



# Laws and policies to prevent and respond to violence against women and children in South Africa

## About the Children's Institute, University of Cape Town:

The Children's Institute is a leader in child policy research and advocacy in South Africa. Our activities focus on key challenges to the well-being of South Africa's children: poverty, inequality, ECD, high infant and child mortality and morbidity, violence and abuse, and limited voice. Our purpose is to provide evidence to assist policymakers and practitioners to create policies, programmes and institutions that support the best interests of the country's children.

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This brief draws on a policy review conducted by the Children's Institute to assess the legal and policy framework in South Africa to prevent violence and to support women and children who have experienced violence. It summarises the rights of women and children and uses the global strategies to end violence as a tool to analyse the legal and policy framework adopted by South Africa. The legal framework is very comprehensive in respect of the criminal justice system, but support services are limited, and despite significant legal reform over the past three decades, little has changed in the lives of women and children. Violence is still at epidemic proportions and justice is denied to most survivors. The brief ends with some recommendations for legal reform and future advocacy.

South Africa has extremely high levels of intimate partner violence and femicide. Nationally it is estimated that 26% of women aged 18 years and older have experienced lifetime physical, sexual, or emotional abuse by an intimate partner.<sup>1</sup> However, community-based prevalence studies report much higher rates.<sup>2</sup> Children witness much of this violence against women but also experience violence themselves in their homes, schools, and communities. Ninety-nine percent of children born in Soweto in 1990 and followed up over more than two decades had either experienced or witnessed violence.<sup>3</sup> Women and children are also killed by violence in their homes and according to the South African Police Services the murder of children and women increased by 37.2% and 70.5% respectively in the first quarter of 2022 when compared to the same period in the previous year.<sup>4</sup> Reports of sexual violence and assault have also proportionally increased over the same period.

Gender inequality, patriarchal gender norms and inequitable power dynamics drive gender-based violence and femicide (GBV-F) whilst poverty, alcohol and substance abuse and the availability of guns further fuel the problem.<sup>5</sup> These factors intersect and contribute to experiences and perpetration of violence.<sup>6</sup> For example, individual characteristics, such as alcohol abuse or mental illness, do not, on their own, cause men to be violent, but they interact with other factors, such as poverty and gender norms to increase the likelihood of men using violence.<sup>7</sup> There is increasing evidence of the interconnections between violence against women and violence against children: they share the same drivers, co-occur in the same households, and have intergenerational effects that reinforce social norms and drive violence across generations.<sup>8</sup> If we are to tackle violence, change needs to occur at the individual, relationship, community and societal levels and across the life-course. **South Africa needs a legislative framework that provides for an integrated set of services that prevent violence and increase women's and children's access to justice and support services to help them heal and to prevent further victimisation.**

Women's rights activists and children's sector organisations have campaigned successfully for legal reform.<sup>9</sup> But women and children's experiences suggest that legislation is not enough to protect them from violence. In 2016, a government review of the effectiveness of programmes and institutions to address violence against women and children revealed systemic failings and a lack of political will to stop the growing tide of violence.<sup>10</sup> Successive waves of campaigning by women's rights activists have put a spotlight on the issue, for example, on 1 August 2018, thousands of women protested across all provinces in an outcry against the alarming rate of violence against women and children under the banner #TotalShutdown. A memorandum of 24 demands was handed over to the President. This led to a presidential summit in November 2018 during which he recognised gender-based violence as "a crisis that is tearing our society apart". Since then, the President has made a series of public commitments to address violence culminating in the publication of the National Strategic Plan on Gender Based Violence and Femicide (NSP) – which was drafted in consultation with civil society organisations.



# International strategies to end violence

Figure 2: How do 'INSPIRE' and 'RESPECT' compare?

INSPIRE: End violence against children	RESPECT: Prevent violence against women
Implementation and enforcement of laws	Put in place and facilitate enforcement of laws and policies*
Norms and values	Transformed attitudes, beliefs, and norms
Safe environments	Environments made safe
Parent and caregiver support	Child and adolescent abuse prevented
Income and economic strengthening	Poverty reduced
	Empowerment of women
Response and support services	Services ensured
Education and life skills	Relationships skills strengthened
Multi-sectoral collaboration	Coordination and partnership across sectors
Monitoring and evaluation	Strengthen monitoring and evaluation systems

Source: UN Women and Social Development Direct (2020) Child and Adolescent Abuse Prevented, RESPECT: Preventing Violence against Women Strategy Summary, p2.

