



Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
14 May 2021

Original: English
English, French and Spanish only

Committee on the Elimination of Discrimination against Women

Inquiry concerning South Africa conducted under article 8 of the Optional Protocol to the Convention

Report of the Committee***

I. Introduction

1. On 28 February 2013, the Committee on the Elimination of Discrimination against Women received information from 11 organizations¹ pursuant to article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women alleging that the failure of South Africa to prevent and protect women and girls from domestic violence constitutes grave and systematic violations of rights under the Convention.

2. The State party ratified the Convention on 15 December 1995 and acceded to the Optional Protocol on 18 October 2005.

II. Submission by the sources of information

3. The sources submit that the high levels of domestic violence in the State party and its failure to comply with its due diligence obligation to protect women from such violence amount to grave or systematic violations of the Convention. They allege that the situation is exacerbated by:

(a) The prevalence of harmful practices such as *ukuthwala* (i.e., elopement leading to child and forced marriages) and polygamy;

* Adopted by the Committee at its seventy-seventh session (26 October-5 November 2020).

** The present report was made public following the expiry of the six-month period provided for in article 8 (4) of the Optional Protocol to the Convention.

¹ Women's Legal Centre, Nisaa Institute for Women's Development, New Women's Movement, Ukuthula Advice Centre, Tlhoafalo Advice Centre, Tshwaranang Legal Advocacy Centre, Diocesan Social Responsibility Project, Community Advice Bureau, Free State Network on Violence against Women, Masimanyane Women's Support Centre and Mosaic Training, Service and Healing Centre for Women.



- (b) Persistent stereotypes that legitimize domestic violence and discourage women from reporting such violence;
- (c) The lack of statistical data and research;
- (d) The lack of public awareness-raising and capacity-building for law enforcement agencies and health and social workers.

III. Procedural history

4. At its fifty-sixth session, in 2013, the Committee considered the information received from the sources to be reliable and indicative of grave or systematic violations. It invited the State party to submit observations. At its fifty-ninth session, in 2014, the Committee decided to conduct an inquiry and requested the State party's consent to a visit to its territory.

5. On 23 September 2015, the State party submitted its observations. It acknowledged the high prevalence of domestic violence and its devastating impact on survivors and their families. The elimination and prevention of gender-based violence was a national priority. It had adopted a robust legislative framework and policies and mechanisms to combat domestic violence.

6. On 17 July 2019, the State party agreed to a country visit, which was conducted from 9 to 20 September 2019 by the designated members Hilary Gbedemah and Esther Eghobamien-Mshelia, and two Human Rights Officers.

7. In Pretoria (Gauteng Province), the designated members met with the Deputy Minister for Women, Youth and Persons with Disabilities, the Deputy Minister for International Relations and Cooperation and representatives of the following departments: Women, Youth and Persons with Disabilities; Social Development; Justice; Labour and Employment; Rural Development and Land Reform; Basic Education; Higher Education; Human Settlements; Cooperative Governance and Traditional Affairs; Planning, Monitoring and Evaluation; Home Affairs; and Correctional Services. They also met with representatives of the National Prosecuting Authority, the South African Police Service and Statistics South Africa.

8. In Johannesburg (Gauteng Province), the members met with the Chairperson and Commissioners of the Commission on Gender Equality, the Deputy Chairperson of the South African Human Rights Commission and the Chairperson, Deputy Chairperson and Commissioners of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

9. In Cape Town (Western Cape Province), the members met with representatives of the Office of the Premier and the following provincial departments: Environmental Affairs and Development Planning; Community Safety; Human Settlements; Social Development; Agriculture; Health; Cultural Affairs and Sport; Education; Economic Development; Local Government; Transport; and Rural Development. They also met with representatives of the National Prosecuting Authority and the Treasury of Western Cape, visited a Thuthuzela Care Centre at Karl Bremer Hospital in Bellville and police stations (also referred to as "community service centres") in Belville and Stellenbosch.

10. In East London (Eastern Cape Province), Ms. Eghobamien-Mshelia met with representatives of the following provincial authorities: the Office of the Premier; the Department of Social Development; and the Department of Sport, Recreation, Arts and Culture. She also met with a representative of the National Prosecuting Authority. She visited the Thuthuzela Care Centre at Cecilia Makiwane Hospital and a police station in Mdantsane.

11. In Durban (KwaZulu-Natal Province), Ms. Gbedemah met with representatives of the following provincial authorities: the Office of the Premier; the Department of Correctional Services; and the Department of Higher Education. She also met with representatives of the National Prosecuting Authority, the South African Police Service and Ugu District Municipality. She visited the Thuthuzela Care Centre at Prince Mshiyeni Memorial Hospital and the Magistrates' Court in Umlazi.

12. The members visited shelters and safe houses, interviewed survivors of domestic violence and met with civil society and academics.

13. The Committee expresses its appreciation for the cooperation extended by the State party. It thanks the survivors of domestic violence interviewed for their courageous testimonies.

IV. Scope of the report

14. The Committee notes that women and girls in South Africa face multiple forms of gender-based violence. However, the scope of the present report is limited to domestic violence as defined in relevant international and regional human rights instruments² and national law.

