enaifoghe argues that GBV is a significant societal problem that requires active State participation,²⁷⁵ and Sarkin contends that the most effective actions to address GBV must be implemented at the State level, given that these challenges exist within national borders.²⁷⁶ Therefore, a robust State-driven response is essential for effectively addressing GBV within South Africa.

In South Africa, the government employs various legal and non-legal measures to address GBV.²⁷⁷ This chapter will specifically focus on the legal measures, including the Constitution, relevant legislation, and policy frameworks designed to combat GBV. Sarkin maintains that the Constitution, particularly the Bill of Rights, imposes an obligation on the State to enact reasonable legislative and other measures to progressively realise these rights.²⁷⁸ Langa further elucidates the constitutional doctrine of the separation of powers, highlighting that the legislative branch is responsible for formulating laws, the judiciary for interpreting them, and the executive for enforcing them.²⁷⁹ Thus, the State has a constitutional duty to address GBV and other human rights violations through its various branches.

4 2 Constitutional and Human Rights Protection

4 2 1 Scope and Purpose

After the end of apartheid, South Africa faced an urgent need to cultivate and promote a culture of human rights, underscoring their intrinsic value and significance. To facilitate this, an interim Constitution was promulgated before the final Constitution was enacted.²⁸⁰ Like the final Constitution, the interim Constitution included a Bill of Rights.²⁸¹ According to Sarkin, the Constitution played an important role in shaping significant human rights legislation and

²⁷⁵ Enaifoghe "The Prevalence of Gender-Based Violence against Women in South Africa: A Call for Action" 2021 *AJGSD* 122.

²⁷⁶ Sarkin "A Methodology to Ensure that States Adequately Apply Due Diligence Standards and Processes to Significantly Impact Levels of Violence Against Women Around the World" 2018 *HRQ* 3-4.

²⁷⁷ Longford *Socio-Economic Rights in South Africa: Symbols or Substance* (2013) 365.

²⁷⁸ Sarkin "The Development of a Human Rights Culture in South Africa" 1998 *HRQ* 632.

²⁷⁹ Langa "Transformative Constitutionalism" 2006 *SLR* 357.

²⁸⁰ Sarkin "The Development of a Human. Rights Culture in South Africa" 1998 *HRQ* 630

²⁸¹ Chapter three of the Interim Constitution of the Republic of South Africa, 1993.

establishing the chapter 9 institutions.²⁸² Essentially, within the mechanisms and provisions of the Constitution, specific measures address the issue of GBV.

4 2 2 *Bill of Rights and Judicial Interpretation in Combating Gender-Based Violence*

The Bill of Rights, contained in Chapter 2 of the Constitution, provides the foundational legal framework for protecting human rights. They play a critical role in combating GBV, as they enshrine various constitutional rights, such as the rights to equality,²⁸³ dignity,²⁸⁴ life,²⁸⁵ and freedom and security of a person.²⁸⁶ Greef asserts that upholding these constitutional provisions is essential for providing a robust legal framework to combat GBV and also for promoting justice and safeguarding the dignity of all individuals.²⁸⁷ Among these rights are specific provisions that directly address and prohibit actions perpetuating GBV, ensuring that individuals are protected under the law.

Section 9 (1), (2), and (3) provide for the right to equality, stating:

“(1) Everyone is equal before the law and has the right to equal protection and benefit from the law. (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the advancement of equality, legislative and other measures designed to protect...persons disadvantaged by unfair discrimination.... (3) No person may discriminate directly or indirectly on the grounds of gender, sex, race...”²⁸⁸

Section 9 of the Constitution is pivotal in advancing gender equality and combating GBV.²⁸⁹ This provision mandates equality. Tshoane argues that Section 9 is essential in securing equal rights and legal protection for all, thereby playing a critical role in establishing justice and equity.²⁹⁰ Consequently, this section stands as a powerful tool in the ongoing efforts to combat GBV and advance gender equality.²⁹¹

In the case of *Bhe v Khayelitsha Magistrate*, the Constitutional Court examined the constitutionality of the African customary law rule of male primogeniture, which historically

²⁸² Sarken 1998 *HRQ* 628.

²⁸³ Section 9 of the Constitution of the Republic of South Africa, 1996.

²⁸⁴ Section 10 of the Constitution of the Republic of South Africa, 1996.

²⁸⁵ Section 11 of the Constitution of the Republic of South Africa, 1996.

²⁸⁶ Section 12 of the Constitution of the Republic of South Africa, 1996.

²⁸⁷ Greef “Practitioner’s Perspectives on a National South African Higher Education Institution Policy Framework Mitigating Gender-Based Violence at a South African University” 2021 *IJCDS* 47.

²⁸⁸ Section 9 of the Constitution of the Republic of South Africa, 1996.

²⁸⁹ Section 9 of the Constitution of the Republic of South Africa, 1996.

²⁹⁰ Tshone “Exploration of the Gaps in the Enactment and Implementation of the Domestic Violence Act of South Africa” 2023 *DIAJ* 61.

²⁹¹ *Ibid.*

excluded women and girl children from inheritance in favour of males.²⁹² The Court held that the rule must be measured in light of the right to equality as enshrined in section 9 of the Constitution. Upon finding that the rule constituted unfair discrimination on the grounds of gender, the Court decided that the rule is unconstitutional.²⁹³

The judgment affirms the imperative that customary norms and practices cannot override constitutionally protected rights, particularly the right to equality and non-discrimination. By invalidating the gender-based exclusion from inheritance, the Court played a crucial role in dismantling a legal structure that reinforces the economic marginalisation of women, a significant contributor to GBV.²⁹⁴ This case, therefore, contributes to the broader constitutional project of eliminating GBV by addressing one of its causes.

Section 10 of the Constitution also contributes to addressing GBV by guaranteeing the right to human dignity and mandating the respect and protection of every individual's inherent dignity.²⁹⁵ Brink argues that this right, coupled with the right to equality, is essential in the fight against GBV, as it highlights the importance of recognising and upholding the inherent worth of all individuals.²⁹⁶ Furthermore, Tshoane interprets Section 10 as requiring the State to educate and involve victims of violence in criminal processes, promoting a forward-looking and inclusive approach.²⁹⁷ In this way, Section 10 reinforces the protection of human dignity and strengthens the legal framework aimed at eradicating GBV.²⁹⁸

In the case of *Dawood v Minister of Home Affairs*,²⁹⁹ the Constitutional Court scrutinised the constitutionality of section 25(9)(b) and 26(3) and (6) of the Aliens Control Act, which affords the immigration authority to prevent spouses of South African citizens or permanent residents to reside in the country while applying for immigration permits.³⁰⁰ The applicants challenged the constitutionality of these administrative powers because they violate their right to human dignity of individuals whose family units were being disrupted by arbitrary decisions.³⁰¹

²⁹² 2005 (1) BCLR 1 (CC) para 9 - 20.

²⁹³ 2005 (1) BCLR 7 (CC) para 219 – 223.

²⁹⁴ Maphosa “Tackling the ‘Shadow Pandemic’: the Development of a Positive Duty on Adults to Report Domestic Violence” 2022 *DJLJ* 89.

²⁹⁵ Section 10 of the Constitution of the Republic of South Africa, 1996.

²⁹⁶ Brink “Practitioner’s Perspectives on a National South African Higher Education Institution Policy Framework Mitigating Gender-Based Violence at a South African University” 2021 *IJCDS* 48.

²⁹⁷ Tshone 2023 *DIAJ* 61.

²⁹⁸ Section 10 of the Constitution of the Republic of South Africa, 1996.

²⁹⁹ 2008 8 BCLR 837 (CC).

³⁰⁰ 2008 8 BCLR 837 (CC) para 1 – 19.

³⁰¹ 2008 8 BCLR 837 (CC) para 27.

The Constitutional Court held that the provisions introduce arbitrariness into the administrative process, thereby undermining the constitutional right to dignity, equality, and family life, particularly for spouses of South African permanent residents. The court further stated that such discretionary power, exercised without clearly articulated countervailing considerations, was inconsistent with the Constitution. Thus, the court decides that the Act was unconstitutional.³⁰²

GBV has become a critical issue, leading to the tragic loss of life for many victims, as highlighted in the 2022 South African police report.³⁰³ Section 11 of the Constitution, which ensures the right to life for all individuals, serves as a crucial provision for safeguarding against GBV.³⁰⁴ The Constitutional Court's decision in the case of *S v Makwanyane* is crucial in highlighting the value of the right to life and dignity.³⁰⁵ The Court declared the death penalty unconstitutional, holding that it constitutes a fundamental violation of the right to life and that the imposition of capital punishment amounts to cruel, inhumane and degrading treatment, as it erodes the person's dignity.³⁰⁶

This landmark decision affirmed the constitutional imperative to protect the right to life and dignity of persons, and the decision provided in this case should be understood as the starting basis to enforce the obligation on the State to employ pragmatic mechanisms to protect the right to life and bodily integrity of persons. In the context of the issue of GBV in South Africa,³⁰⁷ the principles established in *Makwanyane* underscore the constitutional obligation to implement an effective legal and policy framework aimed at safeguarding the lives and bodily integrity of women and girls.

Another important constitutional provision in the Bill of Rights that addresses GBV is Section 12 which provides that:

“(1) Everyone has the right to freedom and security of the person, which includes the rights to
(c) be free from all forms of violence from either public or private sources; (d) not be tortured

³⁰² 2008 8 BCLR 837 (CC). para 58.

³⁰³ South African Government Website “Minister General Bheki Cele: Quarter Two Crime Statistics (2022/2023)” <https://www.gov.za/speeches/minister-general-bheki-cele-quarter-two-crime-statistics-20222023-23-nov-2022-0000> (accessed 25-06-2023).

³⁰⁴ Section 11 of the Constitution of the Republic of South Africa, 1996.

³⁰⁵ 1995 (3) SA 391 (CC).

³⁰⁶ 1995(3) SA (CC) para 95.

³⁰⁷ South African Government Website “Minister General Bheki Cele: Quarter Two Crime Statistics (2022/2023)” <https://www.gov.za/speeches/minister-general-bheki-cele-quarter-two-crime-statistics-20222023-23-nov-2022-0000> (accessed 25-06-2023).

in any way. (2) Everyone has the right to bodily and psychological integrity, which includes the right to (b) security and control over their body.”³⁰⁸

This provision is critical in ensuring that people are protected from all forms of GBV, including assault, torture and the right to bodily and psychological integrity.³⁰⁹ Woolman asserts that GBV violates constitutional rights contained in Section 12 and breaches international responsibilities under the CEDAW.³¹⁰

Despite the South African government's efforts to establish the Constitution to address GBV and discrimination, Mtotyana argues that progress towards gender equality has been insufficient.³¹¹ This is largely due to difficulties in the effective implementation and enforcement of these rights, compounded by factors such as resource limitations and systemic challenges within the justice system.³¹² This, in turn, affects the effectiveness of the Court's decision-making in addressing GBV and applying these rulings accordingly.

The case of *Carmichele v Minister of Safety and Security* is a vital example wherein the Court affirms the role of the State in protecting women from GBV.³¹³ This case relates to a claim against the South African Police Service (SAPS) and the public prosecutors, in which they failed to prevent a known violent offender from harming the applicant, despite constant reports by the applicant and knowing the offender's history of violent and sexual offences.³¹⁴

The Constitutional Court held that this failure amounted to a breach of the State's obligation under section 7(2) of the Constitution, which requires the State to ‘respect, protect, promote and fulfil the rights in the Bill of Rights.’³¹⁵ The Court found that this obligation is particularly important in cases involving vulnerable groups, and that the right to life, dignity and freedom and security of a person imposes a positive duty on the State to take proactive measures to prevent foreseeable conduct of GBV.³¹⁶

³⁰⁸ Section 12 of the Constitution of the Republic of South Africa, 1996.

³⁰⁹ Section 12(1)(a)(c)(d) and (2) of the Constitution of the Republic of South Africa, 1996.

³¹⁰ Woolman “Nowhere to Run, Nowhere to Hide: The Absence of Public Policy on Intimate Partner Violence Aggregates the Right to Healthcare and Bodily Integrity under the South African Constitution” 2021 *IJCDS* 48.

³¹¹ Mtotyana “A Conceptual Framework of Gender-Based Violence and Femicide Drivers in South Africa” 2023 *IJBSS* 320.

³¹² *Ibid.*

³¹³ 2001 (10) BCLR 995 (CC).

³¹⁴ 2001 (10) BCLR 995 (CC) para 1 - 4.

³¹⁵ 2001 (10) BCLR 995 (CC) para 27-32.

³¹⁶ 2001 (10) BCLR 995 (CC) para 62.

This case reinforces the argument in this study that constitutional rights demand positive enforcement by the state institutions to combat GBV effectively.³¹⁷ The Court's reliance on section 39(2), which mandates the development of common law in a manner consistent with the Bill of Rights.³¹⁸ This case integrates South Africa's international obligations under the CEDAW into domestic jurisprudence.³¹⁹ This case, therefore, exemplifies how constitutional rights can be operationalised to safeguard against violence and compel State compliance with the Constitution and International standards.

4 3 South Africa's Compliance with International Law

The Constitution lays an obligation on South Africa to ensure compliance with International Law. Section 231 outlines the process through which international agreements become binding and enforceable, emphasising that such agreements require parliamentary approval unless they are technical or administrative.³²⁰ Section 232 further strengthens this stance by recognising customary international law as part of South African law, unless it conflicts with constitutional provisions.³²¹ Moreover, section 233 obliges the Courts to interpret legislation, where reasonably possible, in a manner consistent with international law.³²² These provisions collectively demonstrate South Africa's constitutional mandate to incorporate and uphold international legal norms, including those aimed at eliminating GBV.

4 3 1 CEDAW: Committee on the Elimination of Discrimination against Women

The Committee recognises South Africa's efforts to combat GBV, including the 2020 National Strategic Plan on Gender-Based Violence and Femicide. Despite these efforts, the Committee remains concerned about the persistently high rates of GBV, particularly femicides, and ongoing systemic challenges. The Committee urges South Africa to urgently establish and adequately fund the National Council on Gender-Based Violence and Femicide, ensuring its independence and promoting women's rights with the support of women's organisations. Furthermore, it calls for the meaningful involvement of women in the COVID-19 recovery process, sufficient resources for Legal Aid South Africa, thorough investigations of GBV cases, enhanced training for law enforcement, and systematic data collection on legal aid services for

³¹⁷ Sarkin "The Development of a Human Rights Culture in South Africa" 1998 *HRQ* 632.

³¹⁸ 2001 (10) BCLR 9955 (CC) para 55.

³¹⁹ 2001 (10) BCLR 9955 (CC) para 62.

³²⁰ Section 231 of the Constitution of the Republic of South Africa, 1996.

³²¹ Section 232 of the Constitution of the Republic of South Africa, 1996.

³²² Section 233 of the Constitution of the Republic of South Africa, 1996.

women and girls.³²³ These recommendations seek to fill the gaps in the present strategy and strengthen the general plan of action for the fight against GBV in South Africa.

