How strong Is The Argument For A Rights Based Approach For The Prevention Of Gender Based Violence In South Africa?

MA in Understanding and Securing Human Rights

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**Abstract**

This study has sought to understand the approach of the South African government for the prevention and elimination of Gender Based Violence (GBV). In seeking to do so, it hopes to contribute to the scholarship on gender equality and the realisation of human rights for women in South Africa. It seeks to explore whether a right based approach has been implemented by the State when tackling GVB. By doing so, it hopes to build a case for the need of a rights based approach in State interventions. In particular, it will focus on interventions by the State through legislative polices and action plans.

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**Key Terms**

ANC, African National Congress

ANCWL, African National Congress Women’s League

AU Protocol, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

BPfA, Beijing Declaration and Platform for Action

CEDAW Committee, Committee on the Elimination of Discrimination Against Women Committee

CEDAW, Convention on the Elimination of all Forms of Discrimination Against Women

CGE, Commission on Gender Equality

CSOs, Civil Society Organisations

DCS, Department of Correctional Services

DSD, Department of Social Development

DEVAW, Declaration on the Elimination of Violence against Women

DOW, Department of Health

DOJ&CD, Department of Justice and Constitutional Development

DOW, Department of Women

DWCPD, Ministry for Women, Children and People with Disabilities

FGM, Female Genital Mutilation

FSAW, Federation of South African Women

GBV, Gender Based Violence

GDP, Gross Domestic Produce

NGM, National Gender Machinery

NGOs, Non Governmental Organisations

NPA, National Prosecuting Authority

OSW, Office of the Status of Women

SAHRC, South African Human Rights Commission

SAPS, South African Police Service

SDGEA, Solemn Declaration on Gender Equality in Africa

UDF, United Democratic Front

UN, United Nations

UPR, Universal Periodic Review

WEGEB, Women Empowerment and Gender Equality Bill

WNC, The Women’s National Coalition

UNIFEM, United Nations Development Fund for Women

**Chapter 1**

**Introduction**

There are internationally recognised human rights standards for States to adhere to for the elimination of Gender Based Violence (GBV), which is one of the most prevalent forms of human rights violations against women and girls. An estimated 1 in 3 are affected around the world. (UNFPA, Gender Based Violence). Since the beginning of democracy in 1994 South Africa has seen much change over a range of areas in the political, economic and social spheres. Though much has changed for the better, the new democracy has also seen particular struggles that have impacted the realisation of human rights. Some of these have been in regards to tackling prevalent rates of GBV in the country which is going to be the focus of this study. International human rights norms challenge duty bearers to end all forms of discrimination including violence against women and girls. GBV has been defined as a ‘form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men’ (CEDAW Committee, 1992, GC19, para.1). Examples include sexual and physical violence, domestic and emotional abuse, rape, Female Genital Mutilation (FGM) and other forms of sexual assault. The manifestation of violence also impacts the realisation of interrelated rights for women such as the right to life, the right to be free from torture and the right to equal protection under the law (ibid, GC19, para.7).

Just like other nations, South Africa has implemented interventions through national legislation and action plans to prevent forms of discrimination and human rights abuses against women. This study will focus on interventions through policy for the elimination of GBV that the government have taken. This is an area of interest for human rights because there are still an estimated high number of cases affecting women concerning GBV such as rape, sexual assault and domestic abuse. It is known that there are issues with implementation of legalisation that seeks to protect women with legal services and public bodies such as the police. However, the purpose of the project is not to measure how successful the State has been in implementation of the national services meant for the protection of women against violence. That area itself would be beyond the bounds of this project and would require quite a different methodological approach than which has been used here. Instead, this study will rather simply it seeks to ponder the following questions over the course of this study,

I. Is there evidence of a comprehensive, well established framework of policy that seeks to prevent as well as protect women from violence?

II. If there is, does it follow international human rights standards according to human rights indicators used for measurement?

III. If human rights standards have not been incorporated, can an argument be made that South Africa needs to implement these standards?

It is hoped that by measuring the approach of the government through policy, some light will be shed on improvements that can be made to the State’s management of policy. The problem in South African is no longer one of women seeking full democratic rights but it can be seen as a struggle between their human rights and the duty of the State to effectively implement protections.

**Literature Review**

This section will discuss the main themes and arguments on gender inequality and discrimination against women in South Africa. It will seek to show how scholarship has sought to explain varying contexts that impact the realisation of women rights since from the time of Apartheid up until now.

I. The Legacy Of The Apartheid State

Today’ South African State is a fairly new democracy at just over 20 years old. To understand social contexts it is useful to grasp the political background and changes the country has seen over the past half century. Apartheid lasted for 46 years after being introduced in 1948 by the governing National Party. It has been defined as program that had the intention of raising interests of the Afrikaner population, maintained by a system of oppression that was justified through Calvinist religious conviction (Bauer and Taylor, 2011). Resistance against State authority was always present throughout the early twentieth century before the creation of Apartheid. However, the increasing racial discrimination faced by many black South Africans under Apartheid led to the growth of resistance movements. The African National Congress (ANC) which was then one of the largest and most influential resistance organisations created opportunities for female members to participate. Women and men protested against elements of the Apartheid system that could be seen through State violence and the resettlement of the black population into townships. The eventual downfall of the Apartheid State came with the watershed decision by President De Klerk to revoke the national ban against the ANC and work to release anti – Apartheid activists including Nelson Mandela in 1990. This eventually led to the first democratic elections in 1994 that saw the ANC as a political party win the majority of votes and the creation of a new Constitution. The South African Constitution that came into force after the election has been viewed by some as being one of the most comprehensive and inclusive (Bauer and Taylor, 2011). It can be argued to some extent that the legacy of the former Apartheid State is still evident today (ibid, p.258). There are issues with unequal wealth distribution, racial tension, low Gross Domestic Produce (GDP) growth, high rates of unemployment, growing crime rates and a high HIV prevalence rate at 18% (ibid. UNAIDS, 2014).

II. Contesting National And Feminist ideals

The role of women in South African society has been discussed around the influence of nationalism and the anti - Apartheid movement. It has been important to understand and explain whether the new start of the new democracy left behind goals of the early gender equality movements. For some scholars this has been useful in trying to understand why there are still obstacles to the realisation of gender inequality today despite the active participation of women in the political sphere. Achieving gender equality in South Africa has been much more difficult than assumed in the new democracy. It can be argued that the struggle facing the country today has been that social systems have yet to transform to line up with the State’s commitment for equality (Britton and Fish, 2009). Having women in political power does not necessarily lead to significant reduction of gender inequality (Britton, 2005). Those such as Hassim (2006) and Geisler (2004) dispute the traditional view of 1980s researchers who argue that women withdrew from interference with politics. They argue instead that women were not passive participants during the twentieth century. They had always used a variety of traditional and non-traditional methods to challenge State control over their lives and to advocate for gender equality. Hassim (2006) argues against the traditional construct that pits female participation either in the political or feminist framework. From the 1920s there were a variety of female led organisations that worked to bring democracy to South Africa as well as gender equality. Though their methods and ideologies differed, women’s activism throughout this period was still very deeply rooted in the anti-Apartheid movement (ibid).

Women had always been participants in democratic struggles before the anti – Apartheid movement for democracy. This included campaigning against low wages, poor working conditions and laws restricting free movement of the black population (*ibid*. p.20, Geisler, 2004, p.60). Many were involved during the 1920s to 1950s with labour movements such as the industrial and Commercial Workers Union and the Workers Women. They formed a significant part of the resistance and discontent shared among the majority of the population. Though not occupied with gender equality objectives, the forms of protests ensured that women were propelled from the domestic to the public sphere (Geisler, 2004). The emergence of the Apartheid State in 1948 saw the continued but intensified resistance. Scholars have concluded that even though women’s contributions in politics gained momentum from the 1950s it still continued to be framed under nationalism.

III. Change

By 1943, the ANC started allowing women to become full members of the organisation with the ability to vote and participate at all levels. This led to the creation of the ANC Women’s League (ANCWL) that gave female activists a chance to unite with other organisations. In 1954 the ANCWL, Communist Party and trade unions eventually came together and formed the Federation of South African Women (FSAW) giving much scope for women to be part of wider networks (Hassim, 2006, p.25). The need for racial as well as gender equality was recognised as early on by the FSAW. In 1954 it published the Women’s charter that called for ‘equal rights with men in relation to property, marriage and children, and for the removal of all laws and customs that deny women such equal rights’ (FSAW’s Charter, 1954). Endorsed by 146 delegates representing a range of organisations with a total of 230,000 members, the Charter spoke against laws and customs hindering women for the progress of the nation (Geisler, 2004, p.67).