V. Legal framework on domestic violence in South Africa

15. The Constitution of South Africa of 1996 protects the right to freedom and security of the person, including “the right ... to be free from all forms of violence from either public or private sources” (art. 12 (1) (c)) and “the right to bodily and psychological integrity, which includes the right ... to security in and control over their body” (art. 12 (2) (b)).

16. In its preamble, the Domestic Violence Act (No. 116 of 1998) refers to the obligation under the Convention to end violence against women. Section 1 broadly defines domestic violence. The Act sets out a civil procedure for the complainant to obtain a protection order from a court to prohibit the respondent from committing any act of domestic violence (sect. 7). The court must also authorize the issuance of an arrest warrant against the respondent in cases of non-compliance (sect. 8 (1)). The Act requires members of the South African Police Service to render assistance to the complainant (sect. 2). National Instruction 7/1999 regarding domestic violence directs the Police Service to refer complainants to support services; assist them in finding suitable shelter and obtaining medical treatment; inform them about the remedies available under the Domestic Violence Act; serve the protection order on the respondent; arrest contraveners of protection orders; accompany complainants to collect personal property; and keep a record of all domestic violence incidents. Failure by the Police Service to comply with these duties constitutes misconduct that entails disciplinary proceedings.

² See the broader definition of “violence against women” in article 1 (j) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Domestic violence is specifically defined in article 3 (b) of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence as “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.

17. There is no specific offence of domestic violence. Acts constituting domestic violence are prohibited under general criminal law provisions on assault, harassment, rape and sexual assault.³

18. Article 211 of the Constitution of 1996 recognizes the applicability of customary law, subject to the Constitution and specific legislation.

VI. Findings of fact

A. Current political and socioeconomic context

19. Among the perceived reasons for gender-based violence in South Africa are the country's history of colonialism and apartheid, which undermined local family and household systems, strengthened patriarchal structures and was organized through a system of legitimated racist violence and inequality. Its legacies of generalized violence within all communities, criminal violence, poverty, unemployment, women's economic dependence, drug use, alcoholism and the impact of HIV/AIDS all contribute to the extremely high levels of gender-based violence.

20. On 1 August 2018, women across the State party participated in a shutdown march, demanding State action to curb gender-based violence. In November 2018, at a national summit on gender-based violence and femicide, the President of South Africa and civil society called for a national strategic plan. An interim steering committee was established in April 2019 to develop the plan.

21. Shortly before the visit of the designated members, a postal worker raped and murdered a 19-year-old female student in a post office in Cape Town. This emblematic case triggered a second wave of nationwide protests against gender-based violence. At the time of the visit, Parliament held an emergency session to discuss victim services and the criminal justice system.

22. Non-governmental organizations (NGOs) observed that the political system condones gender-based violence, recalling the acquittal of the former President, Jacob Zuma, of rape charges in 2006. A diagnostic review conducted by KPMG International in 2016 revealed that there was a lack of political leadership and oversight needed to hold the Government accountable for eliminating gender-based violence.

23. The Committee notes the publication in 2020 of the National Strategic Plan on Gender-based Violence and Femicide. In April 2020, the President announced the establishment of the Gender-based Violence and Femicide Council. Parliament approved and directed all departments to introduce gender-responsive budgeting, but did not require them to provide commensurate budgetary benchmarks or dedicated resources.

B. Gender stereotypes and sociocultural context of domestic violence

24. The Deputy Minister for Women, Youth and Persons with Disabilities explained that the high levels of gender-based violence are a result of the combination of traditional patriarchal stereotypes and oppression based on gender, race, ethnicity, region and class during colonialism and apartheid.

³ See the Criminal Procedure Act of 1977, as amended; the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007; and the Protection from Harassment Act of 2011.

25. From an early age, children learn about the binary roles of women and men. Fathers send their sons to initiation schools to “become men”, while girls in rural areas often undergo so-called virginity testing and drop out of school to get married. In a patriarchal society where women are considered the property of their husbands, domestic violence is socially accepted. Religious organizations often consider it a private matter and fear that addressing it could jeopardize family cohesion.

C. Prevalence, forms and circumstances of domestic violence

26. Statistics South Africa has not conducted dedicated surveys on domestic violence. The State party relies on administrative data collected by the South African Police Service, data received from Thuthuzela Care Centres and shelters, and academic research. According to the National Prosecuting Authority, it is difficult to collect data on domestic violence in the absence of a specific offence. Police statistics capture only registered cases, not the high levels of underreporting.

27. The Department of Justice reported that 22,211 out of 143,824 applications for protection orders were granted in 2018/19. Evidence indicates that the figures for domestic violence, including femicide, are alarmingly high.

28. Many victims interviewed at shelters had experienced violence or abandonment by their mothers, and several had lost one or both parents. Many victims returned to perpetrators because they depended on them economically or did not want their children to grow up fatherless. Victims used drugs to cope with the violence or had attempted to commit suicide. Even after leaving an abusive relationship, many continued to suffer from depression, trauma and anxiety.