4 3 2 *African Charter on Human and Peoples' Rights*

As a member State of the African Union (AU),³²⁴ South Africa has ratified the African Charter on Human and Peoples' Rights (ACHPR).³²⁵ This ratification reflects South Africa's commitment to the principles enshrined in the Charter, which aims to protect and advance human rights across the African continent. By adopting the ACHPR, South Africa has undertaken to adhere to a legal framework that mandates the respect, protection, and realisation of fundamental rights for all individuals, as outlined in the Charter.³²⁶

4 3 3 *Maputo Protocol*

Upon ratifying the Protocol, South Africa expressed reservations regarding several articles, citing their incompatibility with the country's national laws, traditions, religions, and cultures.³²⁷ Despite these reservations, South Africa has taken significant steps to promote and protect women's rights through the establishment of specialised national institutions. In addition to the South African Human Rights Commission (SAHRC), which serves as a general national mechanism for the protection of human rights,³²⁸ the country has established the Commission for Gender Equality (CGE). The CGE is mandated to promote respect for gender equality and the protection, development, and attainment of gender rights.³²⁹ These specialised bodies are crucial in addressing the unique challenges women face and ensuring that gender equality is actively pursued within the legal and social frameworks of the nation.³³⁰

The Maputo Protocol effectively safeguards women's rights by addressing GBV through legislative, financial, educational, and supportive actions while highlighting areas needing improvement in reporting and implementation. South Africa's latest report outlines the National Strategic Plan on Gender-Based Violence and Femicide (2020–2030),³³¹ which

³²³ United Nations "Concluding observations on the fifth periodic report of South Africa" <https://digitallibrary.un.org/record/3951746?v=pdf> (accessed 07-08-2024).

³²⁴ African Union "State Parties to the African Charter" <https://achpr.au.int/en/states> (accessed 08/09/2024).

³²⁵ Adegalu "Introduction to Human Rights in South Africa" in Mitchell, Heyns, Viljoen, Murray (eds) *The Impact of the United Nations Human Rights Treaties on the Domestic Level in South Africa* (2023) 1081.

³²⁶ Organisation of the African Union. African Charter on Human and Peoples Rights, adopted on 27 April 1981. Entered into force on 21 October 1986.

³²⁷ d'Oris "Are African States Willing to Ratify and Commit to Human Rights Treaties? The Example of the Maputo Protocol" 2021 *QJIL* 163.

³²⁸ Section 184 of the Constitution of the Republic of South Africa, 1996.

³²⁹ Section 187 of the Constitution of the Republic of South Africa, 1996.

³³⁰ *Ibid.*

³³¹ South African Government "National Strategic Plan on Gender-Based Violence and Femicide (2020–2030)" <https://www.justice.gov.za/vg/gbv/NSP-GBVF-FINAL-DOC-04-05.pdf> (accessed 08-11-24).

provides a robust framework for a coordinated national response. This plan, organised into six pillars, aims to bolster governmental accountability. A central component is the *Thuthuzela* Care Centres, which offer comprehensive medical, psychosocial, and legal support to rape survivors.³³² The South African government has issued an informational booklet to enhance public awareness of rights. The strategy also aims to strengthen the criminal justice system's capacity to manage cases and ensure justice. Following a National Summit on Gender-Based Violence and Femicide in 2019, the Policy Declaration committed to reallocating funds to improve responses to gender-based violence and to enhance support services for survivors.³³³

4 4 Legal Definitions and Scope of Gender-Based Violence

4 4 1 Domestic Violence

The Domestic Violence Act is a critical legal instrument in reinforcing constitutional rights, particularly the rights to equality, freedom and security of the person.³³⁴ By addressing GBV within intimate relationships. Dippenaar asserts that this Act aligns with international obligations under the CEDAW and outlines practical measures for the State to combat GBV effectively.³³⁵ The Act's aim, as provided in its preamble, is to strengthen the State's commitment to eradicating VAW and child abuse, ensuring compliance with international legal standards and obligations.³³⁶

This Act amended the Prevention of Family Violence Act.³³⁷ Vetten contends that the amendment was necessary because the Prevention of Family Violence Act did not fully protect men's rights to a fair trial.³³⁸ The Prevention of Family Violence Act, as outlined in sections 1(1) and (2), focused on the family unit, encompassing married couples and cohabiting persons, and permitted the issuance of interdicts solely in cases of domestic violence. Therefore, the amendment was necessary to rectify these deficiencies and enhance the fairness and scope of legal protections in domestic violence cases.

³³²African Union “20 Years of the Maputo Protocol: Where are we Now?” https://www.soawr.org/resources_posts/20-years-of-the-maputo-protocol-where-are-we-now/ (accessed 08-11-2024).

³³³African Union “20 Years of the Maputo Protocol: Where are we Now?” https://www.soawr.org/resources_posts/20-years-of-the-maputo-protocol-where-are-we-now/ (accessed 08-11-2024).

³³⁴ Sections 10, 11 and 12 of the Constitution of the Republic of South Africa, 1996.

³³⁵ Dippenaar “The Protection of Human Rights of Women Trapped in Domestic Violence in South Africa” 2012 *IJSD* 95.

³³⁶ Preamble of the Domestic Violence Act 116 of 1998.

³³⁷ Act 133 of 1993.

³³⁸ Vetten “Addressing domestic violence in South Africa: Reflections on Strategy and Practice” 2005 *DAW* 03.

Furthermore, Spies asserts that the implementation of the Act was met with significant scepticism by women's movements, as it was viewed as a deceptive attempt by the apartheid government to secure female votes, coinciding with South Africa's first democratic elections.³³⁹ The rushed enactment of the Prevention of Family Violence Act, alongside the limited consultation with women's organisations, was seen as inadequate in addressing the specific needs of women experiencing abuse.³⁴⁰

The high incidence of GBV in intimate relationships has been a driving force behind legislative changes aimed at addressing the issue more effectively. Tshoane argues that the alarming prevalence of GBV among intimate partners contributed to the development of the Domestic Violence Act.³⁴¹ This legislation acknowledges that GBV can occur in various forms among cohabiting and married couples, thereby expanding the legal framework to offer better protection and support for victims.³⁴² By recognising the diverse circumstances under which GBV occurs, the Domestic Violence Act represents a crucial step towards formalising the response to such violence and ensuring that it is treated with the seriousness it warrants.³⁴³

The Domestic Violence Act is crucial in combating GBV, particularly intimate partner violence.³⁴⁴ The Act provides a comprehensive framework for protection from GBV by directly addressing the various forms of abuse that fall under GBV.³⁴⁵ Section 1 of the Act is particularly noteworthy as it explicitly defines domestic violence to include various forms of GBV such as 'physical, sexual, emotional, verbal, psychological, and economic abuse, as well as intimidation.' This section defines the acts that must be reported by victims of domestic violence. Section 1 ensures that victims are well-informed about what constitutes abuse and what should be reported. This clarity is crucial for facilitating the reporting process and enhancing the protection and support available to those affected by intimate partner violence.

However, Swemmer contends that the Domestic Violence Act does not sufficiently address all factors relating to domestic violence, highlighting gaps in the legislation's ability to comprehensively protect victims.³⁴⁶ Calvino supports this view, arguing that despite the

³³⁹ Spies "Continued State Liability for Police Inaction in Assisting Victims of Domestic Violence: A Reflection on the Implementation of South Africa's Domestic Violence Legislation" 2019 *ALJ* 54.

³⁴⁰ *Ibid.*

³⁴¹ Tshoane 2023 *POB* 61.

³⁴² Act 116 of 1998.

³⁴³ Act 116 of 1998.

³⁴⁴ Act 116 of 1998.

³⁴⁵ Mshweshwe "Understanding Domestic Violence: Masculinity, Culture, Traditions" 2020 *HCPJ* 1.

³⁴⁶ Swemmer "Protecting Fido, Protecting the Family Developing Domestic Violence Law to Include Companion Animals" 2022 *ISS* 82.

enactment of the Domestic Violence Act, GBV between intimate partners remains prevalent in South Africa.³⁴⁷ As a result, there have been calls for amendments to the Act to strengthen its provisions for preventing, protecting against, and mitigating domestic violence, addressing the ongoing challenges faced by victims.

As a result, there was an enactment of the Domestic Violence Amendment Act (DVAA).³⁴⁸ The DVAA expands the definitions and forms of domestic abuse, introduces an electronic submission system, and requires electronic communications service providers to implement specific protective measures.³⁴⁹ The DVAA's passing marks a crucial effort to strengthen the legal framework and processes designed to address and combat GBV. Although the DVAA aims to enhance the existing legal framework through comprehensive amendments, a detailed analysis of these legislative modifications is necessary to understand their full implications.³⁵⁰ The DVAA has introduced significant changes to the Domestic Violence Act.

Section 1 of the DVAA revises several aspects related to domestic violence, including definitions for coercive behaviour, controlling behaviour, elder abuse, exposing a child to domestic violence, sexual harassment, and spiritual abuse. This section also updates definitions for harassment, physical abuse, sexual abuse, emotional, verbal, or psychological abuse, and intimidation.³⁵¹ Additionally, the inclusion of sexual harassment as a distinct category in Section 2(v) of the Act, with its sub-categories, marks a notable advancement in addressing various forms of violence and harassment in domestic settings.³⁵² The definition of spiritual abuse in Section 2(w), characterised as the use or denial of spiritual beliefs to exert control over an individual, represents a thorough examination of cultural dynamics, personal backgrounds, and the contexts in which such behaviour is considered abusive.³⁵³

Section 2(s) of the DVAA defines physical abuse as any act or threat of physical violence directed at a complainant or a related individual, thereby setting clear parameters for what constitutes physical abuse under the law. Similarly, Section 2(u) defines sexual abuse as any activity that exploits, humiliates, degrades, or violates the sexual integrity of the complainant

³⁴⁷ Calvino "Enforcement of Gender-Based Violence Legislation in South Africa: The Need for a Paradigm Shift" in Matadi (eds) *Global Trends in Law Enforcement- Theory and Practice* (2023) 1.

³⁴⁸ Act 14 of 2021.

³⁴⁹ *Ibid.*

³⁵⁰ Calvino "Enforcement of Gender-Based Violence Legislation in South Africa: The Need for a Paradigm Shift" in Matadi (eds) *Global Trends in Law Enforcement- Theory and Practice* (2023) 3.

³⁵¹ Section 1 of the Domestic Violence Amendment Act 14 of 2021.

³⁵² Section 22 (v) of the Domestic Violence Amendment Act 14 of 2021.

³⁵³ Section 2(w) of the Domestic Violence Amendment Act 14 of 2021.

or a related individual, addressing the various forms of sexual violence. To further ensure clarity, Section 2(y) broadens.³⁵⁴ The definition of a weapon includes any object capable of causing serious bodily injury. Additionally, Section 2(c) introduces two new definitions within the context of domestic violence: coercive behaviour and controlling behaviour, expanding the scope of actions recognised as abusive under the Act.³⁵⁵

This development in the scope of Understanding and interpretation of GBV reflects South Africa's response to GBV. By recognising the multifaceted nature of abuse and broadening the definition of domestic violence, these legislations provide a vital framework for the prevention, protection and redress of GBV in both the private and the public sphere. However, while the legislation marks a significant step forward, its effectiveness depends on the rigorous implementation, public awareness and a responsive justice system.

4 4 2 Harassment

The Protection from Harassment Act was designed to provide a practical framework for safeguarding constitutional rights, particularly for vulnerable individuals, predominantly women, against GBV.³⁵⁶ This Act upholds constitutional rights to equality, privacy, dignity, freedom, and security, ensuring protection from all forms of violence, both public and private.³⁵⁷ The Act is grounded in the South African Law Reform Commission (SALRC) Report Project 130, Stalking, issued in 2006, which highlighted the inadequacy of common law protections for victims of harassment.³⁵⁸ In response, the SALRC proposed a mechanism similar to the Domestic Violence Act, allowing complainants to seek an interdict to prevent further harassment. This approach reflects a legislative commitment to enhancing protection for victims and addressing gaps in the legal framework.³⁵⁹

The SALRC argued that the term "harassment" is more widely utilised in foreign and international law and therefore should be adopted as a comprehensive term that includes stalking. The SALRC's Stalking Report recommended aligning the definitions of "harassment" and "stalking" as stipulated in the Domestic Violence Act with the proposed harassment legislation. This alignment seeks to create coherence among legislative instruments addressing

³⁵⁴ Section 2(s)(u)(y) of the Domestic Violence Amendment Act 14 of 2021.

³⁵⁵ Section 2(c) of the Domestic Violence Amendment Act 14 of 2021.

³⁵⁶ Act 17 of 2011.

³⁵⁷ Swemmer "S v P – The Abuse of Protection Orders to "Gag" Victims of Rape" 2023 *PELJ* 6.

³⁵⁸ South Africa Law Reform Commission "South African Law Reform Commission: Project 130 Stalking Report: November 2006" <https://www.justice.gov.za/salrc/reports.htm> (accessed 02-07-2024).

³⁵⁹ South Africa Law Reform Commission "South African Law Reform Commission: Project 130 Stalking Report: November 2006" <https://www.justice.gov.za/salrc/reports.htm> (accessed 02-07-2024).

various forms of GBV. By integrating these definitions, the legislation aims to provide a more unified and effective legal framework for protecting individuals from GBV.³⁶⁰

Section 1 of the Act provides comprehensive definitions of both harassment and sexual harassment. Harassment is defined as any behaviour involving unreasonably following, watching, pursuing, or accosting a complainant or a related person, as well as loitering outside or near the complainant's or related person's residence, workplace, or place of business, and engaging in verbal or electronic communication.³⁶¹

Sexual harassment is specifically defined as unwelcome sexual attention from an individual who knows or should reasonably know that such attention is unwanted. This includes explicit or implicit behaviours, suggestions, messages, or remarks of a sexual nature that offend, intimidate, or humiliate the complainant or a related person, in circumstances where a reasonable person would anticipate that such conduct could cause distress or harm.³⁶²

The definitions provided in this Act go beyond the domestic relationships and umbrellas several factors that constitute abusive conduct. The definitions provided herein enable the Courts to impose preventative measures which serve as proactive tools, rather than reactive remedies, thus contributing to the reduction of GBV by intervening before physical harm occurs.

4 4 3 Sexual Offences and Femicide

In combating GBV in South Africa, the State has prioritised VAW through the enactment of crime prevention measures and legislation aimed at preventing GBV and providing remedies for survivors.³⁶³ One significant piece of legislation in this effort is the Criminal Law (Sexual Offences and Related Matters) Amendment Act (Sexual Offences Act).³⁶⁴ The Act addresses deficiencies in South African common and statutory law regarding sexual offences by offering a more comprehensive and coordinated approach to the implementation and enforcement of sexual offence laws.³⁶⁵

³⁶⁰ Parliamentary Monitoring Group website "South African Law Reform Commission: Project 130 Stalking Report: November 2006" [Protection from Harassment Bill \[B1 - 2010\]: Department response to submissions | PMG](#) (accessed 02-07-2024).

³⁶¹ Section 1 of the Protection from Harassment Act 17 of 2011.

³⁶² Section 1 of the Protection from Harassment Act 17 of 2011.

³⁶³ Smart "An Analogy of Gender-Based Violence and Police Corruption in Matters Related to Violence against Women during the COVID-19 Pandemic" 2022 *JACL* 175

³⁶⁴ Act 32 of 2007.

³⁶⁵ Preamble of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

The Act incorporates international legal standards, such as those set by the CEDAW,³⁶⁶ and the United Nations Convention on the Rights of the Child (CRC),³⁶⁷ To combat abuse and VAW and children. Additionally, the Act upholds constitutional rights to equality, privacy, dignity, freedom and security, including the fundamental right to be free from violence.³⁶⁸ The Sexual Offences Act plays a crucial role in enhancing the legal framework for protecting victims and addressing GBV.