Despite the prominence and recognition for equality, it did not mean gender issues took precedence over national issues. The FSAW were still continued with campaigns against the use of Pass Laws used to regulate the movement of the black urban population. However, what the creation of the FSAW and the Charter signified was that women had begun to realise that the male dominated organisations were not capable of working together with them for gender equality (Wells, 1993 cited in Geisler, 2004, p.67). In addition, nationalist leaders were known to have failed to acknowledge women’s inequality under a patriarch society (Geisler, 2004, p.64). The creation of the FSAW was significant and revolutionary, laying the foundation for mass women’s movements that came later during the 1980s (*ibid*. p.68). Though not all female participation during the early half of the century focussed solely on politics, the largest and most influential organisations such as FSAW were still under the within the nationalist framework. At this stage, women’s visibility in political matters was still related to cultural and traditional roles of women, for most their everyday political contribution still centred on their role as mothers and community members (Hassim, 2006, *ibid*. 2004).

More noticeable differences between women’s organisation for democracy and gender equality came from the second generation of activists in the 1970s. The sometimes conflicting ideals of supporting the growing need for democracy and better treatment of women meant groups were not as united as before. Women’s organisations now had a wider reach of issues not tied to nationalism. Issues such as access to clean water, GBV and health care now become publicised in the social and political spheres (Britton and Fish, 2009. p.12). The dominant position that the emancipation of women was secondary to national liberation in male headed organisations began to change. Under the ANC, women had another opportunity to network with other organisations focused not just on the anti - Apartheid struggle. The formation of the United Democratic Front (UDF) in 1983 brought nearly 400 democracy and women's movements together, including the FSAW (Geisler, 2000, p.609).

For Hassim (2006) women did not necessarily choose to advocate only either for nationalist or gender equality goals. Hassim rejects the traditional feminist view that explains women’s political participation as either ‘an instrument for nationalist mobilisation’ or a ‘vehicle for feminist politics’ (*ibid*. p.246). Instead of viewing female contribution as either nationalistic or feminist, all movements were embedded within and influenced by the anti-apartheid movement. Feminism itself was viewed suspiciously, being seen as Western ideology that did not fit in with the goals of the anti-apartheid movement. Many activists viewed feminist issues as exclusively belonging to sexual and reproductive rights, not concerned with the general problems faced by the majority of black South African women (*ibid*. p.29). Though there was more awareness of gender equality under boarder national movements, women were still not able to fully address the issue.

IV. Entering The New Democracy

Some scholars maintain that sexual violence has roots in the construction of dominant masculinities from a patriarchal society influenced by the Apartheid legacy. Just like the Apartheid State used violence to regulate the black community, GBV uses the same method to regulate women’s behaviour in the public and private spheres (Moffet, 2009). Moffett seeks to show through a feminist framework that forms of GBV, rape in particular, undercut gender equality gains of the post - Apartheid State. The use of violence as an effective tool of social control undermines the political power gained by women in the new democracy (*ibid*. 2009). Similarly, Moolman (2009) also explains that the dominant behaviour of violent and sexualised masculinity needs to be addressed in order to put an end to discrimination against women. Moffet explains that the ‘political space for women in South Africa has invariably been carved out in ways that do not undermine the variety of interlocking patriarchies in society’ (2009, p.171). This has meant that the underlying and root causes that contribute to gender inequality were not resolved despite the readily acceptance of women in the political sphere. The percentage of women in Parliament grew considerably from 2% before the 1994 elections to 24% just after and has continued to grow aided by political party quotas (Britton, 2005, p,1). Between 2010 – 2014 women made up an average of 42% of Parliamentarians, making South Africa one of the few countries to have such a high ratio (World Bank, 2015, Indicators). The situation in South Africa has created a contradictory situation where women’s have rights to political participation and citizenship but female subordination is still required as patriarchal privilege remains untouched (Mofett, 2009). These observations have been similar to other scholars who point out that women’s political activism in the years prior to 1994 did not lead to successfully challenge against gender inequality.

Another example of contradictory effects for women has been during the initial uptake of women activists that became politicians after the 1994 elections. Most of these women were o f elite and highly educated backgrounds consequently meaning that socio-economic issues of other women may be overlooked in Parliament (Britton and Fish, 2009). Ironically, the interests of rural and poor women become more and more marginalised as educated and professional women were the only ones to enter Parliament after 1994 (Geisler, 2004). This has meant that the once influential role grassroots organisations had in State politics have now disintegrated after losing influential leaders to national politics (*ibid*. 2004).

V. Where Can South Africa Go From Here?

There are different opinions about what can be done bring about the effective realisation of gender equality for women in South Africa. Those such as Goetz and Hassim (2003) want the State to incorporate a gender sensitive approach in its accountability system in order to improve their capacity to answer to women. This includes having the capacity to enforce changes to the practice and culture in all public bureaucracies. For example, it has been argued that the low conviction rate for rape cases helps sustain and maintain a culture where the legal system all but tells women that reporting rape is useless (Toit, 2005). Hames (2006) argues that the current gender mainstreaming approach adopted by the government after 1994 needs to be re-assessed. The gap between the legal and political system which has embraced women and yet they are still marginalised is a symptom that the system needs urgent restructuring (*ibid*. pp.1326-7). In addition, scholars recognise that governments need to commit to reducing interrelated causes of inequality such as poverty across all public service institutions. In particular, interventions through the law and national institutions should pay attention to diversity of experiences of women of often marginalised women. Scholars such Toit (2005) also emphasise that interventions dealing with GBV and inequality need to have rights based approaches. GBV serves an interference with the enjoyment of other rights for women such as the right to enjoyment to good health and the freedom from torture. Yet, the reality is that there are various groups of women not living under the protection of this Constitution. It is argued that rape, one of the most committed forms of GBV in South Africa, as a form of torture relegates women to second class citizenship in South African society (*ibid*. 2005). The impact gender inequality has on interrelated rights such as access to good healthcare also takes away the State’s ability to further live up commitments for gender equality (Bauer and Taylor, 2011, p.349). Even with women in political positions, much more is needed for gender transformative agendas to become reality (Geisler, 2004). There is still the need for strong and independent women’s movements that can work with the government as well as mobilise women around common interests (*ibid*. 2004). Although States make commitments to change, they are more interested in being seen to do so and rarely implement procedures for changes (Goetz and Hassim, 2003). Effective and practical changes and not just pledges have to be made through legislation, the legal system, budgeting and the public sector.

Some scholars also agree on the important and influential role Non Governmental Organisations (NGOs) and Civil Society Organisations (CSOs) have over governments. It has been argued that effective change is needed at the grassroots level in order to see the impact on women’s political advances in nations such as South Africa. Advocates need to persuade decision makers to ensure interventions take on a holistic approach by acknowledging the connection between GBV and the enjoyment of these rights (Gerntholz and Macleod, 2014). This is needed in particular because, despite the fact that women have been readily accepted in politics and have equal rights under legislation problems still lie within the structures of the State (Britton and Fish, 2009). Scholars are in agreements that acknowledgement of a holistic approach in dealing with GBV and inequality is a responsibility not just for the government, but also for civil society. Negotiations to effectively confront inequality should be done with organisations that work directly with the public (*ibid*. 2009). CSOs have been central in negotiating for gender rights in a context where deep contradictions exist, having the ability to be agents of social change (Britton and Fish, 2009, p.2). This means there is still an opportunity for civil society to seek changes by working closely with the State. This can be achieved in 3 steps, the first being that civil society is politically mobilised and prepared (Meintjes, 2003). The second would be to develop supportive networks of female politicians to ensure gender issues are taken up by the government and the third would be discourse engagement.

Success for all the above will be easier to achieve with the mobilisation of those who have the knowledge and skills to intervene and negotiate with the State. A successful partnership between the government and civil society is needed to adequately address GBV through empowerment programmes, intervention services and legislation. These suggestions for engaging civil society are relevant to this study as it will form one of the areas to be examined. NGOs and CSOs have important roles in engaging with governments and part of this is recognised as an attribute of a rights based approach. Where this study can contribute in this field will be in exploring whether it can be argued that the approach of the government needs to be aligned with human rights standards. It will be of interest to explore the State’s the wider framework of approach when dealing with GBV and discrimination. This can help in understanding what next appropriate steps should be taken by the State for the elimination of violence against women.