29. NGOs stated that domestic violence increasingly affected children. Several victims reported that their children suffered flashbacks or began taking drugs because of the traumatic experiences of violence committed against themselves, their mothers or their siblings. NGOs referred to high levels of desensitization in schools, where many girls consider domestic violence normal.

30. Perpetrators often have low self-esteem or had experienced violence during childhood. Many victims stated that their violent partners were jealous, possessive, were abusing alcohol or drugs or were gambling.

31. Victims’ accounts of psychological violence suffered included instances of partners isolating them from their families and friends, abandoning them and their children, belittling them, accusing them of adultery, threatening to commit suicide if they left and being excessively controlling or locking them up.

32. Several victims experienced economic violence, as their partners deprived them of food, money, access to education or employment, or did not pay alimony or child maintenance following divorce. NGOs stressed that women’s limited access to resources exposed them to domestic violence.

33. Many victims described acts of physical violence perpetrated on them by their partners, who often had sadistic tendencies, or by family members, including battery with objects, kicks and inflicted burns. Others described how their intimate partners, male family members or male friends had raped them, including during childhood. The designated members interviewed the family members of women and girls murdered by their partners or fathers, respectively. They spoke to a female police officer in Cape Town whose alcoholic ex-husband, also a police officer, had killed their three children one night after a verbal fight with her. Just before the murder, she had withdrawn a temporary protection order against him.

D. Harmful practices and domestic violence

1. Abduction of girls and women for marriage (*ukuthwala*)

34. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities explained that *ukuthwala* is the consensual elopement of a bride leading to negotiations for a customary marriage. NGOs criticized *ukuthwala* as often resulting in forced marriage. In the *Jezile* case,⁴ the High Court of South Africa upheld the conviction of a 28-year-old man who had abducted and raped a 14-year-old girl following *ukuthwala* negotiations with her uncle. It held that the defendant could not rely on *ukuthwala* as a legitimate defence.

35. The Commission did not answer a designated member's question as to how the State party would ensure that *ukuthwala* took place only with the woman's free, prior and informed consent and did not result in child marriage.

2. Child and forced marriages

36. The Recognition of Customary Marriages Act of 1998 recognizes customary marriages entered into before the commencement of the Act (sect. 2). Those entered into thereafter are valid if both prospective spouses are above the age of 18 years and consent to be married to each other under customary law (sect. 3 (1)). If either of them is a minor, both parents or a legal guardian must consent to the marriage (sect. 3 (3) (a)). The Marriage Act of 1961 provides that no boy under the age of 18 years and no girl under the age of 16 years shall be capable of contracting marriage except with the written permission of the Minister for Home Affairs. The Children's Act of 2005 prohibits the marriage or engagement of a child below the above-mentioned minimum age or a child above that age without the child's consent (sect. 12 (2)).

37. NGOs submitted that the Government is reluctant to challenge customary marriages to avoid conflict with the powerful National House of Traditional Leaders. Child marriage, often involving rape, is prevalent in rural areas, where poor families receive bride prices (*lobolo*).

3. Polygamy

38. The Recognition of Customary Marriages Act recognizes polygamous customary marriages entered into before the commencement of the Act. For those entered into thereafter to be valid, the applicant's existing spouse or spouses must consent to the marriage (sects. 2 (4) and 3 (1) (a) (ii)). The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities submitted that polygamy helps to prevent children from being born out of wedlock without knowing their father and provides women with economic protection.

4. Role of traditional and religious leaders

39. Traditional leaders are not adequately sensitized to deal with victims of domestic violence. The information sources submitted that traditional leaders often return girls who report harmful practices to their families.

40. Traditional leaders and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities engage in awareness-raising programmes for rural communities on domestic violence. According to the

⁴ High Court of South Africa, *Nvumeleni Jezile v. the State and Others*, Case No. A 127/2014, Judgment, 23 March 2015.

South African Human Rights Commission and NGOs, traditional leaders often justify *ukuthwala* and other harmful practices as consensual cultural practices.

41. Victims described a culture of silence within their religious communities. One said that the police told her that her abuser, an archbishop, had “merely attempted” to rape her because he had not ejaculated in her. Despite pressure to remain silent to protect the Anglican Church, she filed a complaint. Two Muslim victims of physical and psychological violence said that they felt trapped, as they faced barriers in seeking divorce and did not want to embarrass their families. Muslim religious counsellors had advised them to “make peace” with their abusive husbands.

E. Awareness-raising and prevention

42. Institutional weaknesses, limited resources, a lack of understanding of the root causes of domestic violence and a lack of coordination limit the effectiveness of gender-based violence prevention programmes. Departmental gender focal points and municipal gender units are underresourced and overburdened with other tasks.

43. The Commission for Gender Equality, established under chapter 9 of the Constitution to monitor government compliance with gender equality legislation, lacks the authority to hold it accountable.

44. The Department of Social Development launched a “365 days of activism” campaign against gender-based violence and femicide, and conducts awareness programmes targeting men that are focused on male roles in breaking cycles of violence. At the provincial level, the Office of the Premier coordinates the implementation of programmes on gender-based violence, with minimal resources. KwaZulu-Natal Province launched an anti-rape campaign, in cooperation with national television, championed by the Premier and Zulu queens.