To help states realise their obligations and to fulfil the rights of women and children the World Health Organization has developed the RESPECT and INSPIRE frameworks.<sup>20</sup> Both frameworks contain a set of evidence-based action-oriented steps enabling policymakers and programme implementers working on preventing and responding to violence to design, plan, implement, monitor, and evaluate interventions and programmes to prevent violence against women and children. The INSPIRE framework keeps children at the centre while the RESPECT framework focuses on the following strategies to end violence against women and girls:

**R – Relationship skills strengthened.** These strategies aim to improve skills in interpersonal communication, conflict management and shared decision-making.

**E – Empowerment of women.** This includes economic and social empowerment strategies that build women's self-efficacy, assertiveness, negotiation, and self-confidence.

**S – Services ensured.** This includes the delivery of a range of health, police, legal, and social services for survivors of violence.

**P – Poverty reduced.** This includes strategies to alleviate poverty that are targeted at women or households.

**E – Environments made safe.** This includes efforts to create safe schools, public spaces, and work environments, among others.

**C – Child and adolescent abuse prevented.** This includes strategies to establish nurturing family relationships.

**T – Transformed attitudes, beliefs, and norms.** This includes strategies that challenge harmful gender attitudes, beliefs, norms, and stereotypes.

Figure 3: The RESPECT Framework

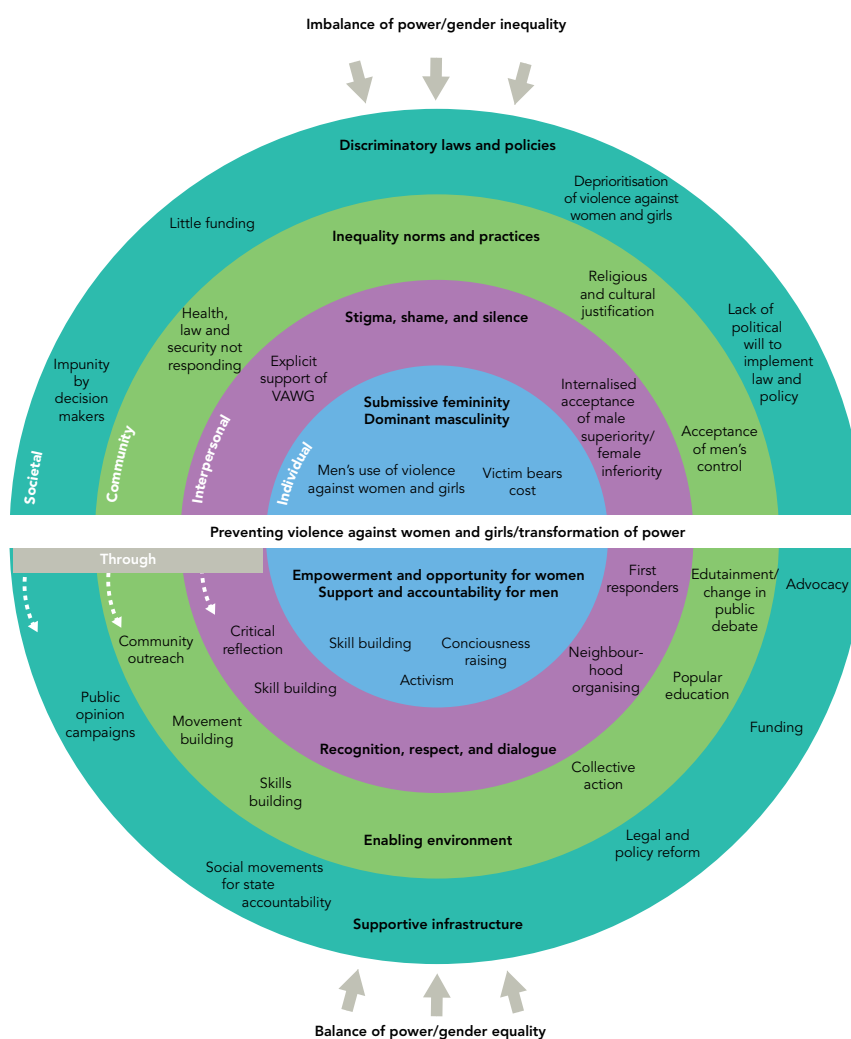
Relationships, skills strengthened	Empowerment of women	Services ensured	Poverty reduced	Environments made safe	Child and adolescent abuse prevented	Transformed attitudes, beliefs, and norms
<ul style="list-style-type: none"> <li>Group-based workshops with women and men to promote egalitarian attitudes and relationships</li> <li>Couples counselling and therapy</li> </ul>	<ul style="list-style-type: none"> <li>Empowerment training for women and girls including life skills, safe spaces, mentoring</li> <li>Inheritance and asset ownership policies and interventions</li> <li>Micro-finance or savings and loans plus gender and empowerment training components</li> </ul>	<ul style="list-style-type: none"> <li>Empowerment counselling interventions and psychological support to support access to services (i.e. advocacy)</li> <li>Alcohol misuse prevention interventions</li> <li>Shelters</li> <li>Hotlines</li> <li>One-stop crisis centres</li> <li>Perpetrator interventions</li> <li>Women's police stations/units</li> <li>Screening in health services</li> <li>Sensitization and training of institutional personnel without changing the institutional environment</li> </ul>	<ul style="list-style-type: none"> <li>Economic transfers conditional/unconditional cash transfers plus vouchers and in-kind transfers</li> <li>Labour force interventions including employment policies, livelihood and employment training</li> <li>Microfinance or savings interventions without any additional components</li> </ul>	<ul style="list-style-type: none"> <li>Infrastructure and transport</li> <li>Bystander interventions</li> <li>Whole School interventions</li> </ul>	<ul style="list-style-type: none"> <li>Home visitation and health worker outreach</li> <li>Parenting interventions</li> <li>Psychological support interventions for children who experience violence and who witness intimate partner violence</li> <li>Life skills/ school-based curriculum, rape and dating violence prevention training</li> </ul>	<ul style="list-style-type: none"> <li>Community mobilization</li> <li>Group-based workshops with women and men to promote changes in attitudes and norms</li> <li>Social marketing or education and group education</li> <li>Group education with men and boys to change attitudes and norms</li> <li>Stand-alone awareness campaigns/single component communication campaigns</li> </ul>

