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

Written statement* submitted by Edmund Rice International Limited, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 May 2021]

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



Rape - Violence against women in South Africa

Introduction

South Africa (SA) has a Gender Based Violence and Feminism (GBVF) crisis. As GBVF is increasing, so is rape. On average, 1 out of every 4 women in SA have been raped either as an adult or a young girl.¹ SA has experienced a continued increased in GBVF, topping the international rankings of occurrence of reported rape and sexual violence. Worsened by its history of apartheid and normalised violence, inequalities that exist in our communities continue to greatly affect young girls, women, children, the LGBTQIA+ community and people with disabilities. These population groups have been and are experiencing high levels of physical, economic, sexual, and psychological abuse as well as rape, sexual harassment and killings. Killings being the most extreme form of GBVF, young girls and women are dying as a result.

The context of the Problem

The Special Rapporteur² states that, 1 in every 3 women die at the hands of their intimate partner on a daily basis. This places SA's femicide rate at five times more than the global average. In 2009 alone, 1024 women were killed by their intimate partners, and 768 by a non-partner in SA.³ This was the time when femicide was said to have decreased. Recently, there has been a sharp increase in killings based on sexual orientation. The problem is systemic in nature and is deeply rooted in cultural and patriarchal values that place women, girl-children and the LGBTQIA+ community at increased risk of GBVF. Between 2018 and 2019, crime statistics from the SA Police Service showed that 52 420 sexual offences were reported. Out of these, 80% (41 583) of the reported sexual offences were rape.⁴ It is important to note that 46% of the victims of reported sexual offences are children (18 years and below).⁵ This attests to how GBV is being normalised in SA.

Constitutional Framework

Within The Special Rapporteur's report⁶, it was noted that SA has no statute of limitation for the prosecution of rape in the country. However, within the Constitution of the Republic of SA (1996), statutory law does not effectively approach the plight of children in a comprehensive and integrated manner. Section 18 of the Criminal Procedure Act (CPA) of SA provides that the right to prosecute any offence will lapse after the expiry of a period of 20 years from the time when the offence was committed, except for certain specific offences such as murder, rape or treason. This means that a statute of limitation does exist in the case of other sexual offences, which should be addressed.⁷

Internationally, The Declaration on the Elimination of Violence Against Women (DEVAW) encourages states in article 4(d) to do the following: to develop penal sanctions in domestic legislation to punish and redress the wrongs of Violence Against Women (VAW); (e) to consider developing national plans of action to promote the protection of women against any form of violence; (h) to include in government budgets adequate resources for their activities related to the elimination of VAW; (i) to take measures to ensure that law enforcement officers and public officials, responsible for implementing

¹ WHO, 2018: Sexual violence; Available at: https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

² A/HRC/47/26.

³ Abraham et al, 2013 Intimate Partner Femicide in SA in 1999 and 2009.

⁴ CRIME STATISTICS – SAPS, 2019: Crime situation in republic of SA twelve (12) months.

⁵ S Armstrong, 1994: Rape in SA: an invisible part of apartheid's legacy.

⁶ A/HRC/47/26.

⁷ CHILD JUSTICE ACT 75 OF 2008.

policies to prevent, investigate and punish VAW, receive training to sensitize them to the needs of women, and lastly; (p) to facilitate and enhance the work of the women's movement and non-governmental organisations and cooperate with them at local, national and regional levels. In this regard, SA has made some improvement in amending its laws, specifically, the crime of rape.

Despite this significant progress, SA laws are still too broad and inaccessible to suit the needs of everyday women, young girls and children comprehensively, especially those in townships and under-served communities. Rather they continue to serve the needs of those in the system, or with access to levels of privilege; such as the prosecutors (courts and judges), government officials, policy formulators, and the high earning, educated, working class.

While the country is sponsoring training programmes for magistrates, clerks, the SA Police Service (SAPS) and those within the system (judges) with response strategies to sexual offenses. However, very little is being done to educate the general public and therefore potential victims of these sexual offenses and their rights in relation to them.⁸

Nationally, in SA, the Constitution and various legislation addressing GBV will not achieve the intended desired results if we do not address the root causes within the system itself, and train local people in order to be a part of addressing this issue.

Ineffective Mechanisms

Despite the criminalization and prosecution of rape being applied within SA national laws, these laws continue to remain ineffective due to low levels of reporting, ineffective reporting mechanisms, as well as underwhelming prosecuting rates.

Many victims feel unsupported by their communities due to commonly held unjust gender stereotypes and stigmatization, cultural perceptions which do not empower women to report rape or GBV, and the fear of potential further violence as retribution. Victims are also often unable to report due to structural challenges such as SAPS incompetence and the lack of adequate advanced innovative technologies for effective legal evidence management. These are crucial elements for effective criminalization and prosecution that are still lacking.⁹

For a developing State such as SA, it is disappointing to see that the country's unsupportive feeling towards victims, as well as its ineffective reporting, legal and evidence management mechanisms, has resulted in the ineffective implementation of laws that are meant to successfully prosecute rape and other sexual abuse cases.

International humanitarian and criminal law

The Special Rapporteur on violence against women, its causes and consequences report (14/17), has noted that the implementation of international humanitarian and criminal law in which rape is being recognised as a human rights violation, as well as a manifestation of GBV against women and girls, has been successfully incorporated into the laws of various countries, including SA. However, these standards are not being fully incorporated within SA at the levels in which they are being experienced by the everyday South African. This shows how, despite having laws and policies on paper, if they are not accessible to the everyday citizen, then they are not being implemented effectively.

⁸ SA Human Rights Commission. (2018). Research Brief: Unpacking the Gaps and Challenges in addressing Gender Based Violence in SA.

⁹ UCT, 2015 Policing Sexual Offences in SA.

Conclusion

In SA, rape in the context of male dominance should be understood within the lenses of poverty, limited opportunities and the violation of human rights by the State as the primary duty-bearer. Also, the context of traditional attitudes, beliefs and norms that normalise sexual offences as well as lack of economic independence forces many women not to report the case and stay in violent relationships.¹⁰ Unless this is well defined and understood in the South African context then young women and girls will continue to have their rights violated within a system that has laws and policies which are good on paper but ineffective for protecting the victims.

Recommendations

1. That a human rights-based, survivor-focused approach to GBVF be implemented at a country level: one that empowers the everyday person to know what their rights are and how to access them (with a special focus on women, children, disabled, young girls, LGBTQIA+).
2. To introduce integrated strategies that address GBV at its root cause: men, by equipping and bringing together young boys and men to be educated on how to challenge toxic masculinity, defend justice, support and protect women, children, the LGBTQIA+ community and the disabled.
3. To implement country-wide campaigns that highlight Human Rights and the Law as a strategy to educate and raise awareness to the rights of women, children and young girls, how to access them and how to report effectively.
4. To ensure that systems are in place to guarantee that reporting mechanisms are accessible, and that investigative mechanisms are truly effective so that the prosecution of rape cases can be successful.
5. To encourage the challenging or criminalising of traditional attitudes, beliefs and norms that normalises sexual offence and gives men the perception that they have the right to control women and children.
6. To ensure that countries place a greater focus on and adopt preventative approaches to GBV and rape, instead of just seeking justice after the fact through responsive and reactive strategies.

The Justice Desk, NGO(s) without consultative status, also share the views expressed in this statement.

¹⁰ Mistry, D. (1997). Victims and the Criminal Justice System in SA. Paper presented at the Centre for the Study of Violence and Reconciliation, Seminar No. 11, 29 October.