45. The Department of Justice conducted awareness sessions and dialogues on domestic violence and femicide with 850 participants in 2018/19. It also developed a risk assessment tool, displayed at police stations and courts, to make victims aware of why they should leave abusive relationships. The National Prosecuting Authority ran several community projects on gender-based violence. The previous Administration had initiated public truth and reconciliation hearings on gender-based violence in the provinces.

46. The Commission for Gender Equality and NGOs also raise awareness about gender-based violence. However, they expressed regret that, despite the efforts made, violent and patriarchal attitudes have not changed.

F. Role of the police and the judiciary in investigating, prosecuting and punishing cases of domestic violence

1. South African Police Service

47. According to the sources of information, police officers lack adequate training with regard to combating gender-based violence. The mandatory five-day training courses on domestic violence do not give them the capacity to apply the Domestic Violence Act and the Sexual Offences Act, conduct gender-sensitive interrogations or collect forensic evidence.

48. The officers of the South African Police Service are permanently appointed to one police station and often reside in its district. As community members, they face pressure to perform favours and are susceptible to corruption. They have reportedly informed perpetrators about the locations of safe houses.

49. The performance of the officers is evaluated using perpetrator detection, conviction and crime resolution rates. The Department of Women, Youth and Persons with Disabilities noted the absence of gender-based violence indicators in performance evaluation plans. NGOs reported that the South African Police Service is often reluctant to register cases, as they might not be resolved. A magistrate reported that police officers often discourage victims from making a criminal complaint and send them to court to apply for a protection order. They often fail to arrest perpetrators, release them without informing victims, delay investigations or seek to settle cases to avoid investigation. Cases are sometimes closed because dockets disappear.

50. Reportedly, officers are frequently influenced by stereotypes, consider domestic violence a private matter and return victims to the perpetrator or mock them. Several victims stated that the police had refused to act on their complaints. A victim of domestic violence living with HIV stated that she had slept at the Kliptown police station, outside of Soweto, for one week before her complaint was registered. The officers mocked her and took no action.

51. NGOs reported that police frequently fail to refer victims to service providers. Rape victims are sometimes not referred to medical examination or wait hours before police bring them to a Thuthuzela Care Centre.

52. NGOs explained that police officers regularly experience trauma, have no space for debriefing, suffer from depression, abuse their partners and sometimes commit suicide. The Department of Social Development stated that the officers are reluctant to seek psychological counselling because of stigmatization.

53. In a few cases, victims stated that the police had helped them. A resident of a safe house in Durban, whose husband had hit her with a chair and burned down her family's house, said that officers at the Chatsworth police station had arrested him and encouraged her to bring a complaint.

2. National Prosecuting Authority

54. From April 2012 to March 2019, the National Prosecuting Authority provided 25 training sessions on domestic violence, attended by 411 prosecutors, and 45 sessions on sexual violence, attended by 822 prosecutors. To withdraw a complaint, a prosecutor must ensure that the victim makes an informed decision. However, in situations in which the victim decides to withdraw the complaint, the law does not allow for ex officio prosecution when there is no evidence beyond the victim's testimony. NGOs cautioned that a "no withdrawal" policy could put victims at risk.

3. Courts

55. The Domestic Violence Act established domestic violence courts at the district court level to issue protection orders. Under the Sexual Offences Act, the Department of Justice designated 74 sexual offences courts at the regional court level in 2013. District and regional courts are co-located with magistrates' courts.

56. According to the National Prosecuting Authority, there has been a stark rise in conviction rates for sexual offences, from 48 to 74 per cent, since 2000, attributable to the sexual offences courts and 55 Thuthuzela Care Centres, which are one-stop facilities that refer sexual offences (65 per cent of them rape) for investigation. Academics noted that the conviction rate refers only to the 2,225 finalized court cases of the 34,558 cases reported to Thuthuzela Care Centres in 2018/19.

4. Department of Correctional Services

57. Although the Department of Correctional Services is mandated to rehabilitate offenders, it has no resources for rehabilitation programmes for gender-based violence offenders.

G. Access to remedies, protection and rehabilitation for victims/survivors of domestic violence

1. Limited access to justice

58. Victims of domestic violence face numerous barriers to access to justice, including legal illiteracy, transportation costs, limited access to legal aid and forensic evidence, and parallel justice systems that prioritize mediation. Victims from poor communities have limited access to the Internet and public transport.

59. Unlike accused persons, victims without sufficient means do not qualify for legal aid unless the perpetrator has legal representation. The South African Human Rights Commission stressed the need for a legal aid system for victims. Free legal assistance is provided by paralegals at shelters and safe houses, who refer cases to legal aid clinics.

60. When victims apply for a protection order, the magistrate can, in accordance with section 5 of the Domestic Violence Act, dismiss the application, issue an interim protection order or serve notice to the respondent to show why an order should not be issued. Except in cases of dismissal, a return date is fixed when both parties must appear. Many victims fail to appear because they fear confrontation with or retaliation by the respondent, or do not understand that the temporary protection order will be set aside and that a final protection order, which is valid for life, cannot be issued unless the victim is present. NGOs reported cases where victims were gang-raped, locked up or received death threats so that they would not attend the court hearing. Most victims seek a warning against the perpetrator rather than obtaining a permanent order or charging him.