VI. Summary

The works reviewed has offered detailed constructed narratives about how women participated in politics, during and after Apartheid. Most have adopted qualitative methods that have relied on one on one interviews, dissemination of public discourse on gender and document analysis of official documents. The use of the qualitative allows for the richer and more detailed analysis which has been particularly helpful in understanding and explaining some of these complex matters. Most authors are in general agreement that underlying root causes that factor in inequality are yet to addressed nationally. The success of the political incorporation of women in the immediate post – Apartheid years cannot be correlated with gender issues. The methodology used by most of these scholars has been able to offer detailed analysis although it can be argued that some lack a comprehensive approach. There is a general skew in the analysis of women’s roles in society which had been framed either through a feminist of political framework. In relation to rights based approaches, very little has been written on this which is where this study can hope to contribute to. On the other hand, there has much written on the need for lobbying the government to bridge the gap between policy and implementation through civil society.

**Methodology**

It was decided that this project will use qualitative research methodology that incorporates content and document analysis. Research data was then collected from several resources from government departments such as South Africa’s Department of Women (DOW), The South African Parliament and The Commission on Gender Equality (CGE). Questions have been chosen to focus on questioning whether the government have shown evidence of a right based approach since 1994 when dealing with GBV through legislation and policy actions plans. The use of a qualitative method is advisable when conducting in depth analysis of content, helping to dissect complex issues (Ritchie, 2003, pp.28-32). Qualitative methods of analysis also allow the researcher to examine a set of documents, look for common themes and substantive meanings behind the data (Spencer, Ritchie, and O’Connor, 2003, pp.200-202). Though governments may strongly acknowledge issues surrounding GBV in public, efforts to carry out effective interventions do not always match the same level of dedication. Using this method of analysis will help to see how the South African government have tried to implement changes in tacking violence against women. An analysis of official government documents represents the inclusion of specialised sources that can be particularly helpful for content analysis (Ritchie, 2003, p.33). Other sources have been analysed such as police reports and South Africa’s reports to international monitoring bodies such as the CEDAW Committee.

In addition to reviewing published resources, it was the hope of this researcher to conduct interviews with representatives from NGOs in South Africa. Some NGOs that worked on GBV and gender equality issues were contacted in order to understand the State's approach for including civil society when creating policy plans. As all these organisations were based in South Africa, I was not able to travel there in person and request interviews. Reaching out to these NGOs by email it was hoped that they would be able to conduct interviews over the phone, Skype or by email. Unfortunately this was not possible to secure interviews with any organisations. This study has created questions from guidelines in the United Nations (UN) Women’s handbook for State’s on tackling violence against women through national action plans and legislation. The questions are based on selected indicators that are the most appropriate for the type of research carried undertaken. It will focus primarily on evidence of indicators at the systemic level that can be seen through adopted legislation and national action plans.

**What Are Human Rights Indicators Of A Rights Based Approach?**

As seen in various instruments, there are international human rights standards for approaches for eliminating and preventing GBV. Due diligence for GBV seeks to accomplish three main things which are, to get governments to prevent acts, investigate acts and punish perpetrators. There are several resources that discuss State responsibility for approach and due diligence when creating legislation and national policies. In 2010, the United Nations Development Fund for Women (UNIFEM) produced the National Accountability Framework to End Violence against Women and Girls as a tool to assist governments in creating effective accountability systems. This framework was influenced by the UN Secretary General’s UNiTE to End Violence against Women campaign, Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the UN’s Declaration on the Elimination of Violence against Women (DEVAW) and the reports by the UN’s Special Rapporteurs on violence against women, its causes and consequence. Seeking to advice on accountability efforts, UNIFEM’s framework contains a ten point checklist for governments in their capacity as duty bearers to work to end violence against women and girls. The ten points all follow the due diligence standard on violence against women on State responsibility that has been discussed by the CEDAW Committee, Special Rapporteurs and DEVAW. The definition of the due diligence standard on violence against women is seen DEVAW, Article 4 explains that States should,

‘Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons (DEVAW,1993, Art 4.C).

Previous Special Rapporteurs have sought to examine due diligence, seeking to establish a framework for which States can use in approaching elimination of GBV. Some of their guidelines seek to assess national plans of action, domestic legislation, awareness raising methods and capability of the criminal justice system. The due diligence standard seeks to do the following as mentioned by the former Special Rapporteur, Ms Manjoo:

‘The due diligence standard serves as a tool for rights holders to hold States accountable, by providing an assessment framework for ascertaining what constitutes effective fulfilment of a State’s obligations, and for analysing its actions or omissions. For due diligence to be satisfied, the formal framework established by the State must also be effective in practice (UN Special Rapporteur, 2013, p.1).

In addition, the CEDAW Committee also notes that,

‘Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation’ (CEDAW Committee, 1992, GC19, para.9).

The CEDAW Committee have also given various guidelines to ensure States take ‘appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act’ (ibid. para.24.a). As mentioned by another former Special Rapporteur, ‘the potential of the due diligence standard lies in a renewed interpretation of the obligations to prevent, protect, prosecute and provide compensation and map out the parameters of responsibility for State and non-State actors alike in responding to violence’ (UN Special Rapporteur, 2006, para.103). Though the application of due diligence may vary according to the State, context and capacity of the government, the enjoyment of women's rights and the prevention of violence are seen as basic standards. Therefore in fulfilling due diligence obligations a general comprehensive system of protection and prevention must be established and must be implemented in practice. The obligation to have comprehensive systems is one of means even if the results are not perfect, but it requires States at a minimum to take reasonable measures that have a real prospect of altering the outcome or mitigating harm (UN Special Rapporteur, 2013, para.70). Ultimately, the general system and its application to specific cases should have an adequate deterrent effect to prevent violence against women.

**Study Layout**

South Africa’s Gender Equality Framework:

This section will give an overview on the framework for equality as seen in legalisation and policy. It will analyse how this has matches up to South Africa’s international commitments and obligations. It is important to understand this framework in relation to women’s rights in South Africa in relation to discrimination.

South Africa’s Responses To Gender Based Violence:

The purpose of this section is to introduce main pieces of legislation and action plans that the government have mentioned are for tackling forms of GBV. These interventions have been chosen specifically also as they frequently come up in government reports or statements regarding the elimination of GBV.

Acknowledgement Of Gender Based Violence:

This section seeks to find out if there is evidence to show that official policy through legislation and action plans have incorporated the same definition of GBV as seen under human rights.

Implementing A Cross Cutting Approach:

This section will assess whether government interventions through legislation and action plans have used a multi sector approach according to human rights standards.

Rights Based Approach For Prevention:

This section will look at evidence under action plans relating to approaches of methods taken by the government when seeking to prevent GBV.

Implementation Of Action Plans:

This section will discuss the approach taken by the government regarding implementation of action plans.

Conclusion

Recommendations

**Chapter 2**

**South Africa’s Gender Equality Framework**

South Africa has signed up to a number of international human rights instruments for the promotion of women’s rights, gender equality and the empowerment of women. Some of these are the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (AU Protocol), CEDAW and the Beijing Declaration and Platform for Action (BPfA).

Under international human rights norms are provisions for States to adopt legislation or plans for national machineries that work to prevent discrimination against women. This can be seen in calls for gender perspective policy implementation, measures to officially prohibit all discrimination and to establish national machineries (AU Protocol, 2003, Art2.c, CEDAW, 1979, Art2.b, CEDAW Committee, 1988, GC6, para.1). By fulfilling obligations under international law South Africa has strengthened and implemented legislation and its gender machinery.

The government has over the past 21 years worked to improve the way women are treated in private and public. Since 1996 there have been three governmental departments under the presidential mandate that led on gender equality matters. At first, it was the role of the Office on the Status of Women (OSW) between 1997 – 2009. This was then replaced by the Ministry for Women, Children and People with Disabilities (DWCPD). Now the newly established Department of Women (DOW) has just replaced the DWCPD in 2014. The DOW deals solely with gender equality and its main objective is for ‘the acceleration of the socio-economic empowerment of women and the promotion of gender equality’ (DOW, 2015, p.1). It was established to for the need to achieve equality, recognising that women’s rights required consolidation and effective coordination on behalf of the State. The establishment of the DOW was symbolic for South Africa, marking 20 years of democracy and 60 since the creation of the FSAW’s Women’s Charter (DOW, 2015, p.10). The DOW has just developed a strategic plan for 2015 - 2020 with detailed plans for mainstreaming socio-economic empowerment which will include social, political and economic participation, research, policy coordination and monitoring and evaluation.