Adapted from: RESPECT women: Preventing violence against women. Geneva: World Health Organization; 2019, pp10-11.

## The constitutional rights of women and children

Since the advent of democracy, South Africa has introduced a comprehensive legal framework aimed at upholding and protecting the rights of women and children. Section 12 of the Constitution enshrines the right to freedom and security of the person that includes violence *from* all public and private sources. In addition to this universal right, children have a specific right to protection *from* abuse, neglect, maltreatment and degradation, and for their best interests to be of paramount importance in any matter affecting them.<sup>11</sup> The active phrasing (to be protected from, freedom from) makes it clear that the state has a duty to take proactive steps to prevent violence from happening and to act swiftly to prevent further harm when a woman or a child has experienced violence.<sup>12</sup> The Constitution promotes substantive equality - prioritising the rights of those who are marginalised, such as women and children; and dignity is central to the value system established by the Constitution.<sup>13</sup> There are also rights to language that speak to the accessibility of services.<sup>14</sup> Finally, there are a range of socio-economic rights to access to housing, social services, social security (grants), and to health that guarantees access to support services.<sup>15</sup>

Figure 1: Transformation of power across the ecological model



## International and regional commitments

South Africa has adopted and incorporated various international legal instruments aimed at protecting women and children's rights. For example, South Africa ratified, among others, the Convention on the Elimination of All Forms of Discrimination against Women,<sup>16</sup> and the UN Convention on the Rights of the Child that obliges the state to "take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse ... including sexual abuse"<sup>17</sup>. At the regional level the Maputo Protocol on the Rights of Women includes a strong definition of violence that covers "both actual violence and acts that could lead to violence," again recognising the duty of the state to combat the drivers of violence.<sup>18</sup> The ratification of these and other instruments represents an important development in realising women's and children's rights. Together these laws oblige the government to put programmes in place that:

- tackle the drivers of violence by reducing gender inequalities and changing social norms to prevent violence against women and children from occurring;
- support families and couples experiencing strain;
- provide sanctuary and support when violence occurs; and
- ensure that the criminal justice system holds perpetrators to account.

Finally, they also provide for rehabilitation in the form of medical and therapeutic services, and support to live independently and reintegrate into the community. If fully respected these obligations would prevent and respond to violence at different levels of socio-ecological model – see figure 1<sup>19</sup>.