61. NGOs reported that victims are not assisted outside of court hours. They are frequently not referred to support services and are sent back to the perpetrator. Victims must stand in line for hours, pay for transport and food and take a day off from work. Application forms are difficult to complete. Court clerks are sometimes absent or lack empathy and summarize applications cursorily. One victim said: "For the clerk, writing a protection order is just a job, but for the complainant it is her life." Owing to heavy caseloads and scarce resources, magistrates sometimes informally refer cases to religious organizations or traditional courts for mediation.

62. Victims informed the designated members that perpetrators apply for protection orders on false grounds to discredit or intimidate the victim.

63. According to the National Prosecuting Authority, the content of a protection order can put a victim at risk, for example when it merely orders the respondent to sleep in another room. Most protection orders do not prohibit further acts of domestic violence. Victims reported having been revictimized after returning home with a protection order, and stressed the need to confiscate firearms from respondents. Many victims are unaware that they must show imminent harm for an eviction order to be issued. Police stations often have no vehicle available with which to serve a protection order.

64. The Department of Justice stressed the difficulties in monitoring protection orders as civil actions. The police can intervene only in cases of a breach of a protection order – a criminal offence. Victims frequently fail to report recurring

violence or to ask neighbours to alert the police. Officers need training in screening criminal records, detecting signs of recurring violence and assessing imminent danger in order to arrest a respondent. NGOs and victims criticized the lenient sentences for breaches of orders.

65. Victims of sexual violence can file a criminal complaint at a police station or a Thuthuzela Care Centre. The designated members visited a Thuthuzela Care Centre in East London, where survivors could not gain access to health services before registering a complaint with the South African Police Service, which had a limited presence (weekdays only) at the Centre. Although the Centres have forensic units, there is a shortage of buccal sample kits for DNA testing. The Centres are concentrated in urban areas. In rural areas, any hospital can perform a forensic examination. To have a report on a medico-legal examination (“J88 form”) completed by a health-care practitioner, victims often need to spend a day at a local day hospital, as forensic examinations are not fast-tracked. The Police Service lacks vehicles to convey victims to a Centre or to hospital. Obtaining an examination at a mental health forensic facility can take months.

66. Another barrier is the long delays in court proceedings. Courts frequently adjourn hearings and change magistrates or the social worker assisting the victim. Court files sometimes have different case numbers relating to the same case. In the absence of a centralized electronic case management system, consolidating them takes time.

67. The South African Human Rights Commission noted that judges and prosecutors require training in relation to rape and gender-based violence, as victims are often subjected to retraumatizing cross-examinations or victim blaming, for example having to answer questions about what they were wearing at the time of the rape. NGOs reported that law enforcement officials allow victims to withdraw their complaints and label them as “regulars” when they come back, which can result in a victim’s murder or suicide. A sexual offences court magistrate confirmed gender bias among judges without specialized training.

68. NGOs submitted that sentences in domestic violence cases are lenient. Victims often plead that their abusive partner not be sentenced so that he can keep his job. The National Prosecuting Authority stressed the need to harmonize the maximum sentence imposable by district courts (three years) with the maximum penalty for offences in domestic violence cases (five years).

69. According to NGOs, the majority of victims do not report domestic violence or withdraw complaints because of shame, self-blame, family or community pressure, economic dependence, mistrust of the police and judiciary, or fear for their children or of retaliation and stigmatization. Sometimes families settle cases financially. Some victims confirmed that they did not file a complaint or apply for a protection order because of family pressure. NGOs submitted that rape is not taken seriously enough in traditional communities, where mothers often prevent their daughters from filing complaints. The National Prosecuting Authority was of the opinion that traditional leaders should do more to raise awareness about gender-based violence and destigmatize victims. While some victims said that it was their own decision to drop their case, many said that the perpetrator had intimidated them. Shelter directors noted that perpetrators are often set free or released on bail and retaliate against the complainant. Activists for lesbian, bisexual, transgender and intersex women noted a high risk of secondary victimization for transgender complainants at police stations and courts.

70. NGOs stated that victim-friendly rooms at police stations are often dilapidated or used by officers to sleep or have sex. In Western Cape Province, 18 of 151 police stations have victim-friendly facilities run by volunteers. The designated members

visited a well-equipped victim-friendly facility at the Belville police station and a basic victim-friendly room at the Stellenbosch police station. NGOs submitted that volunteers often fail to comply with checklists and are too complicit with police officers. The designated members met two volunteers at Belville, who showed awareness of gender-sensitive protocols.

71. Of the victims in sexual offences cases reported to Thuthuzela Care Centres and finalized at court in 2018/19, 988 were under the age of 18 years and 960 were 18 years or older. The National Prosecuting Authority noted that many teachers, social workers and police officers fail to report child abuse in their communities.