In 2000, Parliament adopted the National Policy Framework for Women’s Empowerment and Gender Equality which introduced the nation’s first National Gender Machinery (NGM). The purpose of creating the NGM was to ensure that ‘achieving gender equality’ was core practice within all structures, institutions, policies, procedures, practices and programmes of government (OSW, 2000, p.II). The NGM operates as a set of four interrelated structures with the shared objective of promoting women's empowerment. When created in 2000, these structures were already in existence. The purpose of the NMG was to unite them in fulfilling shared responsibilities to effectively promote equality for women across all government areas. The main structures consists of Joint Committees in Parliament, governmental departments, the CGE and a range of CSOs, NGOs who are ‘recognised as an important component of the NGM especially in the role of monitoring implementation (DOW Beijing +20 Report, 2015, para.204).

The main vision of the Gender Policy Framework is to see a society where ‘women and men are able to realise their full potential and to participate as equal partners in creating a just and prosperous society for all’ (OSW, 2000, p.20). It sets out policies and plans to enable gender mainstreaming, key indicators, short and long term objectives as well as guidelines for monitoring and evaluation. One of the key features of the NGM is the CGE which is a constitutional body created in 1996 with the mandate to ‘promote respect for gender equality and the protection, development and attainment of gender equality’ (SA Constitution, 1996, Chapter 9, para.187.1). As the only official body that monitors the State’s obligation for equality, it has the duty to monitor, research, lobby and advice on matter concerning gender equality.

There are some issues with the State’s ability to address gender equality in domestic legislation according to a rights based approach. During South Africa’s latest review by the CEDAW Committee, concerns were raised regarding the lack of a specific Gender Equality Act, one which would incorporate the definition of discrimination seen under Article 1 of CEDAW (CEDAW Committee, 2010, para.3). In addition, the Committee also raised concerns about the lack of financial and human resources available by the State for the effective management of the NGM (CEDAW Committee, 2010, para.7). In response, South Africa admitted that they were planning on passing legislation in the near future on a specific ‘Bill for Gender Equality’ (CEDAW Committee, 2011, para.25). This proposed bill eventually came to fruition with the Women Empowerment and Gender Equality Bill (WEGEB) that was introduced into Parliament in 2013. However, after much criticism from Parliamentarians and civil society that it lacked much substance it was withdrawn and is currently under further consultation (PMG, 2014).

They also admitted before the Committee that while there was not yet a definition of discrimination articulated in domestic legislation, there were a range of other policies that embodied prohibition of discrimination against women. In particular, they referred to legislation such as the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 and the Employment Equity Act of 1998 (CEDAW Committee, 2011, para.21-23). However, concluding observations by the Committee included asking the government to implement measures to incorporate the internationally recognised definition of equality for women and to ‘take all appropriate measures to enhance women’s awareness of their rights and the means to enforce them’ (CEDAW Committee Observations, 2011, para.13.b, 14).

It is clear to see that international instruments have comprehensive definitions of gender inequality that set standards across the religious, social, political and cultural spheres (AU Protocol, Art 1b, BPfA, para. 8, 12 - 17). CEDAW states that,

‘The term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.’ (CEDAW, 1979, Art 1).

Though there is yet to be a specific definition as stated by the Committee on gender equality, the State has pointed to the Bill of Rights under Chapter 2 of the Constitution. The Bill of Rights states that that everyone is equal under the law and prohibits discrimination on grounds of gender, race and age amongst others (SA Constitution, 1996, Chapter 2, Section 9). Additionally, there are other Acts that prohibit discrimination but only under specific conditions such as employment (Employment Equity Act of 1998), healthcare (Choice of Termination of Pregnancy Act 92 of 1996) and The Protection from Harassment Act 17 of 2011. Despite the extensive legislation that embodies principles prohibiting discrimination and inequality none of these specifically address the impact on all areas of women’s lives as can be seen under official definitions. There is evidence of legislation that recognises women’s equality before the law, this can be seen in the South African Constitution. There is also evidence of a strategic framework for guaranteeing women’s equality. This in itself shows that the country has implemented some standards in recognising women’s rights for equality. Where there has yet to be changes is implementing or modifying domestic legal instruments guarantying women’s equality as set under international standards.

**Overview Of South Africa’s Responses To Gender Based Violence**

During South Africa’s last review by the CEDAW Committee, four of the recommendations given were in relation to issues raised about the government’s approach to GBV. There were concerns by the Committee that ‘violence appears to be socially normalised, legitimised and accompanied by a culture of silence and impunity’ (CEDAW Committee Observations, 2011, para.24). Mentioned also was the regret of the ‘lack of information on the impact of the measures and programmes in place to reduce incidences of all forms of violence against women and girls’ (CEDAW Committee Observations, 2011, para.24). The Committee asked the government to give priority to results of a commissioned study on violence and reconciliation in South Africa in helping to review the State's plan for combating GBV (CEDAW Committee Observations, 2011, para.25.a). Other recommendations focused on raising public awareness through the use of the media and education programmes, putting in place mechanisms of accountability to ensure implementation of legal provisions and ensuring budgets are allocated for projects and victim support. (CEDAW Committee Observations, 2011, para.25, b, c,d). This is not the only example where there have been concerns about the government’s approach in dealing with various forms of violence against women. Under the latest Universal Periodic Review (UPR) conducted in 2012 there quite a number of countries such as Spain, UK, Norway and Japan that made specific recommendations for the realisation of gender equality and elimination of GBV (UPR, 2012, pp.15-25). While aware of areas of concern, South Africa usually explains that it has put in place several pieces of legislation and action plans for elimination GBV. This section will now introduce the main pieces of legislation and action plans which have been introduced over the years by the government that have dealt with gender related offences or discrimination against women relating to forms of GBV.

I. Legislation

Domestic Violence Act 116 1998. This was the first piece of legislation to be created under the new democracy with the sole purpose of dealing with a very pervasive form of GBV. It establishes and strengthens protection for victims or potential victims through the use of protection orders, establishment of domestic violence courts and partnership with the South African Police Service (SAPS).

Promotion of Equality and Prevention of Unfair Discrimination Act 4 2000. This Act prohibits discrimination on grounds of race, gender or disability. Additionally it seeks to prevent and prohibit hate speech.

Criminal law Amendment (Sexual Offences and Related Matters) Act 32 2007. Protects women, children and vulnerable adults from sexual predators. It criminalised a wider range of offences by expanding the definition for rape and sexual assault.

Protection from Harassment Act 17 of 2011. This is an Act which seeks to protect victims and prevent all forms of harassment.

National Policy Framework, Management of Sexual Offence Matters 2013. This was the first piece of official legislation on the management of sexual offences in the new democracy. The aim of the framework is to ensure a collective shared approach for all stakeholders in the public and private sectors that deal with sexual crimes. It created a 5 year plan with the aim of eradiating sexual offences against women and children in communities.

Women Empowerment and Gender Equality Bill 2013. The introduction of this bill been controversial. Some of the reported controversy has been focussed on accusations that the Bill does not develop any new initiative for gender equality in its aim to balance historically unequal power relations. Though it passed through the lower National Assembly in Parliament, it did not get through the National Council of Provinces. It is currently awaiting further consultation by Parliament and has been withdrawn. The Bill seeks to establish a comprehensive agenda across the political, social and economic sectors, public and private sectors to that will help alleviate women from inequality. There are guidelines for promoting and implement plans for the empowerment of women through access to decision making positions and structures. Though the focus of the Bill is quite broad it includes measures to overcome discriminative attitudes and norms present in the public, for example, in the workplace.

16 Days of Activism Against Gender Based Violence Campaign. This is a global campaign held every year from 25 November to 10 December. It is an international campaign originating from the first Women's Global Leadership Institute in 1991 and has since been held in over 180 countries, giving States the chance to focus on issues around violence against women and girls (CWGL, 16 Days Campaign). The campaign brings together NGOs, CSOs, governments, UN agencies and concerned individuals. The 16 day window also features key international days such as the International Day of No Violence Against Women - 25 November, International Women Human Rights Defenders Day - 29 November, World Aids Day - 1 December and International Human Rights Day - 10 December. South Africa adopted the campaign in 1998 and has since held one every year for the past 16 years. It has allowed the government to focus and coordinate together on awareness raising campaigns, highlighting the impact of GBV in local communities and work in collaboration with a range of NGOs and CSOs. The main objective as stated by the government is to ‘increase awareness on the negative impact of VAW&C and to build support for victims and survivors of this scourge’ (DOW, 16 Days, 2014, p.3). It aims to do through a multi system approach that brings together different elements of society, a variety of governmental institutions and departments.