Section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act defines a range of sexual offences, ‘including rape, compelled rape, sexual assault, compelled sexual assault, compelled self-sexual assault, sexual acts with a corpse, statutory rape, statutory sexual assault, and trafficking in persons for sexual purposes.’³⁶⁹ These offences fall within the broader scope of GBV, and the Act provides comprehensive measures to address and criminalise these conduct. Chinnian argues that Section 2 offers complainants the maximum and least traumatising protection possible under the law, facilitates the full implementation of its provisions by State organs, and combats the high incidence of sexual offences in South Africa.³⁷⁰ The Act achieves these goals by codifying and criminalising several sexual offences, enhancing victim protection, ensuring effective investigation and prosecution, holding State organs accountable, providing efficient victim services, and establishing a national register of offenders. This comprehensive approach aims to prevent future offences and strengthen the legal framework for addressing GBV.³⁷¹

The second chapter of the Act outlines the various sexual offences prohibited by the Act and gives a legal definition for these offences. Section 3 defines rape as an ‘unlawful and intentional act of sexual penetration without a complainant's consent.’ Section 4 defines compelled rape as an ‘unlawful and intentional act of compelling a third party to engage in sexual penetration with a complainant without the complainant's or the third party's consent.’³⁷² A person who intentionally and unlawfully violates a complainant sexually without the complainant's consent is guilty of sexual assault, according to Section 5 of the Act. In addition, a person who

³⁶⁶ United Nations General Assembly. Convention on Elimination of All Forms of Discrimination Against Women. Resolution 34/180. Treaty Series, vol. 1249. Adopted on 18 December 1979 and entered into force on 3 September 1981.

³⁶⁷ United Nations General Assembly. UN Convention on the Rights of a Child. Resolution 44/25. Adopted on 2 November 1989 and entered into force on 2 September 1990.

³⁶⁸ Sections 9, 10, 11, 12 and 14 of the Constitution of the Republic of South Africa 1996.

³⁶⁹ Section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 Of 2007.

³⁷⁰ Chinnian “Gender Construction in Sexual Offences Cases: A Case for Fully Reviving the Sexual Offences Courts” 2020 *AJ* 136.

³⁷¹ Section 2 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 Of 2007.

³⁷² Section 3 and 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 Of 2007.

intentionally and unlawfully incites a complainant to believe that they will be sexually violated is guilty of sexual assault. According to Section 6 of the Act, compelled sexual assault is an offence committed by anyone who ‘forcefully and unlawfully compels another person to engage in sexual violation without either party's consent.’³⁷³

The case of *Masiya v Director of Public Prosecutions* contributed to the development of common law definition of rape, which excludes anal penetration and is gender specific.³⁷⁴ The accused was charged with unlawfully anal penetrating a nine-year-old girl. The accused was charged with rape but given that the definition of rape was limited to the penetration of the vagina, the State and defence instead sought a conviction for indecent assault if found guilty.³⁷⁵

The Regional Court evaluated the matter and found the accused guilty of rape. It referred him to the High Court for punishment as per section 52 of the Criminal Law Amendment Act.³⁷⁶ The High Court first considered whether an amendment was needed to the definition rape before affirming the conviction. The Court also considered sections 8(1), 39(2), 10, 170, 172(1), and (2)(a) of the Constitution.³⁷⁷ The Court noted that indecent assault was punished less severely than rape, providing insufficient protection. The case was sent to the Constitutional Court.³⁷⁸ The first issue was whether the definition of rape was in conflict with the Constitution and whether a new definition is needed. Another issue was whether it was appropriate to uphold the ruling that the common law and statutory definitions of rape are invalid.

The Constitutional Court first examined the constitutionality of the definition of rape. Rape was defined as an act that occurs when a penis enters a vagina without consent. In the case of *S v Ncanywa*,³⁷⁹ rape was defined as intentional, unlawful sexual intercourse with a woman without her consent. The element of unlawfulness is essentially based on the absence of consent. The Constitutional Court noted that rape violates fundamental rights, including the right to personal security and bodily integrity, as well as the right to protection from abuse and degrading treatment. The Court emphasized that rape should be viewed as a crime in this broader context, rather than being limited to the common law definition.³⁸⁰ The Court

³⁷³ Section 5 and 6 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 Of 2007.

³⁷⁴ 2007 (5) SA 30 (CC).

³⁷⁵ 2007 (5) SA 30 (CC) para 7.

³⁷⁶ Act 105 of 1997.

³⁷⁷ The Constitution of the Republic of South Africa, 1996.

³⁷⁸ 2007 (5) SA 30 (CC) para 18.

³⁷⁹ 1992 (2) SA (Ck).

³⁸⁰ 2007 (5) SA 30 (CC) para 25.

concluded that the definition needed to be amended because it was not in line with the Constitution.³⁸¹

The National Council on Gender-Based Violence and Femicide Act establishes the National Council with goals and functions, detailing the composition, terms, and responsibilities of its board members.³⁸² The Act highlights the severity of GBV and femicide as significant social issues affecting vulnerable individuals and underscores the importance of enforcing constitutional rights to equality, freedom and security.³⁸³ By aligning with international commitments, the Act advocates for a coordinated, multi-sectoral approach to combat GBV and femicide. It emphasises the necessity for collaboration among various sectors, including government, civil society, and private institutions, to effectively address and eliminate these issues.³⁸⁴

Section 1 of the National Council on Gender-Based Violence and Femicide Act defines femicide as the killing of a female individual or someone who identifies as female based on their gender identity, including murders committed by intimate partners or others.³⁸⁵ It also broadly defines GBV as violence related to gender, encompassing physical, sexual, verbal, emotional, economic, domestic, educational, or psychological abuse in both public and private settings.³⁸⁶

4 5 State Obligations

4 5 1 Role of Police

The Domestic Violence Act outlines the responsibilities of the SAPS in deterring GBV. Section 2 of the Act stipulates that:

“Any member of the South African Police Service must ...(a) render such assistance to the complainant ... or making arrangements for the complainant to find a suitable shelter and to obtain medical treatment; (b) ... hand a notice containing information as prescribed to the complainant in the official language of the complainant’s choice; and (c)... explain to the complainant...remedies at his or her disposal in terms of this Act and the right to lodge a criminal complaint, if applicable.”³⁸⁷

Section 3 of the Act states:

³⁸¹ 2007 (5) SA 30 (CC) para 32.

³⁸² Section 2 of the National Council on Gender-Based Violence and Femicide Act 9 of 2024.

³⁸³ Sections 9 and 10 of the Constitution of the Republic of South Africa, 1996.

³⁸⁴ Act 9 of 2024.

³⁸⁵ Section 1 of the National Council on Gender-Based Violence and Femicide Act 9 of 2024.

³⁸⁶ Section 1 of the National Council on Gender-Based Violence and Femicide Act 9 of 2024.

³⁸⁷ Section 2 of the Domestic Violence Act 116 of 1998.

"A peace officer may, without warrant, arrest any respondent at the scene of an incident of domestic violence whom he or she reasonably suspects of having committed an offence containing an element of violence against a complainant." ³⁸⁸

Section 8 of the Act mandates that the police assist in enforcing protection orders and safeguarding victims, emphasising the State's role in combating domestic violence. This provision reflects the State's obligation to protect victims and ensure the effective enforcement of legal measures against GBV. Tshoane highlights that these sections specify the responsibilities of SAPS members in addressing GBV within intimate relationship, thereby ensuring fairness for victims.³⁸⁹ These provisions also represent a practical application of the *Carmichele v Minister of Safety and Security* case, which established the State's duty to implement mechanisms that guarantee the protection, promotion, and realisation of constitutional rights in addressing GBV.³⁹⁰

There are several concerns regarding the police's effectiveness in addressing domestic violence. The Independent Complaints Directorate of the Act observed that the police exhibited a poor understanding of their obligations under the Domestic Violence Act and the National Instructions.³⁹¹ Spies asserts that the police's failure to assist victims of domestic abuse reflects the extent to which their perceptions of violence have been shaped by stereotypical views of portraying domestic abuse as a private matter, leading to a belief that government intervention is unwarranted.³⁹² Such attitudes are among the patriarchal norms that hinder the effective implementation of measures designed to protect victims of domestic violence.

Furthermore, despite clear instances of misconduct, no disciplinary measures were taken by the respective stations. Furthermore, the directorate identified a significant issue, noting the existence of a pervasive culture of silence within the police force concerning domestic violence.³⁹³ These factors are among the key contributors to the State's inability to effectively combat GBV in South Africa.

Additionally, Section 6 of the Protection from Harassment Act authorises members of the SAPS to investigate the matter and gather the necessary case information for the Court

³⁸⁸ Act 116 of 1998.

³⁸⁹ Tshoane 2023 *POB* 62.

³⁹⁰ 2001 (10) BCLR 9955 (CC) para 62.

³⁹¹ Government of South Africa "Independent Police Investigative Directorate: Domestic Violence Act Report 2010" *Independent Police Investigative Directorate: Domestic Violence Act Report 2010 | PMG* (accessed 10-10-2024).

³⁹² Spies 2019 *JAL* 62.

³⁹³ Spies 2019 *JAL* 58.

following an application for a protection order. This provision ensures that the Court receives comprehensive information to make informed decisions regarding the protection order. Additionally, Section 11 stipulates that if there are reasonable grounds to believe that the complainant or a related person is suffering or will suffer imminent harm due to the respondent's alleged breach of the protection order, the SAPS member must arrest the respondent immediately. This provision underscores the Act's commitment to providing urgent protection for victims and enforcing compliance with protection orders.³⁹⁴

4 5 2 Preventive Measures

Section 25 of the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) mandates the State to foster awareness and understanding of fundamental rights, promote public awareness of these rights, and develop initiatives aimed at advancing equality. This section also requires the provision of assistance, advice, and training on equality issues and the establishment of mechanisms to address unfair discrimination.³⁹⁵ It specifically calls for collaboration between the Constitution's Chapter 9 institutions, such as the South African Human Rights Commission (SAHRC) and the Commission on Gender Equality, in addressing unjust discrimination and developing effective anti-discrimination measures.³⁹⁶ This collaborative approach ensures a comprehensive strategy for tackling discrimination and promoting equality.

According to Section 41 of the Act, an individual who has been found guilty of sexual offences against children or a mentally disturbed person or who is suspected of committing such crimes cannot, under any circumstances, be employed to work with a mentally disabled person or child. Nor can they be granted permission to manage or oversee any organisation, business venture, or trade that involves the supervision or care of children, or where children are present or congregate. Nor can they be granted permission to become a foster parent, caregiver, adoptive parent, foster parent, or curator for the disabled person.³⁹⁷ Essentially, the Sexual Offences Act especially addresses sexual offences against children and people with mental disorders, and it establishes a national sex offender registration.

Section 2 of the National Council on Gender-Based Violence and Femicide Act grants the Council statutory authority to spearhead efforts to eradicate GBV and femicide in South Africa,

³⁹⁴ Section 6 of the Protection from Harassment Act 17 of 2011.

³⁹⁵ Section 25 of the Promotion of Equality and Prevention of Unfair Discrimination Act 04 of 2000.

³⁹⁶ Section 184 and 187 of The Constitution of the Republic of South Africa, 1996.

³⁹⁷ Mollema "The Validity and Constitutionality of the South African National Register for Sexual Offenders: A Comparative Study" 2015 *PELJ* 2717.

establishing a comprehensive legislative framework.³⁹⁸ This framework includes the implementation of a national policy against GBV and femicide through coordinated multi-sectoral activities overseen by the Council's Board. The Act further ensures the protection of constitutional rights to non-racism, non-sexism, human dignity, equality, and security, and mandates the appointment of a Chief Executive Officer and Secretariat to oversee performance review and monitoring processes.³⁹⁹

The Council's objectives are to establish short-term, medium--, and long-term goals that are in line with the country's plan to eradicate femicide and GBV. It aims to organise key stakeholders into a coordinated, multi-sectoral approach to prevent, eliminate, and address GBV and femicide. The Council also facilitates exchanging knowledge and best practices on these issues.⁴⁰⁰ The Council is mandated by Section 5 to create an action plan to carry out the national strategy against femicide and GBV within six months of its founding. All stakeholders must have access to clear indicators and timetables, and an efficient cost and implementation process for this plan. Coordination of education and training initiatives, strategy monitoring and evaluation, and coordination of all Act-established structures are within the purview of the Council. Additionally, it will prioritise GBV and femicide programmes at all levels, create multi- and inter-sectoral frameworks, and assist in forming strategic collaborations with pertinent stakeholders.⁴⁰¹

The National Council on Gender-Based Violence and Femicide is tasked with advising the Minister on GBV and femicide prevention, international standards, and other related issues. The Act mandates that the Council submit detailed reports on its goals, performance, and activities to the Minister at least four times annually, with the Minister required to present these reports to Parliament. Additionally, the Council has the discretion to submit supplementary reports as necessary. The Act also stipulates that the Council must review its strategic and action plans every five years, or more frequently if directed by the Minister, ensuring ongoing relevance and effectiveness in addressing GBV and femicide.⁴⁰²

³⁹⁸ Section 2 of the National Council on Gender-Based Violence and Femicide Act 9 of 2024.

³⁹⁹ Section 2 of the National Council on Gender-Based Violence and Femicide Act 9 of 2024.

⁴⁰⁰ Section 4 of the National Council on Gender-Based Violence and Femicide Act 9 of 2024.

⁴⁰¹ Section 2 of the National Council on Gender-Based Violence and Femicide Act 9 of 2024.

⁴⁰² Section 5 of the National Council on Gender-Based Violence and Femicide Act 9 of 2024.

4 6 Remedies and Procedures

4 6 1 Protection Order

A Protection order is a crucial tool in combating domestic violence, providing a legal mechanism to safeguard the well-being of victims.⁴⁰³ According to Logar, enforcing a physical barrier between victims and perpetrators is essential to protect the well-being of those affected by domestic violence.⁴⁰⁴ This measure is fundamental in ensuring the safety of victims, thereby addressing the immediate threat posed by the perpetrator.

(i) Application for Protection Order

Section 4(1) and (2)(a)(b) of the Domestic Violence Act enables victims of domestic violence to apply for a protection order through the Court. If the victim is not represented by legal counsel or a Court clerk, the Court is required to provide comprehensive guidance on available remedies, including the right to file a criminal complaint against the perpetrator, following the prescribed procedures.⁴⁰⁵ This section permits the issuance of a protection order on behalf of the victim, but this is only possible with the victim's consent unless the victim is a minor, mentally incapacitated, unconscious, or otherwise unable to provide consent.⁴⁰⁶ Section 4(5) allows for the application of a protection order outside of regular Court hours or on non-standard Court days if the Court believes the complainant may experience undue hardship if the application is not addressed immediately. This provision ensures that victims of domestic violence are protected regardless of their circumstances.⁴⁰⁷

(ii) Interim and Final Protection Order

Under Section 5(2) of the Act, the Court has the authority to issue an interim protection order if it finds *prima facie*⁴⁰⁸ evidence of domestic violence and determines that the complainant would face undue hardship without immediate relief, even if the respondent has not been notified of the proceedings.⁴⁰⁹

Sections 5(4), (5), and (6) set out the procedure for the court to issue an interim protection order. Interns of section 5(4)(a), the court must instruct the clerk to serve certified copies of the

⁴⁰³ Logar *Emergency Barring Orders in Situations of Domestic Violence: Article 52 of the Istanbul Convention* (2017) 5.

⁴⁰⁴ Logar *Emergency Barring Orders in Situations of Domestic Violence: Article 52 of the Istanbul Convention* (2017) 5.

⁴⁰⁵ Section 4(1) and (2)(a)(b) of the Domestic Violence Act 116 of 1998.

⁴⁰⁶ Section 4(3) of the Domestic Violence Act 116 of 1998.

⁴⁰⁷ Section 4(5) of the Domestic Violence Act 116 of 1998.