72. The Chair of the Gender-based Violence Committee at KwaZulu-Natal University emphasized that its gender-based violence policy must be strictly implemented to address the high incidence of sexual violence, including intimate partner violence, within the University.

2. Lack of victim support

73. Thuthuzela Care Centres were introduced in 2006 to reduce secondary victimization of survivors of sexual violence and increase conviction rates. The Centres are located at public hospitals and perform forensic examinations and provide counselling and medical treatment to survivors. According to the National Prosecuting Authority and NGOs, the Centres, which receive funding from the Department of Social Development and international donors, are underfunded. In the past four years, no additional Centres have been opened. They lack qualified social workers for psychosocial interventions. NGOs reported that many Centres are dilapidated and do not operate around the clock. Rape victims, including children, have to wait in pain until a doctor is on duty, especially at night or on weekends. Medication is often expired and stocks disappear.

74. The designated members visited Thuthuzela Care Centres in Cape Town, Umlazi (near Durban) and East London, which serve up to eight districts in total. The procedure for intake of victims was similar. After initial counselling by a social worker or NGO representative, the victim sees a nurse for post-exposure prophylaxis and HIV testing and a medico-legal doctor for a forensic examination. The victim has up to five days to decide if she wishes to file a complaint with the South African Police Service. If the victim is under 16 years of age, the Police Service must open a case. At Umlazi, police officers are on site around the clock. Free abortion is available up to 18 to 20 weeks. Victims are referred to psychosocial counselling, which is State-funded only until the end of a trial. There is a lack of NGOs that provide counselling.

75. The Department of Social Development is the lead response agency on gender-based violence and is responsible for victim empowerment services at the national and provincial levels. With an annual budget of 46 million South African rand (\$2.65 million), victim empowerment services are not adequately resourced. NGOs fill the gap in service provision. National law does not define victim empowerment services as mandatory services. In December 2019, the Cabinet approved a victim support services bill defining the duties of every department. The Department oversees six provincial Khuseleka One-stop Centres where victims can stay up to one month, and 220 White Door Centres of Hope, which provide shelter for victims for 24 hours and can refer them to other shelters.

76. The Domestic Violence Act does not mandate the Department of Social Development to operate or fund shelters. The Department subsidizes NGO-run shelters based on a daily benchmark allocation per resident that varies significantly by province, provided that the NGO concerned has infrastructure in at least four provinces. Daily rates for shelter residents are significantly lower than for prison inmates. A 2019 Commission for Gender Equality report on the state of shelters in

South Africa revealed a lack of funding. In Western Cape Province, where Department subsidies are highest, they cover 40 per cent of shelter budgets. Many shelters are not accredited by the Department and those that are raise funds to supplement the shortfall. The Commission for Gender Equality and NGOs stressed that all provinces should use the same funding model. International donors usually require that NGOs own the land on which a shelter is located.

77. The designated members visited shelters and safe houses in Johannesburg, Cape Town, Stellenbosch, East London and Durban. Owing to their limited capacity, shelters cannot accept all victims referred to them. The shelter visited in Johannesburg could take only 25 of the 350 women requesting placement annually. All shelters visited were fully occupied. Many residents shared a room with their children or other occupants. Most shelters accept children up to the age of 12 years who accompany victims, but lack the capacity to take victims with psychiatric conditions, who wait for months to be referred to a psychiatric hospital. Many shelters are reportedly reluctant to accept lesbian, bisexual, transgender and intersex women victims.

78. Most shelters provide or refer victims to medical treatment, psychosocial counselling, drug therapy, paralegal assistance and skills training to empower them to become economically independent. Victims expressed gratitude for the help, love and attention received at shelters. NGOs noted a lack of professional training opportunities for shelter residents. Western Cape is the only province where the Department of Social Development provides a dedicated allocation for skills development in shelters. As waiting lists for low-cost housing are long, victims sometimes stay longer than 12 months at a shelter. The shelter in Cape Town provided second-stage housing for victims at risk. An estimated 25 per cent of shelter residents return to their abusers.

79. A shelter director said that funding from the Department of Social Development involved too much bureaucracy. She appealed to individual donors to pay for salaries, utilities, training, schooling, transport, maintenance and a security company. The shelter in Cape Town had 26 staff, mostly social workers funded by the Department, but had no other large donors and had an annual deficit of 6 million South African rand.

H. Autonomy of survivors of domestic violence

1. Access to affordable housing

80. Many survivors remained in an abusive relationship because they had no access to affordable housing. The Department of Social Development stated that the provision of State-funded housing was beyond its budgetary reach. Neither the Social Housing Act nor the draft national special needs housing programme prioritizes survivors of gender-based violence.

2. Economic empowerment

81. Economic empowerment is crucial to strengthening victims' resilience. Many of the victims interviewed were unemployed, received minimal child support (430 South African rand per month per child) and struggled to pay for food, electricity, school and transport. Some were dependent on food parcels and clothes from social workers.

82. The sources of information explained that joint marital property is often not shared equally upon divorce. Although customary law allows for the division of marital property, many women are unaware that they must claim it or are precluded from doing so by cultural norms.