National Action Plan 2007 - 2009. The National Action Plan was a framework that sought to extend the 16 Days campaign into a yearlong campaign between 2007 - 2009. It was the result of a series of consultations between NGOs, CSOs and the government on strategies to deal with high levels of violence against women. The NAP initiated a series of actions and policies on the elimination of GBV over a 365 period for 2 years. Though the plan was initially focussed on 2007 - 2009, the government continued promoting the 365 Day Campaign which normally runs immediately after the 16 Day Campaign. During the years 2009 - 2013 the 365 Day Campaign was still held even though there has been no new official updated agenda or NAP. It has only been in the previous year of 2014 that an updated version on the NAP has just been launched but elements of this plan are still used today.

National Action Plan 2014 – 2016. This newer plan combines plans for the 16 Day Campaign and the immediate yearlong campaign that will proceed. The objective this time has been to call on all public and private stakeholders to implement measures for prevention. The plan requires all government departments, CSO, NGOs, education institution other stakeholders to commit to a year long programme to eradicate violence against women and children.

These were the 3 government resources used when reviewing data for the actions plans; official reports, press statements and speeches.

**Acknowledgement Of Gender Based Violence: International Human Rights Standards**

This section will focus on assessing whether South Africa has answered the following questions,

Has the government incorporated internationally recognised definition of Gender Based Violence? Are various forms of Gender Based Violence acknowledged, addressed and seen as a violation of women's rights?

When creating action plans and legislation, governments should include acknowledgements of GBV as a violation of women’s human rights, the various forms of manifestation and recognise its international definitions (UN Women, 2012a, pp.21-25, UN Women, 2012b, pp.10-12). This will help to set benchmarks for a shared understanding on what relevant and needed across all government departments that are involved in fulfilling the State’s obligations. It also allows rights holders to explicitly claim rights that are already available from duty bearers. Additionally, action plans represent the State’s public statement of ‘accountability to women themselves, to all their citizens and to the international community’ (*ibid.* p.10). By doing the above South Africa ensures its plans to eliminate GBV are aligned with an international human rights approach. The various types of GBV can be seen in instruments such as General Comment 19 of CEDAW Committee, DEVAW, African Women’s Protocol (AWP) and Beijing Platform for Action (BPfA). With these, GBV has been defined as, physical, sexual, economic or psychological harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, (AU Protocol, 2003, Article 1B, BPfA, 1995, Par.113, DEWAV, 1993, Art 1, CEDAW 1992, CEDAW Committee, 19, Par.6).

I. Legislation

Amongst the legalisation analysed it was only the WEGEB that had a definition of GBV that partially matches the standards seen under General Comment 19 by the CEDAW Committee and DEVAW, Article 1. Under this proposed Bill, GBV is defined as ‘physical, sexual, psychological, emotional or economic harm, and includes any threat to cause such harm (WEGEB, 2013, p.3). These attributes are also present under comments by the CEDAW Committee and under the DEWAV which mention that GBV includes acts that cause the physical, mental, sexual, psychological harm or suffering to women, including threats of such acts (CEDAW Committee, GC 19, 1992, para 6, DEVAW, 1993, Art 1). However, unlike these definitions, WEGEB does not specifically relate GBV to just women alone. In the definition laid out, the Bill also recognises GBV can be carried out against ‘women, girls, men and boys on the basis of their gender, sex or sexual orientation’ (WEGEB, 2013, p.3). Though the Bill seeks to ensure there is no discrimination on the basis of any ‘gender, sex or sexual orientation’ it also does not specifically acknowledge inequalities affecting women or girls on the basis on their gender.

The acknowledgment of the history and impact of gender inequality is present in human rights instruments such as the DEVAW which notes ‘that violence against women is a manifestation of historically unequal power relations between men and women’ (DEVAW, 1993, Preamble). The recognition of historical unequal gender relations and the general vulnerability of women are only alluded to very briefly under the Criminal Law Amendment Act (CLA) and National Policy Framework (NPF) (CLA, 2007, p.2, NPF, 2013, p.14). The rest of the legislation reviewed does not have definitions on GBV even when directly mentioning it.

Though for the specific purpose of tackling domestic violence, the Domestic Violence Act (DVA) recognises an extensive list of various forms of criminal acts, of which some are attributable to GBV. It establishes that physical, sexual, emotional, economic, harassment, damage to property, controlling behaviour and forced entry into the victim's residence are all attributes of violence that takes place in domestic settings (DVA, 1998, pp.2-4). For some of these it specifically establishes the definition, seeking to make clear the types of examples that can be found. For example, emotional, verbal and psychological abuse includes repeated insults, name calling and invasions of the victims’ privacy (DVA, 1998, Definitions). However, the Act itself is not for specifically addressing or tackling gender related violence against women and neither is there mention of the affect it has on other related rights of women. Though the government acknowledges its international responsibilities for ending violence against women in the preamble, there are no articles which can be specifically related to domestic violence and women alone. This has been in order to ensure that the Act is applicable to those in both heterosexual and same sex relationships regardless of gender. The CLA addresses sexually related crimes and redefines definitions to encompass a wider range of type of sexual related crimes regardless of gender. The legislation does primarily seek to protect women and children by criminalising a wide range of acts of sexual abuse, violence, sexual exploitation or grooming. The Act also admits that the previous common laws were not sufficient enough in applying the law in a non-discriminatory manner and with a coordinated approach to implementation of laws (CLA, 2007, preamble). It repealed the common law offence of rape and replaced it with an extensive definition of rape which now includes all forms of penetration without consent and regardless of gender (CLA, 2007, p.1). It also replaced common law offence of indecent assault, replacing it with a new statutory offence of sexual assault applying to all forms of sexual violation without consent and assault (CLA, 2007, p.1). In doing so it explicitly addresses manifestations of GBV. This piece of legislation also acknowledges in the preamble that sexual offences affect the right to equality, right to privacy, right to dignity and the right to freedom and security of the person as evident under the South African Constitution (CLA, 2007, p.1).

II. Action Plans

We can see how the South African government have defined GBV in the Kopanong Declaration, the 2014 Concept Paper for the 16 Day Campaign and 365 Day Campaign speeches by Ministers and President Zuma. The 2014 Concept Paper leads with the strongest evidence of addressing and explaining various forms of violence. In section two, it states the following,

‘Violence takes many forms, for example:

1. Physical violence in the form of domestic violence, terrible violent crime such as murder, robbery, rape and assault.

2. Emotional violence and trauma at many levels caused by many factors. Women and children in their homes, at work, at schools, on our streets, in our communities suffer this form of violence for various reasons.

3. Another terrible blight of our democracy is the violence of poverty, starvation, humiliation and degradation, especially against women and children. Poverty, inequality and unemployment are conditions under which violence thrives’ (DOW Concept Paper, 2014, p.4).

Additionally, President Zuma includes sexual harassment, abuse, assault, rape, corrective rape, domestic violence and harmful cultural practices in his opening statement at the launch of the 16 Day Campaign for 2014 (Zuma Speech, 2014). In her speeches launching the 2012 and 2013 16 Day Campaigns, Minister Xingwana of the DWCPD acknowledged GBV as sexual harassment, abuse, brutal assaults, rape, brutal murders, domestic violence (Xingwana, 2012, 2013). In the documents concerning the creation of the first NAP, only one made direct acknowledgement of violence being a human rights violation according to international norms. The then Deputy President, Ms Phumzile Mlambo-Ngcuka acknowledged during the 356 Days of Action Conference that GBV affected equality rights, privacy and freedom, security rights and basic freedoms (365 NAP Report, 2006, pp.130-131). Though two other documents made connections with GBV and rights, it was in acknowledgement of general wider human rights as opposed to listing specific rights affected. The Kopanong Declaration, which helped launch the first NAP also mentions rights related to human dignity, socio - economic rights, rights concerning reproduction and rights concerning security and control over one’s body. (NAP, Annex A, 2006, p.58). However with the Kopanong Declaration, the context of that acknowledgement is not specific to victims of GBV, but rather a commitment to the ‘fundamental provisions of the Constitution’ for equality for all (NAP, Annex A, 2006, p.58).