⁴⁰⁸ Herlitz "The Meaning of the Term Prima Facie" 1994 *LLR* 392.

⁴⁰⁹ Section 5(2) of the Domestic Violence Act 116 of 1998.

application and any supporting affidavit on the respondent, along with a prescribed notice directing them to show cause, on the specific return date, why a final protection order should not be granted. Section 5(4)(b) requires that the complainant be informed also in the prescribed form or manner of the courts of the decision as to the granting of the order.⁴¹⁰

The return date may not be less than 10 days after service on the respondent. However, it may be anticipated by the respondent with at least 24 hours written notice to both the complainant and the court. Lastly, once an interim protection order becomes effective upon the service to the respondent of the contents of the order. Additionally, these sections define the responsibilities of the Court clerk in cases where an interim protection order is not granted, ensuring that the procedural aspects are adhered to in protecting the complainant's rights.⁴¹¹

According to Sections 6(1) and (2) of the Act, if the respondent does not appear on the return date, and the Court is satisfied with proper service and credible evidence of domestic violence, it must issue a protection order as required by law. Should the respondent attend the return date to contest the issuance of a protection order, the Court will conduct a hearing to review any submitted evidence, affidavits, or oral evidence as directed, and include these in the proceedings' record.⁴¹² Under Sections 6(4), (5), (6), and (7), the Court is required to issue a protection order after a hearing if it determines, on a balance of probabilities, that the respondent has committed or is committing domestic violence.⁴¹³ The Court clerk must serve the respondent with a certified copy of the protection order and the original warrant of arrest. Additionally, certified copies of both the protection order and arrest warrant must be sent to the complainant's chosen police station using the approved method. It is important to note that a Court-issued protection order remains in effect until it is overturned, and that filing an appeal does not automatically suspend its enforcement.⁴¹⁴ These provisions provide due procedure and a right to a fair hearing for both parties before a final protection order is granted.

The issue of the fairness of the procedures of the Domestic Violence Act were challenged in the case of *In the case of Omar v Government of the Republic of South Africa*,⁴¹⁵ the applicant challenged the constitutionality of section 8 of the Domestic Violence Act 116 of 1999, arguing that it infringed on the constitutional right to a fair trial and access to court as per section 35(3)

⁴¹⁰ Section 5 (4)(5) and (6) of the Domestic Violence Act 116 of 1998.

⁴¹¹ Section 5(2)(4)(5) and (6) of the Domestic Violence Act 116 of 1998.

⁴¹² Sections 6(1) and (2) of the Domestic Violence Act 116 of 1998.

⁴¹³ Sections 6(4), (5), (6), and (7) of the Domestic Violence Act 116 of 1998.

⁴¹⁴ Section 6(6) and (7) of the Domestic Violence Act 116 of 1998.

⁴¹⁵ 2006 (1) SACR 359 (CC).

and section 34 of the Constitution. This issue arose after multiple protection orders had been granted against Mr Omar.⁴¹⁶ The orders, issued in terms of the Act, were intended to protect Ms and her children from domestic abuse.⁴¹⁷ A suspended warrant of arrest was annexed to the protection order as provided under section 8. When the warrant was later executed following an alleged breach, Mr Omar sought to challenge the legality of the enforcement mechanism, claiming it led to arbitrary arrest and violated his procedural rights.⁴¹⁸

The Constitutional Court rejected the applicant's argument that section 8(1) infringes the right to access to court. The Court held that the procedure for attaching a warrant of arrest to a protection order is necessary for the enforcement of such an order and is aimed at preventing further abuse. It serves as an emergency function and does not preclude respondents from accessing courts.⁴¹⁹ The Court emphasised the importance of interpreting the statute in light of the historical failure of the justice system to effectively protect victims of domestic abuse.

The Court's interpretation and application of the *Omar* case are important because they reflect an awareness of societal issues and demonstrate how legislation is applied with regard to its objectives, compliance with international law, and the social challenges being addressed. By upholding the constitutionality of interim protection orders, the Constitutional Court reinforced the legislative framework designed to protect victims and prevent further abuse. This case sets a precedent for the interpretation and application of laws aimed at addressing domestic violence, illustrating the balance between safeguarding individual rights and ensuring the safety of victims.

Sections 2 of the Protection from Harassment Act establish the procedures for a victim of harassment to apply for a protection order. If the victim is not represented by legal counsel or a Court clerk, the Court is required to inform the victim of available legal remedies and the right to lodge a criminal complaint for offences such as assault, trespass, extortion, or any other offence affecting the complainant's person or property.⁴²⁰ Additionally, Section 2 allows for an application to be lodged on behalf of the victim with their written consent, particularly if the victim is a minor or unable to file the order themselves. If the Court believes that the complainant or a related person is suffering or will suffer harm if the application is not addressed immediately, the application is expedited and sent to the Court clerk, along with the

⁴¹⁶ 2006 (1) SACR 359 (CC) para 4.

⁴¹⁷ 2006 (1) SACR 359 (CC) para 4.

⁴¹⁸ 2006 (1) SACR 359 (CC) para 6-8.

⁴¹⁹ 2006 (1) SACR 359 (CC) para 36-38.

⁴²⁰ Section 2 of the Protection from Harassment Act 17 of 2011.

necessary affidavits, for prompt handling. This ensures that victims have access to immediate protection and legal support.⁴²¹

Section 3 of the Protection from Harassment Act requires the Court to consider the application with ‘evidence, oral or by affidavit, as soon as reasonably possible, and if the Court is satisfied that there is credible evidence that the respondent has committed the Act's definition of conduct, the Court must issue an interim protection order, which must be served on the respondent in a prescribed manner. The interim order must be accompanied by evidence and a date. The order submitted to the respondent will be accompanied by a warrant of arrest, which will be served on the respondent in the prescribed manner’.⁴²²

According to Section 9 of the Protection from Harassment Act, if a respondent fails to appear in Court on the specified date, the Court must place a final protection order based on the evidence presented. This provision also states that if the responder appears in Court and challenges the protection order, the Court will review the facts presented, summon witnesses, and cross-examine them, including the parties concerned. If the Court finds that the respondent's conduct amounts to harassment under the Act, a final protection order will be enforced.⁴²³

These measures significantly enhance the State’s effectiveness in safeguarding victims by ensuring that they receive timely and appropriate protection. However, successful implementation of these provisions necessitates ongoing efforts to raise awareness, train Court personnel, and ensure that adequate resources are available to provide comprehensive support to victims. Furthermore, the Act incorporates essential mechanisms for the investigation and enforcement of protection orders, with the involvement of the SAPS highlighting the critical role of law enforcement in protecting victims and preventing further domestic violence and harassment. Effective implementation and sustained support are vital for fully realising and addressing GBV.

4 6 2 Further Procedural Remedies

The DVAA also includes amendments focused on technology and procedures. Section 3 aims to establish a more efficient and timely system for handling GBV cases by providing specific recommendations to law enforcement agencies and relevant organisations.⁴²⁴ According to

⁴²¹ Section 2 of the Protection from Harassment Act 17 of 2011.

⁴²² Section 3 of the Protection from Harassment Act 17 of 2011.

⁴²³ Section 9 of the Protection from Harassment Act 17 of 2011.

⁴²⁴ Section 3 of the Domestic Violence Amendment Act 14 of 2021.

Section 18B, this programme involves training initiatives designed to equip law enforcement agents with the sensitivity and expertise needed to handle complex cases compassionately. Section 2B of the DVAA requires adults to report domestic violence against another adult to a social worker or the police. Failure to comply with this obligation constitutes a criminal offence under Section 2B, despite concerns about potential retaliation. Nevertheless, the amendment is well-intentioned. Finally, Section 2B stipulates that no prosecutor may decline to pursue an individual who has breached the provisions of a protective order.⁴²⁵

4 7 Policy and Non-Legal Measures

4 7 1 Medical Services

Section 28 of Criminal Law (Sexual Offences and Related Matters) Amendment Act provides crucial provisions for victims at risk of HIV infection as a result of a sexual offence. This section mandates that victims who are exposed to such risk are entitled to receive post-exposure prophylaxis (PEP) for HIV infection. It ensures that victims are given free medical advice regarding the administration of PEP before it is provided.⁴²⁶ Additionally, the Act requires that victims be supplied with a prescribed list of public health establishments, including their names, addresses, and contact details, all at State expense and by prevailing treatment norms and protocols. This provision is vital in safeguarding the health of sexual offence victims and ensuring that they receive appropriate and timely medical support.⁴²⁷

4 7 2 National Strategic Plan on Gender-Based Violence and Femicide (GBVF-NSP)

The National Strategic Plan on Gender-Based Violence and Femicide (GBVF-NSP) was formulated with input from the GBVF Interim Steering Committee, which was established as a result of the Presidential Summit on GBVF held in November 2018. The primary aim of the NSP is to facilitate a unified national response to the widespread issue of GBVF, involving both the South African government and the broader public. By offering a multi-sectoral and coherent strategic policy and programme framework, the GBVF-NSP is designed to guide the State's response to the severe GBVF crisis affecting South Africa.⁴²⁸

The GBVF-NSP adopts a comprehensive and strategic approach to tackling GBVF. The policy places particular emphasis on addressing VAW across various dimensions, including age,

⁴²⁵ Section 2B of the Domestic Violence amendment Act 14 of 2021.

⁴²⁶ Section 28 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 Of 2007.

⁴²⁷ Section 28 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 Of 2007.

⁴²⁸ Government website "National Strategic Plan on Gender-Based Violence & Femicide Human Dignity and Healing, Safety, Freedom & Equality in our Lifetime 11 March 2020" [INSP ON GBV&FEM 2020-2030rev3 \(www.gov.za\)](https://www.gov.za) (accessed 20-06-2024).

physical location, disabilities, sexual orientations, gender identities, gender expressions, and nationalities. Moreover, it also examines violence against children and explores the interconnections and mutual reinforcement between different forms of violence. By addressing these diverse aspects of GBVF, the NSP aims to create a more inclusive and effective response to the crisis.⁴²⁹

The GBVF-NSP is organised around six strategic pillars designed to combat the pervasive issue of GBVF effectively. These pillars are Accountability, Coordination, and Leadership; Prevention and Rebuilding of Social Cohesion; Justice, Safety, and Protection; Response, Care, Support, and Healing; Economic Power; and Research and Information Management. Each pillar targets specific contributing factors to GBV, ensuring a systematic approach to addressing and resolving these issues. By focusing on these distinct areas, the NSP aims to provide a comprehensive strategy for eradicating GBVF.⁴³⁰

(a) Accountability, Coordination, and Leadership:

The Accountability, Coordination, and Leadership pillar of the GBVF-NSP is crucial for implementing Articles 1 to 10 of the Presidential Summit Declaration Against GBVF. This pillar focuses on improving institutional, strategic, and operational coherence across various governance areas. It also aims to secure and allocate sufficient funding for diverse programs and interventions. By fostering a coordinated and well-resourced approach, this pillar ensures a robust response to GBVF, thereby reinforcing the commitment to eradicating these societal issues through sustained and effective efforts.⁴³¹

The Accountability, Coordination, and Leadership pillar of the GBVF-NSP is operationalized through a detailed five-year plan focused on cultivating bold leadership and increasing accountability across society and government. This plan emphasises the necessity of a strategic response to GBVF, involving clear messaging and the allocation of adequate financial and technical resources. It also advocates for improved multi-sectoral coordination and collaboration among different government levels and trust-based social groups. By fostering a comprehensive and coordinated approach, this pillar aims to ensure an effective response to

⁴²⁹ Government website “National Strategic Plan on Gender-Based Violence & Femicide Human Dignity and Healing, Safety, Freedom & Equality in our Lifetime 11 March 2020” [INSP ON GBV&FEM 2020-2030rev3 \(www.gov.za\)](https://www.gov.za) (accessed 20-06-2024).

⁴³⁰ Government website “National Strategic Plan on Gender-Based Violence & Femicide Human Dignity and Healing, Safety, Freedom & Equality in our Lifetime 11 March 2020” [INSP ON GBV&FEM 2020-2030rev3 \(www.gov.za\)](https://www.gov.za) (accessed 20-06-2024).

⁴³¹ Government website “National Summit Against Gender-Based Violence and Femicide” <https://www.justice.gov.za/vg/gbv/201903-GBV-SummitDeclarationBooklet.pdf> (accessed 20-07-2024).

GBVF, creating an environment where strategic initiatives can be successfully implemented through collective efforts and sustained resource commitment.⁴³²

(b) Prevention and Rebuilding of Social Cohesion:

The Prevention and Rebuilding of Social Cohesion pillar of the GBVF-NSP gives effect to Articles 16 to 18 of the Presidential Summit Declaration Against GBVF by effectively preventing and addressing several factors that contribute to the normalisation and increase of GBVF,⁴³³ such as pervasive patriarchal norms, social gender norms, gender attitudes, women's subordination,⁴³⁴ childhood exposure to violence,⁴³⁵ substance abuse, education, and economic dependence.⁴³⁶ To provide a complete and long-lasting response to these pressing concerns, this all-encompassing approach seeks to undermine the systemic and societal foundations of GBVF. This pillar aims to eliminate harmful social and institutional frameworks that perpetuate GBV and change societal values and norms. It achieves this goal by taking a cogent, comprehensive, and multifaceted approach to the GBVF issue. Preventing violence, reducing its recurrence, and reducing the long-term harm it causes are important tactics for promoting constructive social cohesiveness and upholding human dignity.⁴³⁷

(c) Justice, Safety and Protection pillar

The Justice, Safety and Protection pillar of the GBVF-NSP gives effect to Articles 2-4, 6-8, 12, and 15 of the Presidential Summit Declaration Against GBVF.⁴³⁸ It aims to overcome the infrastructural and resource-related barriers that have hindered the optimal delivery of justice to survivors. By leveraging domestic legislation, policies, as well as international and regional protocols, the pillar strives to enhance access to safety, protection, and justice, effectively addressing the needs of victims of GBV.⁴³⁹

⁴³² Government website “National ‘ Strategic Plan on Gender-Based Violence & Femicide Human Dignity and Healing, Safety, Freedom & Equality in our Lifetime 11 March 2020” [INSP ON GBV&FEM 2020-2030rev3 \(www.gov.za\)](https://www.gov.za) (accessed 20-06-2024).

⁴³³ Government website “National Summit Against Gender-Based Violence and Femicide” [201903-GBV-SummitDeclarationBooklet.pdf \(justice.gov.za\)](https://www.justice.gov.za) (accessed 20-07-2024).

⁴³⁴ Maphosa “Tackling the “Shadow Pandemic”: The Development of a Positive Duty on Adults to Report Domestic Violence” 2022 *DJLJ* 89.

⁴³⁵ Beyene “Gender-Based Violence among Female Youths in Educational Institutions of Sub-Saharan Africa: A Systematic Review and Meta-Analysis *BMC* 02.

⁴³⁶ Maphosa 2022 *DJLJ* 91.

⁴³⁷ Government website “National ‘ Strategic Plan on Gender-Based Violence & Femicide Human Dignity and Healing, Safety, Freedom & Equality in our Lifetime 11 March 2020” [INSP ON GBV&FEM 2020-2030rev3 \(www.gov.za\)](https://www.gov.za) (accessed 20-06-2024).