3. Child custody and maintenance

83. The risk of losing custody or contact with their children deters women from leaving abusive relationships. The length and complexity of divorce and child custody proceedings are further barriers. Several shelter residents had not seen their children, who lived with the victim's family or the abusive father's family, for long periods, because they lived far away or were refused contact. In some cases, family members abused the children.

84. Victim interviews revealed cases in which courts did not adequately take domestic violence into account when determining child custody or visitation rights.

85. Victims face difficulties in enforcing maintenance obligations. The Maintenance Amendment Act of 2015 has improved their situation by authorizing courts to order mobile phone service providers to disclose the address of the parent in default, order an arrest or seize the salary of the defaulting parent or direct the State to advance costs. However, interviews revealed that fathers often refused, were unable to pay maintenance or paid irregularly.

4. Education costs for children

86. The designated members were concerned to learn from victims that they had to spend their meagre resources on their children's education, as only certain "no-fee schools" are exempt from the obligation to supplement government funding by charging school fees.

VII. Legal findings

A. State party's obligations under the Convention in relation to domestic violence

87. Gender-based violence against women constitutes discrimination against women under article 1 and therefore engages all obligations under the Convention.⁵ Discrimination can occur through the failure of States not only to take the necessary legislative measures but also to enforce existing laws.⁶

88. States parties have a due diligence obligation under article 2 (e) of the Convention to take all appropriate measures to prevent, investigate, prosecute, punish and provide reparations for acts or omissions by non-State actors that result in gender-based violence against women, including domestic violence. The failure of a State party to take all appropriate measures to prevent acts of domestic violence when its authorities are aware or should be aware of the risk of such violence, or the failure to investigate, prosecute and punish perpetrators and to provide reparations to victims, provides tacit permission or encouragement to perpetrate domestic violence.⁷

89. Harmful practices, including child and forced marriage, polygamy and the abduction of women for forced marriage, are forms of gender-based violence.⁸

⁵ General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, para. 21; and general recommendation No. 19 (1992) on violence against women, para. 7.

⁶ General recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 10.

⁷ General recommendation No. 35 (2017), para. 24 (b).

⁸ *Ibid.*, para. 14.

Women and girls in such unions are at an increased risk of domestic violence.⁹ States parties have an obligation to repeal, including in customary and religious laws, any provisions that allow, tolerate or condone gender-based violence against women, including child and forced marriage and other harmful practices.¹⁰

90. Under articles 2 (c) and 15, States parties must ensure that victims of domestic violence have access to affordable, accessible and timely remedies, with legal aid, if necessary, free of charge.¹¹ They must provide access to effective reparations.¹² Ensuring access to justice requires individualized assistance for illiterate women to ensure their full understanding of judicial procedures, legal literacy programmes and supportive environments that empower women to report domestic violence.¹³ It may require the reimbursement of transportation costs to courts for women without sufficient means. States parties must protect women complainants from threats, harassment and retaliation before, during and after legal proceedings.¹⁴ They should financially support organizations that provide legal assistance to victims.¹⁵

91. States parties should, under article 2 (c), protect and assist women complainants of domestic violence by referring them to specialized support services, and ensure sufficient numbers of safe and adequately equipped shelters, medical, psychological and counselling services, training opportunities and affordable housing.¹⁶

92. Under articles 2 (f) and 5 (a), States parties are required to destigmatize victims of domestic violence, including rape, by enhancing understanding of its root causes, including the legacy of apartheid, and dismantling discriminatory stereotypes and cultural norms perpetuating domestic violence, as well as commonly held victim-blaming beliefs that women are responsible for the violence that they suffer, through awareness-raising programmes that target law enforcement bodies, education, health and social services and traditional and religious leaders.¹⁷ States parties should provide mandatory and recurrent capacity-building for the judiciary, law enforcement officers and forensic medical and health-care personnel to eliminate gender bias and stereotypes; ensure the strict application of criminal law provisions, the collection and preservation of evidence and the issuance and monitoring of protection orders in domestic violence cases; and assess the impact of such measures.¹⁸

⁹ Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, paras. 22 and 27; and [CEDAW/C/OP.8/KGZ/1](#), para. 74.

¹⁰ General recommendation No. 35 (2017), para. 29 (c) (i).

¹¹ General recommendation No. 28 (2010), para. 34; general recommendation No. 35 (2017), paras. 29 (b) and 31 (a) (iii); and general recommendation No. 33 (2015) on women's access to justice, para. 17 (a).

¹² General recommendation No. 28 (2010), para. 34; and general recommendation No. 35 (2017), para. 33 (a).

¹³ General recommendation No. 33 (2015), paras. 17 (b), 33 (c) and 51 (d).

¹⁴ *Ibid.*, paras. 18 (g) and 51 (d).

¹⁵ General recommendation No. 28 (2010), para. 34; and general recommendation No. 35 (2017), para. 26 (b).

¹⁶ General recommendation No. 35 (2017), para. 31 (a).

¹⁷ *Ibid.*, para. 30 (b) (ii).

¹⁸ *Ibid.*, paras. 26 (c), 30 (b) and 31 (a); and general recommendation No. 33 (2015), paras. 29 (a) and 51.