III. Vulnerability

In seeking to address various forms of violence it should be important for States to recognise how women in differing situations are affected by GBV. This is in particular for those that are more vulnerable in specific situations. Though the DVA mentions that most victims of domestic violence are vulnerable women, it does not define who they could be. Neither does the Act specifically address groups of women that are more vulnerable. For example, there is no evidence that show distinctive approaches for women living in marginalised communities, sex workers, those living with HIV or AIDS. However, it does define a variety of living domestic situations that women could be in and manages to cover minority groups. Rather than defining domestic living situations as only married opposite sex relationships, it also included same sex relationships, single parent families, cohabiting couples and those just in a romantic relationship. The CLA on the other hand recognises the particular vulnerability of women and children victims involved in sex work and trafficking. Though not specific to gender, the CLA seeks protection from sexual exploitation and grooming of anyone with learning difficulties (CLA, 2007, Chapter 4). For those women who may be possibly infected with HIV from perpetrators of violence, the CLA provides the SAPS with tools to obtain tests for offenders (ibid. Chapter 5.3). Additionally, victims will be given free medical assistance and advice, including tests for infections at health establishments. Purposely carrying out sexual assault with HIV status is also a prosecutable offence under this legislation.

It has been under the NPF where there has been the strongest evidence of recognition that women are particularly vulnerable to sexual violence due to their circumstances. This was something the CLA and the DVA both failed to do but which the NPF rectified. Women are recognised as vulnerable ‘mainly due to gender power imbalances in society, as well as the prevalence of discrimination against women’ (NPF, 2012, P.14). Though the NPF is not specifically geared to women alone it still manages to address core issues that face women affected by GBV through various types of sexual offences. The framework was established on core principles meant to place responsibility on the State to help victims, offer appropriate services and equal access to all services. It borrows principles from the National Policy Guidelines for Victim Empowerment (VEP) which sets guidelines for the State to ensure that ‘victims of crime and violence with special focus on women and children’ are empowered and not re – victimised (VEP Newsletter, 2009). The guidelines of this legislation are set within a restorative justice framework to ‘create a common understanding of victim empowerment amongst various state departments, victims, perpetrators (and) non-profit organisations’ (VEP, 2009, p.4). Recognising that women are the more vulnerable to violence, the VEP prioritises victims of domestic violence, sexual assault and rape under its guidelines for national and local government departments as well as CSOs.

IV. Summary

The assessment of the government’s adopted approach with the above indicators brings to light gaps where changes can be made. As evidenced in these sources there is some but not a strong enough awareness of gender inequality, its impact on women through various forms of violence and how this affects other related rights. There is no strong evidence of an explicit and consistent connection to the State’s obligations as defined under international human right law for the main interventions and legislation. Though the government do mention abuses of victims, there is no rhetoric on the obligations of the state in addressing or preventing human rights violations as mentioned by international instruments. When there have been some connections, it does not fully incorporate standards as seen under international norms.

There are other human rights that are affected with the presence of violence against women. Rights affected are those such as, the right to life, the right not to be subject to torture, cruel inhuman or degrading treatment or punishment, the right to equality and the right to equal protection under the law (DEWAV, 1993, Art 3, CEDAW Committee, 19, Par 7). Apart from general comments on inequality and discrimination, there is no evidence of awareness of the interrelated rights and how the impact affects women in the social, cultural and economic spheres. This has also been agreement with some scholars that Stated should address and acknowledgements the effects of gender inequality through GBV that violate other interrelated rights such as the rights to health.

Though seeking to reach out to men and include them in interventions, there is little evidence that directly connects GBV to the wider impact of gender inequality. As seen in the preamble of the DEVAW, it recognises and acknowledges the ‘historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women’ (DEVAW, 1993). Unequal gender relations and the wider framework of how this affects forms of violence should be addressed as violence is one of the various forms of discrimination against women. GBV does not happen in a vacuum, it is often interrelated and embedded with discrimination against women across the social, cultural, political and economic spheres.

**Importance Of Implementing A Cross Cutting Approach**

This section will discuss where there has been evidence of a cross cutting approach and will seek answers to the following question,

Have there been efforts to incorporate the social, political and legal frameworks?

States should ensure efforts to embody an approach that includes the ‘meaningful participation of civil society and other stakeholders throughout the process of their development, implementation and monitoring’ (UN Women, 2012b, p.19). For example, this should be seen in a multidisciplinary approach in addressing GBV through collaboration with the police, social and health services (UN Women, 2012a, p.11). Participation of civil society and other stakeholders in creating and establishing action plans ensures the development of a solid foundation of knowledge and unity in fulfilling nationwide objectives. According to UN Women ‘consultation with civil society during the development of National Plans of Action’ is seen as an absolute minimum (UN Women, 2012b, p.20). Full and meaningful participation of stakeholders also means they are invested with some power being part of the decision making process. Supportive structures enabling cooperation among stakeholders as well as the State should be embedded into all plans. This would lead to better and more meaningful coordination efforts, thereby creating much more impact as information and best practice efforts are shared (UN Women, 2012a, p.1, UN Women, 2012b, p.17-21).

I. Legislation

The NPF is the legislation with the strongest evidence of a cross sector approach when dealing with sexually related offences. The framework was created to oversee the implementation of the objectives of the CLA. An Intersectoral Committee was established to manage the creation and to monitor the outcome of the NPF’s five year plan. Representatives from the following State departments were on the Committee, the Department of Justice and Constitutional Development (DOJ&CD), SAPS, Department of Correctional Services (DCS), Department of social development (DSD), Department of Health (DOH) and the National prosecuting authority (NPA) (CLA, 2007, Section 3). The creation of the Committee was a joint effort from various government departments in an effort to coordinate the ‘planning, resource allocations and execution of services’ regarding sexual offences nationwide (NPF, 2012, p.7). One of the principles of the NPF is for the purpose of creating an ‘efficient and holistic response to the management of sexual offences requires a multidisciplinary and intersectoral approach’ (NPF, 2012, p.18). It called upon partnership between the ‘correctional services, social development and health and the National Director of Public Prosecution’ when creating the NPF (CLA, 2007, para. 62.1). In particular, it placed emphasis on the need to ‘ensure a uniform and coordinated approach by all Government departments and institutions’ (CLA, 2007, para. 62.1.a). A similar approach was evident during the consultation period for the WEGEB with feedback being received from government departments, the private sector, educational institutions and NGOs. Some of these included the CGE, Price and Waterhouse Coopers, Women’s Legal Centre and the Gender Health and Justice Research Unit from the University of Cape Town (WEGEB, 2013, p.18).

The NPF established a five year plan for all stakeholders for the fulfilment of the State's obligations in guaranteeing rights on equality, dignity freedom, and security of persons according to South Africa’s Constitution. The plan lays out instructions and responsibilities for all major national stakeholders. Parliament has obligations to oversee and monitor reporting by government departments on implementation of the CLA and to engage with CSOs (NPF, 2012, p.35). There are also specific instructions for 12 stakeholders such as the DOJ&CD, SAPS, DOH and even for CSOs and NGOs (NPF, 2012, pp.36-40). The shared responsibilities for all can be grouped into three main priorities that are, placing needs of victims at the heart of services, awareness raising on sexual offences and establishing effective monitoring. There is a strong emphasis on ensuring that legal, health and police services offer victim friendly services that grant them better access to justice, better access to test for HIV and AIDS and making sure officials are better trained to handle priorities of victims. The NPF sets detailed priority and objectives that have been listed alongside detailed corresponding actions, outputs and indicators for monitoring and evaluation. The inclusion of other stakeholders is also evident in the WEGEB which seeks to eliminate all forms of discrimination including GBV. It requires all private and public bodies to ‘develop and implement plans’ in combating GBV to ‘achieve substantive gender equality in society and the workplace’ (WEGEB 2013, Section 6). Encouraging organisations to enforce actions to prevent GBV, they must also submit their detailed plans of compliance with measures in the Act for review by the Minister of Women in the Presidency.

The DVA makes provisions for courts to give protection orders to victims or potential victims of violence. Under Section 4, a request can be made either by the complainant or a representative from the SAPS, legal counsel, teacher or health service provider. The main purpose of the protection order is to prohibit abusers from continuing the acts of violence, or from entering the home or workplace of the victim (DVA, 1998, Section 7.1). The DVA also makes provision for the SAPS to give immediate help to victims by helping them find safe shelters, getting medical treatment and arresting offenders without the need of a warrant (DVA, 1998, Section 2). Similarly, the Harassment Act makes provisions for courts to issue protection orders to stop attempt of harassment and requires the SAPS to seize any weapons from suspected persons (Harassment Act, 2011, Section 1.1, 1.3). While prohibiting any form of discrimination on grounds of gender, race or disability, the Promotion for Equality Act does not make any detailed provisions for a coordinated approach to effectively deal with any form of gender related discrimination. In terms of using a multi sector approach, it does so in reference to enabling courts to preside over discrimination cases. In addition it also instructs ‘any other component falling within the definition of the State’ such as the CGE and South African Human Rights Commission (SAHRC) to report on measures it has undertaken in complying with the legislation (Equality Act, 2000, Section 25.2). Additionally it lists a range of public and private sectors such as employment and education where this legislation will be applicable in enabling equal treatment (Equality Act, 2000, Schedule).