⁴³⁸ *Ibid.*

⁴³⁹ *Ibid.*

This pillar achieves this by guaranteeing that victims of GBV have access to a criminal justice system that is effective, considerate, and responsive while taking gender equality into account. It improves the Criminal Justice System's ability to end impunity, deal with femicide head-on, and enable GBV survivors to get access to justice. To achieve this, the pillar ensures that additional Sexual Offences Courts with full staff and victim support resources will be established.⁴⁴⁰ Additionally, legislation related to GBVF will be amended, including the Criminal Procedure Act of 1977's bail provisions, sentencing laws that will result in harsher sentences and parole restrictions for certain GBVF offenders,⁴⁴¹ and the National Register for Sex Offenders, which will be expanded and possibly made public.⁴⁴²

(d) Response, Care, Support and Healing

The Response, Care, Support and Healing pillar of the GBVF-NSP ensures that all victims of GBV receive appropriate and sensitive responses, care, and support, allowing them to regain control over their physical and mental health, well-being, and lives. This enables Articles 7-9 and 12-13 of the Declaration arising from the Presidential Summit Against GBVF to be put into effect. The objective is to furnish prompt containment measures and enhance the medium- to long-term healing processes.⁴⁴³ This objective is achieved by ensuring that survivors have continuous access to care and resources to mitigate the effects of GBV on their well-being. A survivor and child-centred strategy, grounded in feminist principles, ensures that services are equitable, holistic, comprehensive, consistent, confidential, and responsive to the diverse needs of women of all ages and gender identities, as well as their children. A standardised core package of services, including access to health and mental care, appropriate after-care services, and efficient referral and feedback systems, is provided by trained, skilled and competent personnel.⁴⁴⁴

(e) Economic Power:

The Economic Power pillar of the GBVF-NSP implements the Presidential Summit Declaration Against GBVF Article 19, which aims to empower women to actively engage in, navigate, and alter their lives. It also seeks to consciously reshape social norms, economic

⁴⁴⁰Government website “National ‘ Strategic Plan on Gender-Based Violence & Femicide Human Dignity and Healing, Safety, Freedom & Equality in our Lifetime 11 March 2020” INSP ON GBV&FEM 2020-2030rev3 (www.gov.za) (accessed 20-06-2024).

⁴⁴¹ Act 12 of 2021.

⁴⁴² *Ibid.*

⁴⁴³ *Ibid.*

⁴⁴⁴ *Ibid.*

systems, and value systems to transform the structural underpinnings of GBV in the local, provincial, and national domains.⁴⁴⁵

This pillar seeks to achieve this by restoring economic power to women and altering their social status, addressing their unique vulnerabilities to various forms of GBV. It is also crucial to consciously utilise the workplace as a platform for implementing interventions related to GBV prevention and response.⁴⁴⁶

(f) Research and Information Management:

The Research and Information Management pillar of the GBVF-NSP employs a multi-disciplinary approach to conduct integrated research across all entities related to GBVF. Its objective is to enhance and strengthen the response to GBVF by applying existing information and developing initiatives to address current challenges faced by various departments involved in combating GBVF. This pillar collects data from diverse State bodies, including the justice system, legislative bodies, law enforcement, and health institutions, particularly in cases concerning GBVF. It also implements innovative strategies to mitigate the issue of GBVF in South Africa.⁴⁴⁷

The pillar implements initiatives to enhance research and information management on GBVF. Key efforts include establishing a coordinated data management system through a multidisciplinary research team, alongside the formation of the National Centre of Violence and Crime Prevention, which oversees a comprehensive GBVF database. Additionally, the identification of knowledge gaps prompts seminars for sharing research findings and quarterly multistakeholder engagements.⁴⁴⁸ This progressive framework facilitates ongoing evaluation and monitoring of GBVF-related challenges, thereby addressing issues effectively to advance policy objectives in combating GBVF.

The implementation and review of this strategic plan, as well as the monitoring and evaluation plan, will be prepared in compliance with Department of Planning Monitoring and Evaluation (DPME) procedures to ensure full integration.⁴⁴⁹ The Gender Responsive Planning, Budgeting,

⁴⁴⁵ *Ibid.*

⁴⁴⁶ *Ibid.*

⁴⁴⁷ *Ibid.*

⁴⁴⁸ *Ibid.*

⁴⁴⁹ Government website “Department of Planning Monitoring and Evaluation: Strategic Plan” <https://www.dpme.gov.za/publications/Pages/Strategic-Plan-and-Anual-report.aspx> (accessed 20-06-2024).

Monitoring, and Evaluation Framework will oversee and support this integration.⁴⁵⁰ The Secretariat will lead implementation in line with the relevant NSP pillars, establishing multisectoral technical teams and operational frameworks as needed.⁴⁵¹

The release of money to programs by civil society that address GBV are facilitated by implementation funding arrangements. Local multisectoral coordinating structures are essential in converting NSP outcomes into significant change on the ground by drawing on already-existing community-level organisations that are successful, such as victim empowerment programs, police, and civil society networks. Coordinators at the district level will play a pivotal role in spearheading and bolstering local initiatives. To assist the NSP rollout, mechanisms for interacting with development partners and other important strategic partners will be developed. The entire implementation plan is supervised by the Department of Women, Youth, and Persons with Disabilities,⁴⁵² which will ultimately answer to the Council.⁴⁵³

The NSP seeks to end GBVF by promoting institutional synergy, accelerating societal change, improving justice systems, assisting survivors, and empowering women. Its strict implementation and oversight guarantee efficient operation and support a more just and safe community. It is important to also note that this policy is good on paper and has to be considered in a pragmatic and operational sense because the issues that it seeks to address are to a large extent contributing factor to GBV and if they can be thoroughly addressed, they would in turn address GBV when applied accordingly.

4 7 3 Non-Legal Measures to Combat Gender-Based Violence

One of the earliest non-legal initiatives to combat GBV in South Africa was the establishment of the first feminist rape crisis centre in Cape Town in 1976.⁴⁵⁴ This centre focused on supporting survivors of rape in their recovery and pursuit of justice while striving to effect change within communities. Its objectives included reducing the trauma experienced by

⁴⁵⁰ Government website “Advancing Gender-Responsive Budgeting in South Africa” [GRPB-framework-250119A.pdf \(dwydpd.gov.za\)](https://www.dwydpd.gov.za/GRPB-framework-250119A.pdf) (accessed 20-06-2024).

⁴⁵¹ Government website “National ‘ Strategic Plan on Gender-Based Violence & Femicide Human Dignity and Healing, Safety, Freedom & Equality in our Lifetime 11 March 2020” [INSP ON GBV&FEM 2020-2030rev3 \(www.gov.za\)](https://www.gov.za/INSP-ON-GBV-FEM-2020-2030rev3) (accessed 20-06-2024).

⁴⁵² Government website “Department of Women, Youth and Persons with Disability” <https://www.dwydpd.gov.za/> (accessed 20-06-2024).

⁴⁵³ Government website “National ‘ Strategic Plan on Gender-Based Violence & Femicide Human Dignity and Healing, Safety, Freedom & Equality in our Lifetime 11 March 2020” [INSP ON GBV&FEM 2020-2030rev3 \(www.gov.za\)](https://www.gov.za/INSP-ON-GBV-FEM-2020-2030rev3) (accessed 20-06-2024).

⁴⁵⁴ South African History Online website “History of the Rape Crises Trust in Cape Town” [History of the Rape Crisis Trust in Cape Town | South African History Online \(sahistory.org.za\)](https://www.sahistory.org.za/history-of-the-rape-crisis-trust-in-cape-town) (accessed 26-09-2024).

survivors, empowering women, promoting gender equality, strengthening the criminal justice system, and addressing shortcomings in legislation.⁴⁵⁵

The establishment of the rape crisis centre was followed by the founding of People Opposing Women Abuse (POWA) in Johannesburg in 1979, which opened the first shelter for battered women in the same year.⁴⁵⁶ These initiatives were significantly influenced by the second wave of feminism in Europe and North America during the late 1960s and 1970s, which highlighted VAW as a critical aspect of female oppression.⁴⁵⁷

The adoption of the 1996 Constitution further advanced gender equality by enshrining it as a foundational value and a substantive right.⁴⁵⁸ It affirmed the right of every individual to be free from violence, whether perpetrated by public or private entities. As a result, various State institutions were established, including specialised sexual offences Courts and *Thuthuzela* Care Centres (TCCs),⁴⁵⁹ to provide comprehensive support services to survivors of sexual assault.⁴⁶⁰

Subsequently, the South African Gender-Based Violence Initiative (SAGBVI) was created as a collaborative effort among clinicians, researchers, and activists. Its primary aim was to enhance the health sector's response to GBV. SAGBVI partnered with the Department of Health to develop policies and training programmes for healthcare workers, leading to improved services for sexual assault survivors.⁴⁶¹

Additionally, the government introduced the provision of antiretroviral drugs for individuals living with HIV, as well as post-exposure prophylaxis (PEP) for rape survivors and medications to reduce the risk of mother-to-child transmission. Within the framework of post-sexual assault care, essential services were established, including forensic medical examinations, evidence collection, testing for sexually transmitted infections and HIV, the administration of prophylaxis for STIs, HIV, and pregnancy, as well as referrals and safety planning in cases of potential future harm.⁴⁶²

It is important to recognise that the aforementioned initiatives cater for GBV victims after the harm has already occurred. Consequently, there is a pressing need to integrate preventive

⁴⁵⁵ Longford *Socio-Economic Rights in South Africa: Symbols or Substance?* (2013) 371.

⁴⁵⁶ POWA website “People Opposing Women Abuse (POWA)” POWA: People Opposing Women Abuse – Participedia <https://www.powa.co.za/> (accessed 26-09-2024).

⁴⁵⁷ Longford 371.

⁴⁵⁸ The Constitution of the Republic of South Africa, 1996.

⁴⁵⁹ Government website “Thuthuzela Care Centres” <https://www.gov.za/TCC> (accessed 26-09-2024).

⁴⁶⁰ Longford 371.

⁴⁶¹ Jacobs “Vezimfilho: a model for health sector response to gender violence in South Africa” 2002 *IJGO* 52.

⁴⁶² Longford 376.

measures alongside these existing interventions to ensure that this violation of human rights is prevented before it takes place.

4.9 Summary

These frameworks play a significant role in addressing GBV by tackling its core contributing factors. However, the challenge lies in their practical application. A notable example is the *Carmichele* case,⁴⁶³ where the perpetrator was repeatedly convicted for acts of VAW. Despite continuous efforts by the victims to highlight the danger posed by the perpetrator to public safety and well-being, he was nevertheless released on bail and subsequently committed the same offence after being released.⁴⁶⁴ This case illustrates a broader issue of ineffective State intervention to GBV. While robust frameworks exist to deter violence, there is a lack of proper implementation by the State to ensure due diligence in addressing this issue.

This situation underscores the need for the establishment of State branches, as provided in the aforementioned policies and the National Council on Gender-Based Violence and Femicide Act.⁴⁶⁵ To oversee compliance with these provisions. Additionally, there is a need for the proper application of existing mechanisms. For example, the Sexual Offences Act includes victim support mechanisms,⁴⁶⁶ But there are no effective oversight bodies to evaluate whether these provisions are effectively applied to ensure that GBV victims are thoroughly and appropriately assisted, and their well-being is prioritised.

Furthermore, the existing legal framework should be applied in a forward-looking manner. The remedies provided by the Courts and the provisions in legislation should aim to prevent the future occurrence of GBV. For instance, scholars argue that GBV can stem from experiencing family violence as a child.⁴⁶⁷ Therefore, when a victim applies for protection under the Domestic Violence Act,⁴⁶⁸ The police should collaborate with social workers to evaluate the children's well-being in the affected environment. This is crucial because a child witnessing domestic violence might become a potential perpetrator of GBV and other violent conduct.⁴⁶⁹

⁴⁶³ 2001 (10) BCLR 995 (CC).

⁴⁶⁴ 2001 (10) BCLR 995 (CC) para 2.

⁴⁶⁵ Act 9 of 2024.

⁴⁶⁶ Section 5 of the National Council on Gender-Based Violence and Femicide Act 9 of 2024.

⁴⁶⁷ Beyene "Gender-Based Violence among Female Youths in Educational Institutions of Sub-Saharan Africa: A Systematic Review and Meta-Analysis" *BMC* 02.

⁴⁶⁸ Section 4 of the Domestic Violence Act 116 of 1998.

⁴⁶⁹ Brown "Exposure to Physical and Sexual Violence and Adverse Health Behaviours in African Children: Results from the Global School-based Student Health Survey" 2009 *BWHO* 447.

Additionally, in GBV cases, bail decisions should be based on a careful consideration of the facts. If the State can demonstrate that there is a high likelihood of the perpetrator committing the same offence if released on bail, bail should be denied. This approach ensures the protection of the victim's rights to freedom of security of a person, security, and human dignity⁴⁷⁰ and helps prevent the future occurrence of GBV.

The mechanisms in place should not only focus on the victims but also address the perpetrators of such offences. There should be systems to ensure that perpetrators are introduced to rehabilitative programmes to prevent future occurrences of violence. For instance, if a person who has committed a violent act is released on parole or another form of supervised release, they should be evaluated for at least a year to assess their likelihood of reoffending. This approach ensures that the legal system deters future crimes effectively.

Moreover, if it is evident that the perpetrator has not changed, they should not be released. The rights of the general public must be considered alongside the rights of the perpetrator. The system should prioritise the safety and security of society, ensuring that any potential risk posed by the perpetrator is mitigated through continued monitoring and rehabilitation efforts.

⁴⁷⁰ Section 10, 11 and 12 of The Constitution of the Republic of South Africa 1996.

CHAPTER FIVE: FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

5 1 Introduction

This chapter presents the final stage of the study, offering key findings, conclusion and recommendations based on the critical assessment of the legal framework regulating GBV in South Africa, through an analysis, comparison, and examination of the legal frameworks from international bodies, South Africa, and other jurisdictions. This chapter provides insights and proposes pragmatic initiatives to amend and develop the South African legal framework. These proposals aim to improve South Africa's approach to addressing GBV.

This study holds profound significance, as the issue of GBV in South Africa remains critical. Despite the establishment of a Constitution and legislation that protect and promote human rights, the country continues to experience disproportionately high rates of GBV.⁴⁷¹ This issue has a devastating impact on constitutionally guaranteed rights, including the rights to life, dignity, equality, and freedom and security of the person, with women being the most affected.⁴⁷² As a result, this concern necessitated a thorough interrogation of South Africa's legal framework addressing GBV.

This study aims to identify the gaps contributing to the disproportionately high rates of GBV against women in South Africa and to recommend areas for improvement and legislative amendments to address the issue. To achieve this, the study examined international and regional legal frameworks addressing GBV, South Africa's legal framework, and how the country has incorporated international law provisions. It also explored how the Courts have interpreted and applied these legal frameworks in addressing GBV, alongside comparing South Africa's legal framework with those of other jurisdictions. This analysis revealed several mechanisms from different countries that have made significant progress in addressing GBV.

To achieve this aim, the study was conducted using desktop research to examine GBV-related constitutional provisions, legislation, case law, and journal articles. It employed a doctrinal research methodology to evaluate GBV-related constitutional provisions, legislation, international law, the Court's interpretation and application of the GBV legal framework, and scholarly analysis and debate on the subject to identify gaps in addressing GBV.⁴⁷³ The study

⁴⁷¹ Gouws "Violence Against Women is Staggeringly High in South Africa" News 24 (02 December 2022) https://www.news24.com/life/relationships/love/her_story/violence-against-women-is-staggeringly-high-in-south-africa-20221202 (accessed 02-06-2023).

⁴⁷² Spies "Continued State Liability for Police Inaction in Assisting Victims of Domestic Violence: A Reflection on the Implementation of South Africa's Domestic Violence Legislation" 2019 *JAL* 54-55.