Table 1. South African laws by RESPECT strategies Relationship skills

<p><b>Relationship skills</b></p>	<p>Both the <b>National Strategic Plan on Gender-Based Violence and Femicide</b> and the <b>National Programme of Action to End Violence against Women and Children</b> recognise the importance of counselling and family strengthening programmes to develop positive relationships between parents and children and build healthy intimate relationships. SA has limited programmes but could draw best practice as such as <i>Bandebereho</i> or <i>Indashyikirwa</i> from Rwanda.</p>
<p><b>Empowerment of women</b></p>	<p>The <b>Basic Conditions of Employment Act</b> protects workers' rights and provides for maternity leave whilst the <b>Labour Laws Amendment Act</b> introduced parental leave. The <b>National Minimum Wage Act</b> protects low-earning (vulnerable) workers and provides a platform for reducing inequality and disparities in between men and women.</p> <p>The <b>Promotion of Equality and Prevention of Unfair Discrimination Act</b> prohibits unfair discrimination by the government and by private organisations and individuals and forbids hate speech and harassment. It also establishes Equality Courts to ensure implementation of the Act. Whilst the <b>Employment Equity Act</b> introduces measures to combat disparities in employment, occupation and income that arose from the discriminatory laws and practices under apartheid. The <b>White Paper on Families</b> calls for family preservation and strengthening and although it concentrates on reducing poverty it also focuses on GBV and child abuse by addressing underlying social and economic risks such as gender inequality and unemployment.</p>
<p><b>Services</b></p>	<p>The <b>Domestic Violence Act</b> requires the police to refer women and children to shelters. But there is no legislation to ensure the supply of shelters or other support services. The <b>Victims Support Services Bill</b> aims to plug this gap, but it is still to be tabled in Parliament.</p> <p>The <b>Liquor Act</b> and the <b>Prevention of and Treatment for Substance Abuse Act</b> aim to combat substance abuse and reduce the demand and harm associated with substance abuse including prevention programmes and treatment facilities, however the Liquor Policy aligned to WHO guidelines has yet to be adopted/implemented.</p> <p>The <b>Traditional Courts Bill</b> has been in Parliament in one form or another since 2008, currently, traditional courts have no statutory basis for their structure, functions, and powers yet they can adjudicate matters concerning marriage including assault and sexual offences other than rape. The <b>Child Justice Act</b> establishes a separate set of procedures for children in conflict with the law and sets the age of criminal capacity at 12.</p>
<p><b>Poverty reduction</b></p>	<p>Extremely high levels of unemployment disproportionately affect women and children in their care. The <b>Social Assistance Act</b> establishes a series of grants that help poor families with children, adults with disabilities, pensioners and those who foster children in alternative care. During the COVID-19 pandemic the government paid R350 to support adults with no income. These relief grants are still in payment to combat poverty and in the long-term need to be incorporated in law. Yet both the COVID relief grant and the Child Support Grant fall below the food poverty line leaving women who receive them dependent on other sources of income.</p> <p>The <b>Maintenance Act</b> requires that both parents provide financial support to their children, where the contribution is linked to their income.</p>

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<p><b>Environments made safe</b></p>	<p>The <b>Domestic Violence Act</b> provides a mechanism for victims of domestic violence to obtain a protection order, for the arrest of the perpetrator, and for police protection to prevent further domestic violence. However, English is the language of record in the courts and is used when police take statements irrespective of the language of the complainant. Forms, proceedings, and orders are all in English.</p> <p>Criminal law includes the <b>Criminal Procedure Act, the Criminal Law (Sentencing) Act</b> and the <b>Criminal Law (Sexual Offences and Related Matters Amendment Act) which</b> criminalise sexual abuse and rape and guides the arrest, prosecution, conviction and sentencing of perpetrators of violence against women and children. These acts also provide some protective measures for vulnerable victims and witnesses.</p> <p>A range of other crimes for example, harassment and online stalk are established by dedicated laws including the <b>Protection from Harassment Act</b>; the <b>Cyber Crimes Act</b>, and the <b>Films and Publications Act</b>. The <b>Prevention and Combatting of Trafficking in Persons Act</b> criminalises all acts that support the trafficking of women and children.</p> <p>The <b>Firearms Control Act</b> regulates the possession of firearms by civilians but ownership of handguns and keeping guns at home is permitted if owner is competent and the gun is licenced.</p>
<p><b>Child abuse prevented</b></p>	<p>The <b>Children’s Act</b> provides for a range of prevention and early intervention programmes to prevent violence including support for positive parenting. It also includes a system to identify, refer, support, care for and rehabilitate children who have suffered violence, where provinces must provide these services.</p> <p>The Constitutional Court has banned corporal punishment in all settings including the home. The <b>Policy on the Prevention and Management of Learner Pregnancy</b> supports pregnant learners to complete their education reducing risks of them becoming victims of violence and using it against their own children.</p> <p>The <b>South African Schools Act</b> bans the use of corporal punishment by teachers. The <b>Life Orientation</b> curriculum includes a focus on sexual abuse, life-skills training, and relationships. The Department of Basic Education has adopted a <b>Care and Support for Teaching and Learning Programme</b> and is currently upgrading and improving the curriculum to strengthen peace building. The <b>National School Safety Framework</b> aims to identify and manage risk and threats of violence in and around schools.</p>
<p><b>Transformed attitudes</b></p>	<p>The <b>National Strategic Plan on Gender-Based Violence and Femicide</b> recognises that a gender transformative approach to parenting, land reform, economic empowerment and violence prevention is necessary, but emphasises the ‘need for men specifically to transform’. Genuinely transformative programmes work with men and women together not separately. The NSP also includes training for some officials, but minimum requirements should be incorporated into law especially for sexual abuse cases. Professionals need to know the law and be able to implement it in a gender-sensitive and trauma informed way. Yet, there are no programmes with national reach and no clear plans for scale-up.</p>