The creation of the National Register for Sex Offenders through the Sexual Offences and Related Matters Act has seen up to 16 868 names of convicted offenders appear by the end of 2014 (DOW, Beijing +20 Report, 2014, p.31). However, there are questions about the effectiveness of how this data can be used to understand and assess GBV. The State recently admitted that the lack of disaggregated data on sexual offences register did make it harder to monitor GBV (ibid, p.40). Under national police statistics there is only one category for crimes relating to sexual offences. According to latest figures released last year there were a total of 62, 649 sexual related crimes reported (SAPS, Crime Categories, 2014). Though there has been a slight decrease compared to the previous year, it is still difficult to see exact levels of GBV. The Sexual Offences and Related Matters in 2007 created up to 59 sexually related offences that are reported under the same category. In addition, cases that include domestic violence are also being recorded under other categories of criminal activities such as grievous bodily harm (ANC, 2014, p.8). Data disaggregation is especially needed to be able to create effective interventions that are able to prevent and target specific forms of GBV. These issues make it harder for the State and invested stakeholders to monitor and analyse the impact of legislation and policies.

II. Action Plans

As mentioned earlier, collaborative efforts were made between various government departments, CSOs and NGOs when creating the first NPA. The involvement of government ensured there was participation and representation from the justice, health, treasury and police departments (365 NAP Report, 2006, p.3, NPA, 2007, pp.10-11). Backing the conference and participation during the planning process were South Africa's then Deputy President, Phumzile Mlambo Ngcuka, Deputy Minister Nomatyala Hangan an outspoken champion of the 16 days Campaign, Susan Nkomo of the OSW and Chana Majake, the CEO of the CGE. It is also important that the government were involved and supportive of the NAP. Political support can help to establish legitimacy of plans and can also be an advocacy tool for civil society to use the measure government’s commitments. In this case, the NAP received political support as well as much needed support from those within the NGM. Political support from the highest levels places NAPs in a better position to receive ‘support, prioritisation and resourcing’ (UN Women, 2012B, p.21). Support can be in the form of leadership or oversight by State ministers, presidential decrees, legislative support or from structures that are part of the NGM. Working to end violence against women is an ongoing long term campaign, one that requires as much broad support from political structures, regardless of the political party in power. Therefore NAPs should be set up to include support at all levels of the government so the implementation of the plan can continue even if a new party comes into power.

The main goals mentioned under the NAP reflect its cross cutting approach for implementation. This can be seen in goal 4 which relates to contribution from the SAPS, goal 7 which relates to those that provide supportive services for victims and goal 6 that relates to health services providers (NGM, 2007, pp.3-4). All across the three sections of the multi sector plan is evidence of a cross cutting approach for implementation showing involvement of a range of government departments, services and civil society. All except for 4 of the 78 action points had more than one organisation or department assigned to it. Of the 78 goals, 33 were focused on prevention, 27 for responses and 18 for supportive plans for victims. Again a range of government departments were tasked with specific objectives with indicators to use for measuring the impact. These included the Department of Arts and Culture (DAC), Department of Correctional Services (DCS), Department of Education (DOE), Department of Health (DOH), Department of Social Development (DSD) and the Department of Trade and Industry (DTI). Also included were national institutions, NGOs, CSOs and media organisations such as the following,

CGE,

National House of Traditional Leaders

SAPS,

GETNET (a gender focussed training NGO)

EngenderHealth - focussed on working to reduce GBV through transformation of male attitudes and behaviours

Masimanyane Women's Support Centre

Media Institute of Southern Africa

South African National Editors' Forum

The now updated NAP for 2014 – 2016 released by the DOW is quite different to the previous plan. Documents reviewed for this only show official plans for the initial 16 Days Campaign even though the plan itself mentions the extension of campaign into the 365 day campaign. There are general objectives in regards to various departments, CSOs and NGOs, some of who were also involved in the implementation of the first NAP. A similar approach can be seen in the rhetoric in speeches by the Minister of Women in the Presidency and President Zuma. Similar to previous years there is much emphasis on following up the 16 Day Campaign with a 365 Day NAP but there is no evidence of a structured and detailed plan for it.

III. Summary

Evidence of a using a rights based approach by the South African government can be seen clearly when using the cross cutting indicator to assess their approach. The evidence reviewed strongly shows that the government has adopted a cross cutting approach that seeks to establish uniformity with various stakeholders in the public and private sector. Over the years it is clear to see that certain pieces of legislation and action plans have incorporated this approach. It also seeks to engage with and incorporate civil society as stakeholders especially in implementing action plans. This creates more opportunity for advocates to influence strategies of the State, which is what some scholars believe should be the way forward for bridging the gap between policy and action. The argument that can be made in here regarding a rights based approach is the need for consistency. For example, the first NAP had detailed objectives with timetables and action points. After that expired, the government continued with the implementing the 365 Day Campaign but without an update NAP. Then last year it whist it released a new plan for both the 16 and 365 Day Campaigns there were no details except for the initial 16 Day Campaign.

**Rights Based Approach For Prevention**

Prevention of GBV through a rights based approach should seek to address underlying root causes in order to tackle it before it occurs. Plans for campaigns and actions should have a specific focus on prevention with strategies seeking to ‘transform attitudes, practices and behaviours that support discrimination and violence’ (UN Women, 2012b, p.30). Adopting this approach to prevention also means that the State has takes on its responsibility to transform discriminatory attitudes in society on GBV. Key elements of prevention strategies should involve, raising awareness through the use of the media, targeting men and boys and community based interventions. Different groups should be included and the government need to ensure their messages are disseminated in a variety of ways to reach as many as possible. Action plans which do so are taking important steps in challenging wrongful attitudes about women and violence (ibid, pp.30-32).

I. Action Plans

One of the main goals of the first NAP was to create a sustainable awareness raising campaign for GBV prevention (NAP, 2007, p.3). There are further plans for the development of a National Communication strategy targeting the media, men, boys, vulnerable groups, cultural, educational and traditional structures (ibid, p.26). This has included hosting workshops to develop and change mindsets in partnerships with traditional community leaders, FBOs, the male population and NGOS (ibid, p.31). There were also plans to organise conferences and focus groups discussions on the interconnection with GBV, HIV and AIDS. This included hosting workshops on sexual offences, teaching about domestic violence in schools, clinics and churches as well as gender sensitivity training for those who work in human rights sector (ibid p.32). In addition were plans to develop outreach interventions in schools and communities aimed at transforming ‘gender inequalities and stereotyping’ (ibid, p.28). Plans for schools included reaching all nine provinces, gender sensitivity training, distributing education manuals and developing a strategy framework for schools. There were also objectives for special campaigns to raise awareness on low levels of rape reporting and a national campaign to address GBV and HIV and AIDS (ibid p.33). It also sought to improve and monitor GBV coverage in the media and develop guidelines on best practices (ibid p.34-35).

In tackling root causes of GBV as part of prevention, the 16 Day Campaign plan for 2014 involved reaching to different sectors of society to raise awareness on GBV. The most recent Campaign for 2014 delivered by the DOW was titled, ‘Count Me In: Together Moving a Non-violent South Africa Forward’ (DOW Concept Paper, 2014, p.4). In recent years has been much more emphasis on engaging wider communities. Recent speeches have emphasised the need for a shared communal strategy of ‘government, private sector, civil society and community members in a year-long programme to eradicate violence against women and children’ (Zuma Speech, 2014, Minister Shabangu, 2014). President Zuma acknowledged at the start of the 16 Day Campaign that,

‘This year we are reaching out to men and boys. We encourage greater participation of men in the campaign of preventing violence against women and children. We urge young men and boys as well to commit themselves to become activists against gender based violence. We are focusing our message on men as well not because South African men are abusive. It is because excluding men from participating actively in this campaign has been a serious shortcoming. Men also have solutions to offer in fighting violence against women and children. (Zuma Speech, 2014).

This has been mainly influenced by the realisation that despite the success of previous campaigns there was too much focus on a ‘victim centred’ approach that ‘did not reach out to perpetrators as part of the solution’ (DOW Concept Paper, 2014, p.3). In order to combat this, plans for 2014 included bringing ‘on board all other stakeholders that have been left out in the past 15 years of the 16 Days Campaign (ibid). The 2014 plan acknowledged that ‘religious, customs and cultural beliefs and values have often been cited as among the causes of VAW&C, therefore the purpose of the meetings with different stakeholders was to bring them on board to partner with us to find the solution to this scourge’ (ibid, p.5). By acknowledging the wider influences in society, this has allowed the government to work with other stakeholders at the local and national levels. Under the plans for the 16 day event in 2014 are objectives for engaging with NGOS, FBOs, traditional leaders, media organisations and sports societies. There is a timetable for the 16 days showing active engagement with religious organisations including male based organisations.