⁴⁷³ van Howcke *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline* (2013) 14.

also incorporated content analysis, which involved analysing and interpreting legislation, case law, and policy.⁴⁷⁴ A comparative analysis was also applied in Chapter Four, comparing South Africa's legal framework with other jurisdictions, namely India, Canada, and the United States.⁴⁷⁵

This chapter begins by presenting the key findings of the study, focusing on critical aspects of the South African legal framework and significant insights drawn from comparative analysis with other jurisdictions. These findings provide the foundation for the conclusion that follows, which evaluates the extent to which South Africa has positioned itself as a beacon of hope in eliminating gender-based violence or whether it falls short in this regard. Based on this assessment, the chapter concludes with recommendations aimed at strengthening the legal and institutional responses to GBV, highlighting the responsibilities of key stakeholders such as the police, the judiciary, civil society, and non-governmental organisations.

5 2 Research Findings

As GBV remains an evolving issue in South Africa, the State has implemented several legal provisions to address this issue, with various legislative amendments and developments.⁴⁷⁶ Additionally, legal frameworks and provisions from other countries were examined in Chapter Four of this study. These provisions have proven highly effective in addressing GBV, as demonstrated in the case law discussed in Chapter Four. The constitutional interpretation and judicial application of these provisions, particularly Cases like *Omar v Government of the Republic of South Africa*,⁴⁷⁷ show the courts' commitment to strengthening protections against GBV by applying relevant legal provisions in light of the country's ongoing GBV crisis. However, while these legal developments represent progress, their practical effectiveness remains contested, especially in light of persistent incidents of GBV, such as the widely publicised case of Uyinene Mrwetyana.⁴⁷⁸ This case underscores the need for more comprehensive and systemic enforcement measures beyond the legal texts themselves, including state accountability and institutional reform.

⁴⁷⁴ Salehijam "The Value of Systematic Content Analysis in Legal Research" 2018 *TLR* 34.

⁴⁷⁵ Lomio *Legal Research Methods in a Modern World: A Coursebook* (2011) 55.

⁴⁷⁶ Government "State of the Nation 2024: Gender-Based Violence" <https://www.stateofthenation.gov.za/priorities/making-communities-safer/gender-based-violence> (accessed 18-10-2024)

⁴⁷⁷ 2006 (1) SACR 359 (CC).

⁴⁷⁸ Ntlama "Gender-Based Violence Ignites the Re-emergence of Public Opinion on the Exercise of Judicial Authority" 2020 *JLJ* 293.

5 2 1 Coordinated and Forward-Looking Approach in Addressing GBV

South Africa recently enacted legislation mandating the appointment of structures to monitor and combat GBV, namely the National Council on Gender-Based Violence and Femicide Act.⁴⁷⁹ The National Council on Gender-Based Violence and Femicide Act represents a significant improvement in combating GBV, as it establishes a robust mechanism and framework for addressing the issue at the grassroots level. By offering a structured approach, the Act will be instrumental in assessing progress in addressing GBV. It achieves this by providing for the creation of structures at the national, provincial, and local levels, all of which will facilitate the implementation of programmes aimed at addressing GBV. Moreover, these structures are tasked with reporting on the progress achieved, thereby ensuring accountability and transparency.⁴⁸⁰ The Act, therefore, plays a crucial role in coordinating GBV prevention initiatives and monitoring their effectiveness, thus ensuring a comprehensive response to the issue.

Another progressive framework addressing GBV in South Africa is the National Strategic Plan on Gender-Based Violence and Femicide, developed by the Interim Gender-Based Violence and Femicide Steering Committee.⁴⁸¹ This policy adopts a holistic approach to combating GBV, structured around six key pillars. The first pillar, Accountability, Coordination, and Leadership, strengthens multi-sectoral coordination and collaboration among various government departments to ensure the effective and unified application of GBV-related initiatives. The second pillar, Prevention and Rebuilding Social Cohesion, focuses on initiatives aimed at transforming societal norms and behaviours that perpetuate GBV, to foster safer communities for all individuals.⁴⁸²

The third pillar, Justice, Safety, and Protection, ensures that victims have access to a swift, accessible, and responsive criminal justice system. It also calls for the amendment of relevant legislation and procedures to better address GBV cases. The fourth pillar, Response, Care, Support, and Healing, provides services designed to help victims recover and heal from the negative impacts of GBV. The fifth pillar, Economic Power, aims to enhance women's access

⁴⁷⁹ Act 9 of 2024.

⁴⁸⁰ Section 2(f) of the National Council on Gender-Based Violence and Femicide Act 9 of 2024.

⁴⁸¹ Government "Steering Committee on the National Emergency Action Plan on GBVF" <https://www.gcis.gov.za/newsroom/media-releases/steering-committee-implementation-national-emergency-action-plan-gbvfvf> (accessed 12-10-2024).

⁴⁸² Government "National Strategic Plan on Gender-Based Violence & Femicide Human Dignity and Healing, Safety, Freedom & Equality in our Lifetime 11 March 2020" [INSP ON GBV&FEM 2020-2030rev3 \(www.gov.za\)](https://www.gov.za) (accessed 20-06-2024).

to socioeconomic rights, such as housing and employment, to reduce the economic vulnerabilities that contribute to GBV. Lastly, the sixth pillar, Research and Information Management, seeks to deepen the understanding of the nature, causes, and broader societal effects of GBV. This comprehensive framework represents a significant step towards addressing GBV in South Africa by integrating preventative, protective, and supportive measures across multiple sectors.⁴⁸³

With the proper application of the framework, progress can be made on the issue of GBVF, as the National Strategic Plan offers a holistic approach.⁴⁸⁴ Some of the pillars and initiatives within this policy are forward-looking in character and hold great potential for addressing GBVF in South Africa. As presented in Chapter Three of this study, there are many responsive legal frameworks currently in place, and they have not provided any development in addressing GBV. Therefore, the forward-thinking initiatives presented in the National Strategic Plan, if effectively implemented, can lead to considerable advancements in combating GBVF. These proactive measures will not only address current challenges but also prevent future occurrences of violence.

In essence, the primary argument of this study is that the initiatives to address GBV should be forward-looking in character. Rather than merely responding to incidents of GBV once they have occurred, as demonstrated in some legislative frameworks discussed in Chapter 3. Within the National Strategic Plan on Gender-Based Violence and Femicide, the most essential and noteworthy pillars are Pillar Two, which promotes the dismantling of societal norms that contribute to the high incidence of GBV, Pillar Five, which fosters the economic empowerment of vulnerable individuals to prevent further and future occurrences of GBV, and Pillar Six, which provides room for further investigation and a deeper understanding of the factors contributing to GBV.⁴⁸⁵

These three pillars encourage research and data collection to uncover underlying causes of GBV that may not have been previously identified, enabling a more comprehensive approach to addressing these issues. By emphasising the importance of prevention through socio-economic empowerment and the transformation of harmful societal norms, the study argues

⁴⁸³ *Ibid.*

⁴⁸⁴ *Ibid.*

⁴⁸⁵ *Ibid.*

that a future-oriented framework is necessary for reducing GBV in the long term. This will not only address the current crisis but also prevent future incidents of GBVF.

Scholars define GBV as a public health issue that incorporates various forms of violence, such as human trafficking, harmful traditional practices, child and forced marriage, as well as other forms of physical and emotional abuse.⁴⁸⁶ It also encompasses mental harm or suffering, including threats, coercion, and arbitrary deprivation of liberty, whether experienced in public or private life.⁴⁸⁷ This definition should be the first initiative that advises policymakers and legislators that when developing a framework addressing this human rights violation, there should be a consideration of the form of abuse and effects of GBV so that the legal framework developed resonates with the issues therein and accordingly addresses them.

5.2.1 Socio-economic Development and Public Awareness

The comparative analysis in Chapter Four has provided valuable insights into adopting a holistic and forward-looking approach to addressing GBV. The legal frameworks from other jurisdictions, namely India, Canada, and the United States, have been particularly enlightening. In the Indian context, while the country still faces a serious GBV issue, certain provisions, particularly those in the Protection of Women from Domestic Violence Act, present progressive steps towards addressing the problem. Similarly, Canada's *It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence* offers a mechanism that addresses GBV.⁴⁸⁸ Lastly, the United States' Violence Against Women Act has proven to be an invaluable tool in combating GBV.

The Indian Protection of Women Against Domestic Violence Act provides progressive provisions that address gender-based violence (GBV). These provisions are mindful of the factors contributing to the underreporting of domestic violence and seek to mitigate such challenges. Section 19 of the Act, for instance, introduces the concept of a residence order, which, upon the Court's confirmation of domestic violence, dispossesses the respondent of the joint household, even if they have legal ownership. The respondent is then required to relocate to an alternative residence. Additionally, the Act ensures financial support for victims, either through the respondents' provision of alternative accommodation or direct financial assistance

⁴⁸⁶ McSherry "Defining Sexual and Gender-Based Violence in the Refugee Context" 2019 *IRIS* 05.

⁴⁸⁷ Hynes "Sexual Violence against Refugee Women: Observations from the CDC" 2000 *JWHGBM* 819.

⁴⁸⁸ Canadian Government website "Its Time: Canada's Strategy to Prevent and Address Gender-Based Violence" https://publications.gc.ca/collections/collection_2017/cfc-swc/SW21-172-2017-5-eng.pdf (accessed 09-10-2024).

during the enforcement of the protection order.⁴⁸⁹ This legal provision is aimed at offering victims immediate relief and security during the process.

This provision is crucial in combating GBV as it directly addresses the socio-economic factors that often contribute to the perpetration of GBV. Many victims are reluctant to report domestic violence due to their financial dependence on the respondent. This provision is sensitive to that issue, aiming to mitigate the risk of economic insecurity for victims by ensuring that their financial well-being is not compromised as a result of reporting domestic violence. The socio-economic well-being of victims is a critical aspect of addressing GBV. For many victims, seeking recourse against their abusers remains an unattainable goal due to a lack of economic resources.⁴⁹⁰

The failure to understand the social realities faced by victims of domestic violence, particularly women, such as their economic dependence on relationships, contributes to the Domestic Violence Act's inability to effectively address the practical challenges of domestic violence in South Africa.⁴⁹¹ Therefore, a legal provision that considers the root causes of the ineffectiveness of certain legislations and takes steps to address these gaps is crucial in the fight against GBV.

The "It's Time: Canada's Strategy to Prevent and Address Gender-Based Violence" policy introduces progressive initiatives to combat GBV, with Pillar One focusing on prevention. This pillar encourages awareness campaigns that engage young people, particularly men and boys, in addressing GBV. It stresses the importance of sharing best practices and practical information among policymakers and service providers to ensure the effective implementation of preventive measures.⁴⁹² The strategy also supports urban services for Indigenous peoples, particularly through the Urban Programming for Indigenous Peoples,⁴⁹³ and addresses the unique needs of Indigenous families, ensuring a comprehensive approach to GBV prevention across communities.⁴⁹⁴

⁴⁸⁹ Section 19(1)(a)(b)(f) and (6) of the Protection of Women Against Domestic Violence Act of 2005.

⁴⁹⁰ Maphosa "Tackling the 'Shadow Pandemic': the Development of a Positive Duty on Adults to Report Domestic Violence" 2022 *DJLJ* 91.

⁴⁹¹ Spies "Continued State Liability for Police Inaction in Assisting Victims of Domestic Violence: A Reflection on the Implementation of South Africa's Domestic Violence Legislation" 2019 *JAL* 70.

⁴⁹² Canadian Government website "Urban Programming for Indigenous Peoples" <https://www.sac-isc.gc.ca/eng/1471368138533/1536932634432> (accessed 09-10-2024).

⁴⁹³ *Ibid.*

⁴⁹⁴ *Ibid.*

The United States Violence Against Women Act offers insights to Canadian policy. Section 402 allocates preventive grants to State and local governments, non-profits, and other organisations to fund educational, outreach, and community engagement initiatives.⁴⁹⁵ This initiative encourages a cooperative approach among all relevant bodies addressing GBV, enabling them to implement programmes that raise awareness about GBV and its implications for human rights violations. By fostering this awareness, the Act aims to deter future occurrences of GBV.

These legal frameworks offer an important perspective in addressing GBV because of the promotion of awareness about GBV and preventative measures, educating individuals about the implications of GBV as a violation of human rights. The perpetration and victimisation of gender-based violence (GBV) are associated with a combination of factors, including age, rural residence, witnessing family violence during childhood, educational status, and other relevant determinants.⁴⁹⁶ Initiatives addressing GBV should focus on immediate issues and incorporate Therefore, implementing initiatives across all areas of the country is a crucial approach to educating people about the negative effects and initiatives to address GBV. Such initiatives are progressive, as they contribute to mitigating the future occurrence of GBV. This aligns with the argument presented in this study that initiatives addressing GBV should not solely focus on immediate issues but should also incorporate a forward-looking strategy to ensure that the future occurrence of this issue is effectively addressed.

5 2 Conclusion

South Africa continues to experience alarmingly high incidents of GBV, despite existing legislation aimed at addressing the issue. According to police reports from July to September 2022, there were approximately 13,000 cases of women assaulted with the intent to cause grievous bodily harm, 1,220 instances of attempted murder, and nearly 10,000 reported rape cases during this period.⁴⁹⁷ The rate of VAW is also concerning as it is increasing rather than decreasing with time. Therefore, the study had to initiate an assessment of the GBV-related framework, its limits, interpretation and application in combating this issue.

⁴⁹⁵ Section 402 of the Violence Against Women Reauthorization Act of 2013.

⁴⁹⁶ Beyene “Gender-Based Violence among Female Youths in Educational Institutions of Sub-Saharan Africa: A Systematic Review and Meta-Analysis” 2019 *BMC* 02.

⁴⁹⁷ South African Government Website “Minister General Bheki Cele: Quarter Two Crime Statistics (2022/2023)” <https://www.gov.za/speeches/minister-general-bheki-cele-quarter-two-crime-statistics-20222023-23-nov-2022-0000> (accessed 25-06-2023).

International and regional instruments demonstrate a global commitment to combating GBV, urging States to foster safer and more equitable environments for all, particularly for vulnerable groups of people. The effective implementation and enforcement of these laws are crucial for safeguarding human rights and promoting justice and equality. While these frameworks provide important principles and standards for preventing GBV, their efficacy relies on rigorous national implementation, strengthened monitoring mechanisms, and comprehensive strategies that address cultural contexts and root causes of violence. In the African context, regional legal mechanisms are vital in protecting women's rights and preventing GBV. They establish frameworks for State commitments, evaluate progress, and outline integrated programmes that encompass legal reforms, social change, and resource allocation, advancing gender equality across the continent.

International and regional instruments reflect a global and continental commitment to eliminating GBV and promoting equitable and safer environments, especially for vulnerable groups. However, their success depends on how well States implement these principles through national legal reforms and context-specific strategies. In South Africa, the judiciary has played a pivotal role in advancing this mandate, particularly through the development of common law in line with section 39(2) of the Constitution. In *Carmichele v Minister of Safety and Security*, the Constitutional Court emphasised the State's duty to protect individuals from sexual violence, leading to the recognition of State accountability for failures to prevent GBV.⁴⁹⁸ Similarly, in *Masiya v Director of Public Prosecutions*, the Court expanded the common law definition of rape to include non-consensual anal penetration, addressing gaps in protection for victims of sexual violence.⁴⁹⁹ These landmark decisions illustrate the judiciary's commitment to aligning domestic legal standards with constitutional values and international human rights norms. Within the African context, regional legal frameworks further reinforce these efforts by requiring States to adopt integrated programmes that combine legal reform, social transformation, and resource allocation to advance gender equality and prevent GBV.