RESPECT serves as a useful framework for analysing South Africa’s approach to ending violence as it articulates with the NSP GBV-F. Table 1 maps South Africa's law on to each of the respect strategies.

Cape Town: Children’s Institute, University of Cape Town & Save the Children South Africa. <sup>13</sup> See fn 11, section 9. <sup>14</sup> See fn 11, section 6. <sup>15</sup> See fn 11, sections 26, 27, 28. <sup>16</sup> Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW) 1979 <sup>17</sup> UN Convention on the Rights of the Child, Article 19 <sup>18</sup> Protocol to the African Charter on Human and Peoples’ Rights <sup>19</sup> Michau, L., Horn, J., Bank, A., Dutt, M., & Zimmerman, C. (2015). Prevention of violence against women and girls: lessons from practice. *Lancet*, 385(9978), 1672–1684. <sup>20</sup> World Health Organization (WHO) (2016), *INSPIRE: Seven Strategies for Ending Violence Against Children, July 2016*; World Health Organization. (2019). *RESPECT - seven strategies to prevent violence against women: key messages*. World Health Organization. <sup>21</sup> Artz, L. (2014). National and international laws and policies to reduce intimate partner violence. Chapter 37 in P.D. Donnelly and C.L. Ward (eds.) *Violence: A global Health Priority*. Oxford, UK: Oxford University Press. <sup>22</sup> Eliminate all forms of violence against women and girls SDG Target 5.3; Eliminate all harmful practices, such as child, early and forced marriage, and female genital mutilation; SDG Target 16.1 Significantly reduce all forms of violence and related death rates everywhere; SDG Target 16.2 End abuse, exploitation, trafficking and all forms of violence against children <sup>23</sup> South African Police Services. (2021). *Crime statistics: April 2020 – March 2021*. Pretoria: SAPS. <sup>24</sup> Jewkes, R. K., Dunkle, K., Nduna, M., & Shai, N. (2010). Intimate partner violence, relationship power inequity, and incidence of HIV infection in young women in South Africa: A cohort study. *The Lancet*, 376, 41-48. <sup>25</sup> Machisa, M; Jina, R., Labuschagne, G., Vetten, L., Loots, L; Swemmer, S., Bonita Meyersfeld, B., Jewkes, R. (2017). *Rape Justice In South Africa: A Retrospective Study Of The Investigation, Prosecution And Adjudication Of Reported Rape Cases From 2012*. Pretoria, South Africa. Gender and Health Research Unit, South African Medical Research Council. <sup>26</sup> Titi, N; Jamieson, L & Vetu, S (2022) Closing the gaps in services that respond to violence against women and children. Cape Town: Children’s Institute, University of Cape Town. <sup>27</sup> Department of Women Youth and Persons with Disabilities. (2021). Overview National Strategic Plan on Gender Based Violence and Femicide Roll-Out Year 1. Department of Women Youth and Persons with Disabilities: Republic of South Africa. <sup>28</sup> Sandisiwe Shoba ‘Implementation of National Strategic Plan on GBV moves at snail’s pace’ <https://www.dailymaverick.co.za/article/2021-08-30-implementation-of-national-strategic-plan-on-gbv-moves-at-snails-pace/>

## Conclusion

Women and children's rights are enshrined in international, regional, and constitutional law.<sup>21</sup> These rights place an obligation on the government to put laws, policies, and programmes in place to prevent violence from happening, to protect victims from further harm, and to support them to rehabilitate physically, emotionally and reintegrate into society independently without fear of further victimisation. The international community has agreed that ending violence is a strategic priority if humanity is to prosper and build a sustainable future, setting targets as part of the Sustainable Development Goals.<sup>22</sup> Hence, it has developed sets of strategies to help governments and civil society to end violence against women and against children.