II. Summary

The government have incorporated methods to change wrongful attitudes and raise awareness on violence against women and children. Over the years this has been included and implemented mainly through the 16 Days and 365 Days Campaigns. They have included plans that target a range of CSOs such as male sports organisations, religious and educational institutions. These action plans show the importance of partnership with civil society that is needed to help challenge discriminatory attitudes.

**Implementation Of Action Plans**

Evaluation and monitoring for action plans create the opportunity to establish effective implementation (UN Women, 2012b, pp. 64-73). Comprehensive monitoring includes indicators that are linked to strategic objectives. Indicators should be able to capture outputs and the effects, allowing the State to easily monitor progress and achievements. Proposals should entail clearly defined objectives that are both for the short and long term in addition to information about stakeholder or entities responsible. There should also be evidence of timeframes and budgets for each major objective and the taking into account the resources that are needed. This section will focus on answering whether there are clear goals, responsibilities and budgets for action plans.

I. Action Plans

It is only in the first NAP do we see plans for monitoring and implementation. Under this plan are the listed various targets with budgets, goals and indicators under each major theme of prevention, support and response. There are 33 action points under the section for prevention over the next 2 years. Of these there are 15 that did not have a specific timeframe for completion, being classed as ‘ongoing’. The rest however do have detailed and timely plans, though there are a few that have partial timeframes. There are budgets appointed for each action except two that are related to preventing virginity test practices and raising awareness of violence in same sex relationships. The twenty seven action points under the response section have complete budgets and all except four do not have a specific timeline. These are in relation to establishing and maintaining victim friendly facilities, designing alternative forms of justice programmes, monitoring the use of rape kits and providing support for caregivers (NAP, 2007, p.38, 40, 42). Similarly, all eighteen action points under the support section are fully budgeted for and included a specific time frame.

In keeping with standards the NAP contains outcomes and output indicators for each of the total 78 action points. Under the prevention section are some examples of indicators that are clear and targeted. For example, for the action point to ‘support and document dialogue and speak-out programmes’, the intended outcome is to create ‘a conducive climate and culture to speak-out’ in helping to speak out about GBV. The output in measuring this outcome is the creation of multimedia messages in collaboration with the government, CSO’s and NGOs. There are specific targets for each type of multimedia created (NAP, 2007, p.27). Another example can be seen in the action point for establishing capacity building workshops that will raise awareness on the connection between GBV, HIV and AIDS. There are plans to train 81 (9 from each province) community volunteers to lead workshops for the creation of create 18 public awareness campaigns (NAP, 2007, p.32). For the action point to ‘provide legal advice’ for the public, the planned outcome is the creation of a national hotline and the capacity to lodge complaints online. The output will be the creation of a Concept Paper about online services and having up to 350 individuals working on the hotline (NAP, 2007, p.37). On the subject of providing assistance through shelters there are other points that have better detailed plans for implementation such as the specification for the number of new shelters to be created (NAP, 2007, p.43).

However, there are also other objectives where it may be difficult to measure the impact of reach. Under the support section, the outcome and output provided for fulfilling the action point on maintaining established shelters for victims of GBV is quite vague. The outcome will be ‘shelters that meet the needs of survivors’ and the output will be ‘well maintained shelters’ (NAP, 2007, p.43). From the general statement it is not very clear how the government and other stakeholders should judge if this action point had been successful. In addition, there is no specific timetable listed with this objective, it is assigned as ‘ongoing’. Another example can be seen in the action point from the Response section, the objective of the point is to ensure that service providers that work for victims of GBV maintain victim friendly facilities. The outcome is to establish and maintain victim friendly facilities and the corresponding output is the ‘preserved human dignity of victims and survivors’ (NAP, 2007, p.38).

The NAP established a multi sector team to serve as a mechanism to ‘ensure implementation of, and mobilisation of resources’ (NAP, 2007, p.53). Its specific role was to unite all stakeholders with the ‘common goal of ending gender violence through a concerted and collaborative campaign’ (NAP, 2007, p.56). Members were chosen from various stakeholder organisations including the government that specialised in different areas of work in relation to preventing sexual violence against women and children. The creation of the team was based on principles of those such as participation, desire to be results focussed, harnessing contributions from all sectors of society and ongoing monitoring (NAP, 2007, p.53).

II. Summary

Based on the previous NAP created in collaboration with the government and civil society is evidence of the recognition for clear targets, indicators and budgets. In addition to the inclusion of various stakeholders was the targeted objective for each one to complete. The high degree of inclusion for NGOs and CSOs has followed in the same vein as some scholars have argued for. The inclusion of NGOS and CSOs gives a chance for grassroots level advocacy to partner with the government. While in this section and in the previous there has been evidence of rights based approaches, the measurement of success for implementation could be seen as an additional indicator. Perhaps this is where insight from interviews with South African NGOs could have been very useful. It would have provided a more in depth look at how the various departments work with NGO on creating and implementing action plans.

**Chapter 3**

**Conclusion**

By exploring and trying to understand the approach of the South African government, it has been found that there is evidence showing partial cooperation with right based approaches. The creation of the NGM as part of the gender equality framework lines up with international obligations found in instruments they have signed up to. The NGM recognises the history of unbalanced gender relations and seeks to be instrumental in the realisation of women’s rights. Yet, there also need to be implementation in domestic law of the comprehensive definition of discrimination against women as per international standards. All in all the government have proven adherence to the principle of gender equality and no discrimination which is visible in the wide range of legislation adopted. When reviewing legislation and action plans for South Africa’s response to GBV, there seemed to be a general lack of an effective structure. The legislation and action plans undertaken by the State have mostly always been in response to a form of GBV or discrimination against women through violence. While this is correct in fulfilling due diligence obligations by prosecuting offender it means there has been little done to create interventions that prevent GBV. There is evidence clearly showing that the South African government have included elements of a rights based approach, there is not much emphasis on prevention. Neither is there much evidence of a structured and comprehensive legislative approach that implements a plan of action just for GBV. However, it is important to note that this is not always needed for States if already existing legislation or approaches are sufficient. It can be strongly argued that this has not been the case for South Africa when reviewing legislation and action plans implemented over the years. It is clear to see that while there is much evidence for the criminalisation of sexual offences and gender related violence, there is no legal instrument that prioritises prevention of all forms of GBV. The three questions this study sought out to answer have shown that there is no evidence of a current, well established and comprehensive package of legislation or action plans that seeks to either prevent or protect women from GBV. Yet, the argument can be made for the need to implement one as the former UN Special Rapporteur, Ms Manjoo mentioned,

‘The obligation to have comprehensive systems is one of means even if the results are not perfect, but it requires States at a minimum to take reasonable measures that have a real prospect of altering the outcome or mitigating harm’

(UN Special Rapporteur, 2013, para.70).

**Recommendations**

It is the recommendation of this researcher that the following policy should be considered for implementation by the South African government;

1. South Africa should set about implementing new legislation or adapt its current laws to incorporate internationally recognised definitions of discrimination against women and girls and gender equality.
2. South Africa should develop one piece of comprehensive legislation that seeks to define, recognise, eliminate and prevent GBV according to international standards. The main emphasis should be on prevention to address root causes.
3. For the effective implementation of this newly created legislation, it should establish a constitutional body that can monitor compliance across all State institutions such as the police and educational bodies.
4. South Africa should also integrate a system of monitoring and evaluation that can ensure progression over the years to come. It is important to create polices that are sustainable and that can continue to be implemented regardless of who is in government.
5. South Africa should also make sure NGOs and CSOs are included in the consultation process. This will ensure grassroots politics is still present and building up partnership with the government. By doing so, it means women too can get their voices heard. It is essential to include women from all backgrounds so any policy that is implemented can be relevant to their needs and rights. It will also create the chance to involve men from these organisations who can participate and who also need to be reached out to. Incorporating participation of all is essential in building a State that does all it can to prevent GBV and discrimination against women.

These recommendations should also take into account international standards for a rights based approach. Under several human rights instruments South Africa has signed up to are key guidelines to help with the creation of policy and action plans. This is essential if changes that are to be long lasting, sustainable and effective. It is also important to implement policy that is aware of all forms of GBV and how it affects different communities of women.

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