A forward-looking and cohesive application of the legal framework is essential to prevent future occurrences of GBV. For instance, when a victim applies for protection under the Domestic Violence Act, collaboration between police and social workers should assess the well-being of children in the environment, as exposure to domestic violence can lead to future

⁴⁹⁸ 2001 (10) BCLR 995 (CC).

⁴⁹⁹ 2007 (2) SACR 435 (CC).

perpetration.⁵⁰⁰ Moreover, bail decisions in GBV cases must involve careful consideration of the likelihood of reoffending. This approach protects victims' freedom and security,⁵⁰¹ life,⁵⁰² and dignity of victims of GBV.⁵⁰³

When addressing GBV, it is crucial to recognise that the approach should extend beyond the legal system. GBV is a public health issue, involving multiple forms of violence such as human trafficking, harmful traditional practices, child and forced marriage, as well as physical and emotional abuse.⁵⁰⁴ It includes mental harm or suffering resulting from threats, coercion, and arbitrary deprivation of freedom experienced in both public and private spheres.⁵⁰⁵ This comprehensive understanding should guide relevant government bodies, non-profit organisations, and other relevant institutions to address this human rights violation, ensuring that prevention measures resonate with the complexities of GBV and effectively address its diverse impacts.

5.3 Recommendations

The significance of this study is the assessment of the South African GBV-related legal framework and the exploration of further initiatives that can be integrated into the existing legal framework. To promote the effectiveness of current measures and promote a comprehensive approach to combat GBV, the following recommendations are made:

- The Domestic Violence Amendment Act needs further strengthening to account for factors that prevent victims from applying for protection orders, such as their socio-economic well-being and economic dependence on their partners.⁵⁰⁶ In cases where the victim is likely to experience domestic violence at the shared residence, the protection order under Section 4A should be amended to mandate the removal of the respondent from the residence.⁵⁰⁷ Additionally, if the respondent provides economic support to the complainant, the Court should require this support to continue during the protection order. This would address the issue of victims hesitating to apply for protection orders

⁵⁰⁰ Beyene "Gender-Based Violence among Female Youths in Educational Institutions of Sub-Saharan Africa: A Systematic Review and Meta-Analysis" 2019 *BMC* 02.

⁵⁰¹ Section 12 of the Constitution of the Republic of South Africa, 1996.

⁵⁰² Section 11 of the Constitution of the Republic of South Africa, 1996.

⁵⁰³ Section 10 of the Constitution of the Republic of South Africa, 1996.

⁵⁰⁴ McSherry "Defining Sexual and Gender-Based Violence in the Refugee Context" 2019 *IRIS* 05.

⁵⁰⁵ Hynes "Sexual Violence against Refugee Women: Observations from the CDC" 2000 *JWHGBM* 819.

⁵⁰⁶ Spies "Continued State Liability for Police Inaction in Assisting Victims of Domestic Violence: A Reflection on the Implementation of South Africa's Domestic Violence Legislation" 2019 *JAL* 70.

⁵⁰⁷ Section 4A (1) of the Domestic Violence Amendment Act 14 of 2021.

due to their financial dependence on the respondent and guarantee the safety of the victims.

- The National Council on Gender-Based Violence and Femicide Act should explicitly outline the duties and responsibilities of the provincial and local structures, as appointed under section 22 of the Act.⁵⁰⁸ In addition to the general duties outlined in Section 2,⁵⁰⁹ these structures should have clearly defined duties within the Act to strengthen efforts to mitigate GBV at the provincial and local municipal levels. These duties should focus on facilitating, monitoring, and evaluating the progress of GBV interventions within each province and local municipality through:
 - Facilitating the establishment of counselling and efficient support services for victims in each local municipality within the provinces, ensuring that victims have access to both immediate emergency assistance and long-term support.
 - Collaborating with non-governmental organisations and other relevant bodies to develop and implement rape prevention and educational initiatives, to foster a culture of consent and respect. This collaboration should extend to schools, community organisations, and youth agencies.
 - Facilitate the allocation of grants to local governments, non-profit organisations, and healthcare institutions to support comprehensive GBV prevention and response efforts. These should include community education and outreach, particularly in rural and township areas, as well as strengthening healthcare services through staff training, safe reporting spaces, and integrated support for survivors.
 - Facilitating the establishment of transitional housing assistance across provinces and local municipalities to support victims escaping abusive situations, ensuring they have access to safe and temporary accommodation during their transition to long-term security.
 - Constant evaluation of the adequate application of the South African GBV-related legal framework, including the Domestic Violence Amendment Act,⁵¹⁰ Protection from Harassment Act,⁵¹¹ Promotion of Equality and Prevention of Unfair Discrimination Act,⁵¹² Criminal Law (Sexual Offences and Related

⁵⁰⁸ Section 22 of the National Council of Gender-Based Violence and Femicide Act 9 of 2024.

⁵⁰⁹ Section 2(b)(c)(d)(f) of the National Council of Gender-Based Violence and Femicide Act 9 of 2024.

⁵¹⁰ Act 14 of 2021.

⁵¹¹ Act 17 of 2011.

⁵¹² Act 04 of 2000.

Matters) Amendment Act,⁵¹³ and the National Strategic Plan on Femicide and Gender-Based Violence. Additionally, amendments should be proposed to any legislation identified as ineffective in addressing GBV.

- The National Council, as established under section 3 of the Act, should provide regular reports on the progress and challenges faced by the provincial and local structures in fulfilling their respective roles and duties. These reports should be submitted every three months to enable a thorough evaluation of the effectiveness of the measures in place. Regular reporting will also help identify regions or areas encountering difficulties in addressing GBV, thereby facilitating the development of targeted and strategic initiatives to overcome these challenges.

⁵¹³ Act 32 of 2007.

BIBLIOGRAPHY

Books

Dale A, Mali K, Matia R A Report to Guide the Implementation of a National Action Plan on Violence Against Women and Gender-Based Violence (2021) Blueprint Group for Canada's National Action Plan.

Deber RB, Mah CL Case Studies in Canadian Health Policy and Management (2014) University of Toronto Press.

Freedman J, Sahraoui N, Tastsoglou E Gender-Based Violence in Migration: Interdisciplinary, Feminist and Intersectional Approaches (2022) 90 Springer Nature Switzerland AG.

Hall K, Richter L, Mokomane Z, Lake L Children, Families, and the State: Collaboration and Contestation (2018) Children Institute University of Cape Town.

Lomio PJ, Sprang-Hanssen HS, Wilson GD Legal Research Methods in a Modern World: A Coursebook 2 ed (2011) DJOF Publishing.

Longford M, Cousins B, Dugard J, Madlingozi T Socio-Economic Rights in South Africa: Symbols or Substance? (2013) Cambridge University Press.

Logar R, Niemi J Emergency Barring Orders in Situations of Domestic Violence: Article 52 of the Istanbul Convention (2017) Council of Europe.

Lopi SADC Gender Monitor: Monitoring Implementation of the Beijing Commitments by SADC Member States (1995) Southern African Research and Documentation Centre.

Sacco NL The Violence Against Women Act (VAWA): Historical Overview, Funding, and Reauthorization (2019) Congressional Research Services.

van Hoecke M Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline (2013) Oxford, UK: Hart Publishing.

Chapters in books

Adegalu F, Mitchell T “Introduction to Human Rights in South Africa” in Heyns C, Viljoen J, and Murray R (eds) *The Impact of the United Nations Human Rights Treaties on the Domestic Level in South Africa* (2023) BRILL NIJHOFF Boston.

Calvino LR “Enforcement of Gender-Based Violence Legislation in South Africa: The Need for a Paradigm Shift” in Matadi MT (eds) *Global Trends in Law Enforcement- Theory and Practice* (2023) Intech Open.

Journal Articles

Bahl A, Dwivedi P “Women’s Rights are Human Rights and provisions under Indian Constitution” 2017 *IJRPS* 384 – 2278..

Beck C, Cretsinger M, Frey V, Park H, Tarani M “Systems and legal frameworks to address gender-based violence” 2023 *OECD* 80-88.

Beyene AS, Chojenta C, Roba HS, Melka AS, Loxton D “Gender-based Violence among Female Youths in Educational Institutions of Sub-Saharan Africa: A Systematic Review and Meta-Analysis” 2019 *BMC* 01-14.

Bhushan S, Kumari A “Abusive Relationships and Domestic Violence in India” *IJLMH* 892-907.

Brahmapurkar KP "Gender Equality in India Hit by Illiteracy, Child Marriages and Violence: A Hurdle for Sustainable Development" 2017 *PAMJ* 1-9.

Brown DW, Riley N, Butchart A, Meddings DR, Kann L, Harvey AP “Exposure to Physical and Sexual Violence and Adverse Health Behaviours in African Children: Results from the Global School-based Student Health Survey" 2009 *BWHO* 447-455.

Brink JG, Mdaka Q, Mayee L, Weppelman K “Practitioner’s “Perspectives on a National South African Higher Education Institution Policy Framework Mitigating Gender-Based Violence at a South African University” 2021 *IJCDS* 47-60.

Charlesworth H, Chinkin C, Wright S “Feminist Approaches to International Law” 1991 *AJIL* 613-645.

Charlesworth H “The Mid-Life Crisis of the Universal Declaration of Human Rights” 1998 *WLLR* 781-796.

Chen Y, Mandes K, Gosse C, Hodson J, Velentsianos G “Canadian Gender-Based Violence Prevention Programs: Gaps and Opportunities” 2024 *SJ* 1-23.

Chinnian K, Petersen A “Gender Construction in Sexual Offences Cases: A Case for Fully Reviving the Sexual Offences Courts” 2020 *AJ* 135-163.

Classen CJ “The Functioning and Structure of the Constitutional Court” 1994 *JCRDL* 412-139.

Dash PP “Rape adjudication in India in the aftermath of Criminal Law Amendment Act, 2013: findings from trial Courts of Delhi” 2020 *ILR* 1-23.

Dippenaar O “The Protection of Human Rights of Women Trapped in Domestic Violence in South Africa” 2012 *IJSD* 95-100.

d’Oris C "Are African States Willing to Ratify and Commit to Human Rights Treaties? The Example of the Maputo Protocol" 2021 *QJIL* 159-182.

Enaifoghe A, Dlelana M, Durakifa A, Dlamini N “The Prevalence of Gender-Based Violence against Women in South Africa: A Call for Action” 2021 *AJGSD* 121-150.

Etienne M “Addressing Gender-based Violence in an International Context” 1995 *HWLJ* 139-170.

Gover AR, Moor AM “The 1994 Violence Against Women Act: A Historic Response to Gender Violence” 2021 *SJ* 8-29.

Graaff K “The Implications of a Narrow Understanding of Gender-based Violence” 2021 *JCSCP* 1-12.

Greenbaum L "Access to Justice for All: A Reality or Unfulfilled Expectations?" *DJLJ* 248-266.

Gupta V “Equivalence between Domestic Violence with Torture” 2020 *JLA* 49-55.

Habiba U “Persecution of Indian Women: An Analysis on The Most Heinous Cases of Rape and Sexual Abuse of Women” 2020 *JARSS* 1-8.

Harrington “Special Rapporteurs of the African Commission on Human and Peoples' Rights” 2001 *AHRLJ* 147-267.

Hauser “Human Rights and Social Policy in the 21st Century. by Joseph Wronka” 1993 *AJIL* 681-682.

Heise L, Ellsberg M “Ending Violence Against Women” 1999 *CHGE* 1-44.

Herlitz GN “The Meaning of the Term Prima Facie” 1994 *LLR* 391-408.

Hynes M, “Sexual Violence against Refugee Women: Observations from the CDC” 2000 *JWHGBM* 819-883.

Jacobs T, Jewkes R “Vezimfilho: a model for health sector response to gender violence in South Africa” 2002 *IJGO* 51-56.

Kalaivane AP, Elengovan A "Media's Perspective of Women" 2020 *SA* 23-30.

Kaur N, Byard RW “Bride burning: A unique and ongoing form of gender-based violence” 2020 *JFLM* 1-4.

Khan FA “The Role of Judiciary in the Protection and Promotion of Human Rights” 1993 *DUS* 101-114.

Klare KE “Legal Culture and Transformative constitutionalism” 1998 *SAJHR* 146-188.

Kok A “The Promotion of Equality and Prevention of Unfair Discrimination Act: Why the Controversy” 2001 *TSAR* 294-310.

Kok A “The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000: Court-Driven or Legislature-Driven Societal Transformation?” 2008 *SLR* 122-142.

Langa P “Transformative Constitutionalism” 2006 *SLR* 351-360.

Lewis PC, Cheong YF, Kaslow NJ, Yount KM “Collateral Effects of COVID-19 Stay-at-Home Orders on Violence Against Women in the United States, January 2019 to December 2020” 2024 *BMCPH* 1-10.

Maluleka MJ “Culture, Custom, Tradition, Law and Gender Equality” 2012 *PELJ* 1-22.

Manjoo R, Nekura R "Does Africa Need a Regional Treaty on Violence Against Women? A Comparative Analysis of Normative Standards in three Regional Human Rights Systems" 2020 *AJ* 197-226.

Maphosa R “Tackling the ‘Shadow Pandemic’: The Development of a Positive Duty on Adults to Report Domestic Violence” 2022 *DJLJ* 88-106.

McGregor L, Murray D, Ng V “International Human Rights Law as a Framework for Algorithmic Accountability” 2019 *ICLQ* 309-343.

Butler AS, McSherry B "Defining Sexual and Gender-based Violence in the Refugee Context" 2019 *IRIS* 1-40.

Mensah EKG “Women’s Rights in Africa: The CEDAW and ACHPR in the 21st Century” 2024 *JSSPI* 78-86.

Mintigh M “Sexual Violence in Prisons Part 2: The Criminal Law (Sexual Offences and Related Matters) Amendment Act (32 of 2007) Its Implications for Male Rape in Prisons and the Department of Correctional Services” 2011 *SAJCJ* 178-200.

Luks M “Important Steps and Instructive Models in the Fight to Eliminate Violence Against Women” 1995 *WLLR* 1109-1141.

Mokone G “The Constitutional Role of The Judiciary in Cases of Sexual GBV: An Analysis of *Tshabalala v S; Ntuli v S* 2020 (5) *SA 1 (CC)*” 2021 *NMU* 406-420.

Mlambo DN “The Quest for Post-Colonial Regional Integration” 2020 *JAJA* 23-48.

Mollema N “The Validity and Constitutionality of the South African National Register for Sexual Offenders: A Comparative Study” 2015 *PELJ* 2738 -2760.

Mshweshwe L “Understanding Domestic Violence: Masculinity, Culture, Traditions” 2020 *HCPJ* 1-5.

Mtotyana M, Ledwaba M, Mambo B, Nkondo Z “A Conceptual Framework of Gender-Based Violence and Femicide Drivers in South Africa” 2023 *IJBSS* 315-330.

Ntlama “Gender-Based Violence Ignites the Re-emergence of Public Opinion on the Exercise of Judicial Authority” 2020 *DJLD* 286-307.

Nnad I “Early Marriage: A Gender-based Violence and A Violation of Women's Human Rights in Nigeria” 2014 *JPL* 35-40.

Obokata T “Human Rights Framework to Address Trafficking of Human Beings” 2006 *NQHR* 377-409.

Ozlar LI “The Universal Declaration of Human Rights at Seventy: Progress and Challenges” 2018 *EIA* 395-406.

Rana B “CEDAW: A Tool for Addressing Violence Against Women” 2019 *SDPI* 111-130.

Rebouche R “Health and Reproductive Rights in the Protocol to the African Charter: Competing Influences and Unsettling Questions” 2009 *WLJCRSJ* 79-112.