In response to heavy pressure from the women and children's rights activists in South Africa the government has adopted a comprehensive set of laws to strengthen the criminal justice system. The legal framework criminalises a comprehensive set of sexual offences and diverse array of forms violence directed at women and children. Women and children can have perpetrators removed from their homes and ask for their weapons to be confiscated. Victims and their families have a right to be informed throughout the process and to input into bail, sentencing and parole hearings. There are specialised courts and procedures to protect vulnerable groups, however, all proceedings are conducted in English with an interpreter where necessary. And whilst there are measures in place to ensure that victims receive medical treatment and containment counselling there is a gaping hole in the legal framework due to the lack of provisioning legislation for preventative programming, interventions to change gender norms, support, and therapeutic services.

Additionally, there are few statutory measures to combat the drivers of violence. The lack of poverty reduction measures including economic empowerment provisions for women and children leaves them in positions of dependency. Gun control laws are not aligned with international and regional frameworks they allow ownership of handguns for self-defence. Alcohol is freely available, and a suite of legislation designed to prevent alcohol-related harm have stalled and are yet to be enacted, whilst existing laws are not enforced. Corporal punishment is banned in the home and the Children's Act provides for a continuum of services including parenting programmes and prevention and early intervention to reduce violence. The White Paper on Families would go some way to expanding the provision of prevention programmes, but it is not yet law. Cabinet adopted the National Strategic Plan on Gender-Based Violence and Femicide in March 2020, and whilst it is a comprehensive strategy it is not fully funded and has no legal standing.

Laws are fragmented and implemented in silos which results in interventions that focus on different types of violence, rather than a holistic and integrated set of strategies that address common risk factors. The mandatory standards for training of police, justice, health, and social service professionals are inadequate, consequently, negative attitudes of professionals are compounded by their lack of knowledge of law and procedure, for example, in some cases weapons and perpetrators are not removed when protection orders are granted leaving women and children at heightened risk.

Whilst, public discourse indicates that violence is seen as a violation of human rights, gendered social norms remain entrenched. As a result, violence against women and children is still endemic. More than 36,000 rapes were reported in South Africa from 2020 to 2021.<sup>23</sup> Although, there is a comprehensive set of criminal justice legislation, there is limited improvement in the response to violence. Only one in every nine cases is reported,<sup>24</sup> with only a third of reported cases getting onto the court role and less than 10% of cases resulting in a conviction - this figure is far less for children.<sup>25</sup> To make matters worse the language of record in the courts is English so indigenous languages are not used during proceeding or when the police take statements, as a result much is lost in translation.<sup>26</sup> And despite high-level political commitments the criminal justice system is not dealing with these cases quickly: in July 2020, there were nearly 31,000 GBV and femicide cases, 90% of which were backlog cases.<sup>27</sup> By April 2021, the backlog had increase to more than 79,000 cases.<sup>28</sup> These delays increase the chance of the perpetrators being acquitted and the victims being exposed to further violence. In conclusion, the legislative framework in South Africa has critical gaps around the prevention of violence and support services for survivors. While criminal law is comprehensive, women and children are not accessing justice, and intersectional vulnerabilities mean that victims who are black and poor are even less likely to get the support they need.

## Recommendations

Women and children's sector activists have successfully lobbied to improve the criminal law and the National Strategic Plan on Gender-Based Violence and Femicide outlines strategies for preventing violence, supporting victims, and strengthening the systems for supporting communities and services. However, the NSP has no legal authority, and legislation needs to be passed to bridge the current gaps. Key priorities include:

- Victim Support Services Bill with clear provisioning clauses that make State funding for services mandatory
- Basic Income Grant for adults and Child Support Grant above the food poverty line
- GBV Council Bill to empower communities to hold government accountable for delivery on the NSP and improve coordination at local level
- Firearms Control Amendment Bill to ban handguns and ownership of guns for self defense
- Allowing all official languages to be used in court proceedings and in witness statements
- Traditional Courts Bill to uphold the values of the Constitution and protect the rights of women and children under their jurisdiction

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