Rico N "Gender-based Violence: A Human Rights Issue" 1997 *LCL* 1-49.

Roy AS, Sen N, Bagchi SS “Gender-based Violence in India in Covid-19 Lockdown” 2021 *JCLA* 41-55.

Salehijam M “The Value of Systematic Content Analysis in Legal Research” 2018 *TLR* 34-42.

Sarkin J “A Methodology to Ensure that States Adequately Apply Due Diligence Standards and Processes to Significantly Impact Levels of Violence Against Women Around the World” 2018 *JHUP* 1-36.

Sarkin J "Reforming the role of the African Commission on Human and Peoples' Rights in advancing democratic principles and human rights in African countries: An examination using the lens of Swaziland/Eswatini" 2019 *SAPL* 1-56.

Sarken J “The Development of a Human. Rights Culture in South Africa” 1998 *HRQ* 628-665.

Sener MB “A Review of The Meaning and Importance of The Universal Declaration of Human Rights” 2021 *IJPS* 15-25.

Simelane NN, JT Mofokeng, D Khosa “Analysis of Institutional Response to Gender-based Violence and Femicide in the South African Police Service” 2023 *IJSD* 33 – 52.

Smart C “An Analogy of Gender-Based Violence and Police Corruption in Matters Related to Violence against Women during the COVID-19 Pandemic” 2022 *JACL* 170-183.

Snyman T, Rudman A “Protecting Transgender Women within the African Human Rights System Through the Inclusive Reading of the Maputo Protocol and the Proposed Southern African Development Community Gender-Based Violence Model Law” 2022 *SLR* 57-77.

Soyiyo S “Stalled Gender Policy Renewal and the Effects of the Policy Gap on Malawi Government’s Gender Agenda” 2021 *AEWGE* 37-47.

Spies A “Continued State Liability for Police Inaction in Assisting Victims of Domestic Violence: A Reflection on the Implementation of South Africa's Domestic Violence Legislation” 2019 *ALJ* 53-77.

Swemmer S “Protecting Fido Protecting the Family: Development of Domestic violence Laws to Include Animals” 2022 *ISS* 1-86.

Swemmer S “S v P-The Abuse of Protection Orders to "Gag" Victims of Rape” 2023 *PELJ* 1-29.

Tshone SN, Bello PO, Mofokeng JT, Olutola AA “Exploration of the Gaps in the Enactment and Implementation of the Domestic Violence Act of South Africa” 2023 *DIAJ* 59-80.

Tyagi N “Gender Violence, Gender Justice and Gender-Based Laws: An Analysis of Pattern and Policies in India and Indonesia” 2020 *BLJ* 144-162.

Ulrich JL “Confronting Gender-Based Violence with International Instruments: Is a Solution to the Pandemic Within Reach?” 2000 *IJGLS* 629-654.

van Coller A “Child Marriage - Acceptance by Association” 2017 *IJLPF* 363-376.

Vetten L “Addressing domestic violence in South Africa: Reflections on Strategy and Practice” 2005 *DAW* 1-12.

Vojdik VK “Conceptualizing Intimate Violence and Gender Equality: A Comparative Approach” 2008 *FILJ* 487-527.

Woolman S, Sprague C “Nowhere to Run, Nowhere to Hide: The Absence of Public Policy on Intimate Partner Violence Aggregates the Right to Healthcare and Bodily Integrity under the South African Constitution” 2021 *IJCDS* 29-74.

Yusufu S “The Scourge of Gender-based Violence (GBV) on Women Plaguing South Africa” 2022 *SSOAR* 89-100.

Legislation

a) Domestic

Criminal Law Amendment Act 105 of 1997.

Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 Of 2007.

Domestic Violence Act 116 of 1998.

Domestic Violence Amendment Act 14 of 2021.

National Council on Gender-Based Violence and Femicide Act 9 of 2024.

Prevention of Family Violence Act 133 of 1993.

Protection from Harassment Act 17 of 2011.

Promotion of Equality and Prevention of Unfair Discrimination Act 04 of 2000.

Sexual Offences Act 23 of 1957.

The Constitution of the Republic of South Africa. 1996.

The Interim Constitution of the Republic of South Africa, 1993.

b) Foreign

Criminal Law (Amendment) Act 13 of 2013.

Criminal Code of Canada (R.S.C 1985 C-46).

The Constitution of Canada, 1867.

The Constitution of India, 1950. The Constitution of the United States of America, 1787, as amended.

Indian Penal Code Act 40 of 1960.

Violence Against Women Act of 1994.

Treaties and Conventions

African Union. Protocol to the African Charter on Human and Peoples Rights in the Rights of Women in Africa. Adopted by the African Union on 11 July 2003 and entered into force on 25 November 2005.

Organisation of African Unity. African Charter on Human and Peoples Rights' Rights. Adopted on 27 June 1981. Entered into force on 21 October 1986.

Southern African Development Community, Declaration on Gender and Development, SADC, adopted on 8 September 1997.

Southern African Development Community. Protocol on Gender and Development. Adopted on 8 September 1997.

United Nations Fourth World Conference on Women. Beijing Declaration and Platform for Action. Entered into force on 15 September 1995.

United Nations General Assembly. Universal Declaration of Human Rights. Resolution 217 A (III) of 10 December 1948.

United Nations General Assembly. Convention on Elimination of All Forms of Discrimination Against Women. Resolution 34/180. Treaty Series, vol. 1249. Adopted on 18 December 1979 and entered into force on 3 September 1981.

United Nations General Assembly. Declaration on the Elimination of Violence Against Women, 1993. General Assembly Resolution, 48th Session, Supplement No. 49. Adopted on 20 December 1993.

United Nations Fourth World Conference on Women. Beijing Declaration and Platform for Action. Conference Series, No. 1. Adopted on 15 September 1995. Entered into force on 15 September 1995.

Case Law

a) Domestic case law

Bhe v Magistrate of Khayelitsha 2005 (1) BCLA 1(CC).

Carmichele v Minister of Safety and Security 2001 (10) BCLR 995 (CC).

City Council of Pretoria v Walker 1998 (3) BCLR 275 (CC).

Dawood v Minister of Home Affairs 2000 (8) BCLR 837 (CC).

Masiya v Director of Public Prosecutions 2007 (5) SA 30 (CC).

Mbamila v S 2022 All SA 488 (KZD).

Omar v Republic of South Africa 2006 (1) SACR 359 (CC).

S v Baloy 2002 SA 425 (CC).

S v Makwanyane 1995 (2) SACR 1 (CC).

b) International case law

Egyptian Initiative for Personal Rights & INTERIGHTS v Egypt 323/06 AHRLR 64 (ACHPR 2011).

News Paper and News Reports

“Critics of amendments to equality and unfair discrimination act have a poor understanding of their meaning” Daily Maverick (23 June 2021).

“Law Reform Commission proposes new legislation criminalising forced and child marriages” News 24 (29 March 2022).

Gouws A “Violence Against Women is Staggeringly High in South Africa” *News 24* (02 December 2022).

Internet Sources

African Union “20 Years of the Maputo Protocol: Where are we Now?” https://www.soawr.org/resources_posts/20-years-of-the-maputo-protocol-where-are-we-now/ (accessed 08-11-2024).

African Union “State Parties to the African Charter” <https://achpr.au.int/en/states> (accessed 08/09/2024).

African Union “Standard Operating Procedures on the Special Mechanisms of the African Commission on Human and Peoples’ Rights” [Standard Operating Procedures on the Special Mechanisms of the African Commission on Human and Peoples’ Rights | African Commission on Human and Peoples' Rights \(au.int\)](#) (accessed 10 June 2024).

Canadian Government “Its Time: Canada’s Strategy to Prevent and Address Gender-Based Violence” https://publications.gc.ca/collections/collection_2017/cfc-swc/SW21-172-2017-5-eng.pdf (accessed 09-10-2024).

Canadian Government “It’s Time: Canada’s Strategy to Prevent and Address Gender-Based Violence: Progress Report 2021-2022” <https://www.canada.ca/en/women-gender-equality/gender-based-violence/gender-based-violence-strategy/progress-report-2021-2022.html#toc0> (accessed 12-10-2024).

Canadian Government “Urban Programming for Indigenous Peoples” <https://www.sac-isc.gc.ca/eng/1471368138533/1536932634432> (accessed 09-10-2024).

Commission for Gender Equality “The Bare Minimum: Commission for Gender Equality Report on South Africa’s Compliance with CEDAW Committee 2011 Concluding Observations & Recommendations RESEARCH REPORT 2020” <https://cge.org.za/wp-content/uploads/2021/01/the-bare-minimum-cedaw-report-2020.pdf> (accessed 08-07-2024).

Government “Advancing Gender-Responsive Budgeting in South Africa” [GRPFB-framework-250119A.pdf \(dwypd.gov.za\)](#) (accessed 20-06-2024).

Government “Department of Planning Monitoring and Evaluation: Strategic Plan” <https://www.dpme.gov.za/publications/Pages/Strategic-Plan-and-Anual-report.aspx> (accessed 20-06-2024).

Government “Department of Women, Youth and Persons with Disability” <https://www.dwypd.gov.za/> (accessed 20-06-2024).

Government “Integrated Crime and Violence Prevention Strategy” https://static.pmg.org.za/220704Final_Approved_Integrated_Crime_Violence_Prevention_Strategy.pdf (accessed 20-06-2024).

Government “Minister General Bheki Cele: Quarter Two Crime Statistics (2022/2023)” <https://www.gov.za/speeches/minister-general-bheki-cele-quarter-two-crime-statistics-20222023-23-nov-2022-0000> (accessed 25-06-2023).

Government “National Strategic Plan on Gender-Based Violence and Femicide (2020–2030)” <https://www.justice.gov.za/vg/gbv/NSP-GBVF-FINAL-DOC-04-05.pdf> (accessed 08-11-24).

Government “National Strategic Plan on Gender-Based Violence & Femicide, 2020” <https://www.justice.gov.za/vg/gbv/GBV-Summit.html> (accessed 20-06-2024).

Government “National Summit Against Gender-Based Violence and Femicide” [201903-GBV-SummitDeclarationBooklet.pdf](https://www.justice.gov.za/201903-GBV-SummitDeclarationBooklet.pdf) (justice.gov.za) (accessed 20-07-2024).

Government “National Strategic Plan on Gender-Based Violence & Femicide Human Dignity and Healing, Safety, Freedom & Equality in our Lifetime 11 March 2020” [1NSP ON GBVF&FEM 2020-2030rev3](https://www.gov.za/1NSP_ON_GBVF&FEM_2020-2030rev3) (www.gov.za) (accessed 20-06-2024).

Government “State of the Nation 2024: Gender-Based Violence” <https://www.stateofthenation.gov.za/priorities/making-communities-safer/gender-based-violence> (accessed 18-10-2024).

Government “Steering Committee on the National Emergency Action Plan on GBVF” <https://www.gcis.gov.za/newsroom/media-releases/steering-committee-implementation-national-emergency-action-plan-gbv> (accessed 12-10-2024).

Government “Thuthuzela Care Centres” <https://www.gov.za/TCC> (Accessed 26-09-2024).

Kalra. H “Justice Verma Committee Report Summary” <https://prindia.org/policy/report-summaries/justice-verma-committee-report-summary> (accessed 07-10-2024).

South African History Online “History of the Rape Crisis Trust in Cape Town” [History of the Rape Crisis Trust in Cape Town | South African History Online](https://www.sahistory.org.za/history-of-the-rape-crisis-trust-in-cape-town) (sahistory.org.za) (accessed 26-09-2024).

“India's Struggles with High Rape Cases, Low Conviction Rates” [India's struggles with high rape cases, low conviction rates | The Straits Times](https://www.straitstimes.com/india/indias-struggles-with-high-rape-cases-low-conviction-rates) (accessed 08-10-2024).

Government “Minister General Bheki Cele: Quarter Two Crime Statistics (2022/2023)” <https://www.gov.za/speeches/minister-general-bheki-cele-quarter-two-crime-statistics-20222023-23-nov-2022-0000> (accessed 25-06-2023).

POWA “People Opposing Women Abuse (POWA)” [POWA: People Opposing Women Abuse – Participedia](https://www.powasouthafrica.org/) (accessed 26-09-2024).

Population Council “Sexual and Gender-Based Violence: Literature Review, New York 2008” https://knowledgecommons.popcouncil.org/departments_sbsr-rh/508/ (accessed 11-03-2024).

Parliamentary Monitoring Group “South African Law Reform Commission: Project 130 Stalking Report: November 2006” Protection from Harassment Bill [B1 - 2010]: Department response to submissions | PMG (accessed 20-07-2024).

South Africa Law Reform Commission “South African Law Reform Commission” <https://justice.gov.za/salrc/> (accessed 17-07-2023).

South Africa Law Reform Commission “South African Law Reform Commission: Project 130 Stalking Report: November 2006” <https://www.justice.gov.za/salrc/reports.htm> (accessed 02-07-2024).

Southern African Development Community “History and Treaty” <https://www.sadc.int/pages/history-and-treaty> (accessed 15-06-2024).

United Nations website “Concluding observations on the fifth periodic report of South Africa” <https://digitallibrary.un.org/record/3951746?v=pdf> (accessed 07-08-2024).

Sullivan “Principal Deputy Director Katharine T. Sullivan of the Justice Department’s Office on Violence Against Women Delivers Testimony Before the Senate Judiciary Committee Hearing Entitled, “The Need to Reauthorize the Violence Against Women Act” <https://www.justice.gov/opa/speech/principal-deputy-director-katharine-t-sullivan-justice-department-s-office-violence> (accessed 12-10-2024).

United States Government “The Silent Epidemic of Femicide in the United States” The Silent Epidemic of Femicide in the United States (sanctuaryforfamilies.org) (accessed 12-10-2024).

United Nations website “Fourth World Conference on Women, 4-15 September 1995, Beijing, China” <https://www.un.org/en/conferences/women/beijing1995> (accessed 05-06-2024).

United Nations “International Human Rights Commission (IHRC)” <https://www.ihrcworld.org/> (accessed 05-06-2024).

United Nations “General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992)” file:///C:/Users/201906092/Downloads/CEDAW_C_GC_35-EN.pdf (accessed 07-08-2024).

United Nations “Report of the World Conference to Review and Appraise the Achievement of the United Nations Decade for Women: Equality, Development and Peace 15-26 July 1985 New York” <https://www.un.org/womenwatch/confer/nfls/Nairobi1985report.txt> (accessed 05-06-2024).

United Nations “World Conference of the United Nations Decade for Women 14-30 July 1980, Copenhagen, Denmark” World Conference of the United Nations Decade for Women: Equality, Development and Peace | United Nations (accessed 05-06-2024).

United States Bureau of Justice Statistics “Criminal Victimization, 2020” <https://bjs.ojp.gov/library/publications/criminal-victimization-2020> (accessed 12-10-2024).

United States Government “Centres for Disease Control and Prevention” <https://www.cdc.gov/index.html> (accessed 12-10-2024).

United States Government “Crime/Law Enforcement Stats (Uniform Crime Reporting Program)” <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr> (accessed 12-10-2024).

United States Government “Intimate Partner Violence, 1993-2010” <https://bjs.ojp.gov/library/publications/intimate-partner-violence-1993-2010> (accessed 12-10-2024).

United States Government “Office on Violence Against Women” <https://www.justice.gov/ovw> (accessed (12-10-2024)).

“World Conference of the United Nations Decade for Women 14-30 July 1980, Copenhagen, Denmark” [World Conference of the United Nations Decade for Women: Equality, Development and Peace | United Nations](#) (accessed 20-06-2023).