B. Violations of rights under the Convention

1. Right to live free from domestic violence

(a) Lack of awareness-raising to prevent domestic violence

93. The Committee acknowledges efforts made by the State party to raise public awareness of the criminal nature of domestic violence and harmful practices that give rise to such violence through programmes targeting rural communities in particular. However, lack of funding and attempts by State institutions to justify harmful practices such as *ukuthwala*, child marriage and polygamy as consensual cultural practices undermine the effectiveness of these programmes. The limited impact of these measures underlines the need to take systematic and comprehensive preventive measures to address the stigmatization of victims and eliminate patriarchal stereotypes that persist in the State party, especially in rural areas, which perpetuate the social legitimization of domestic violence.

(b) Adequacy of the legislative framework

94. The Committee acknowledges the introduction of criminal penalties and protection orders to punish and prevent domestic violence. However, the failure to specifically criminalize all forms of domestic violence falls short of a clear message against this offence and is not commensurate with its extremely high prevalence in the State party.

95. The Committee notes that, under section 26 (1) of the Marriage Act, the minimum age of marriage for girls is 16 years and 18 years for men, and that the Minister for Home Affairs can authorize the marriage of a girl under the age of 16 years. It recalls its jurisprudence that child marriage is any marriage where at least one of the parties is under 18 years and is a forced marriage.¹⁹ While the Recognition of Customary Marriages Act requires consent for polygamous marriages and *ukuthwala* (sects. 2 (4) and 3 (1) (a) (ii)) and the Children's Act requires consent for marriages of children above the minimum age of marriage set by law (sect. 12 (2) (b)), they do not define the criteria for ascertaining free, full and informed consent. The Committee considers that, by failing to repeal provisions that allow, tolerate or condone child and forced marriage and other harmful practices, the State party exposes women and girls to increased risks of domestic violence.

(c) Lack of law enforcement

96. Compared with the number of cases reported to Thuthuzela Care Centres, the conviction rates for sexual offences are low (see para. 56 above). The low levels of prosecution and conviction in domestic and sexual violence cases (CEDAW/C/ZAF/CO/4, para. 24) and lenient sentences, especially for first-time offenders, are inadequate as a deterrent and incompatible with the State party's due diligence obligation under article 2 (e) of the Convention.

97. The frequent failure of the South African Police Service to assist and protect victims from revictimization and to serve, enforce and monitor protection orders, the lenient sanctions for breaches of orders²⁰ and police non-compliance with the Domestic Violence Act²¹ run counter to the obligation of the State party to provide effective protective mechanisms to prevent domestic violence.

¹⁹ Joint general recommendation No. 31/general comment No. 18 (2019), para. 20, as amended (see A/74/38, part three, decision 72/VI).

²⁰ General recommendation No. 35 (2017), para. 31 (a) (ii).

²¹ Ibid., para. 23.

98. In addition, law enforcement bodies are overly passive when investigating criminal complaints. Reluctance to register complaints, the returning of victims to the perpetrator, corruption or collusion with perpetrators and the failure to arrest perpetrators subject women to revictimization and undermine the effectiveness of police response to domestic violence. The loss of dockets and the absence of a centralized electronic case management system result in systematic failures in the investigation of cases.²²

99. The Committee notes the limited use of ex officio prosecution in cases of rape (only when the victim is under the age of 16 years) and upon the withdrawal of a domestic violence complaint. While ex officio prosecution can expose victims to retaliation, the lack of an automatic criminal justice response enables perpetrators and third parties to put pressure on victims not to file or to withdraw a complaint and gives rise to impunity for perpetrators and stigmatization of women who report domestic and sexual violence. It also notes that the heavy reliance by prosecutors on victims' testimonies as evidence weakens the criminal justice response to domestic violence.²³

(d) Lack of capacity-building and awareness-raising for the judiciary and the police

100. The Committee acknowledges the State party's efforts but notes the inadequacy and limited impact of capacity-building for judges, prosecutors and, in particular, the South African Police Service, and the need for further mandatory, recurrent and effective training on the diverse forms of domestic violence, the strict application of the Domestic Violence Act, gender-sensitive questioning and proper case management and evidence collection.

101. The frequent reluctance by law enforcement bodies and the judiciary to investigate, prosecute and punish acts of domestic violence, as well as the secondary victimization of women during legal proceedings, can be attributed to the persistence of discriminatory stereotypes within these bodies. The Committee notes that the lack of awareness-raising programmes to change traditional attitudes specifically targeted at the judiciary and police confines domestic violence to the private sphere, thereby contributing to a culture of impunity.

(e) Findings

102. The Committee finds the State party in violation of the following articles of the Convention:

(a) 1, 2 (f), 3, 5 (a), 10 (c) and (h) and 16, for failing to take sustained measures to prevent domestic violence and eliminate harmful practices by eradicating the discriminatory stereotypes and practices that are the root causes of domestic violence;²⁴

(b) 2 (b), (e) and (f), read in conjunction with 5 (a), 15 and 16, for failing to specifically criminalize all forms of domestic violence²⁵ and femicide and repeal provisions that allow, tolerate or condone child and forced marriage and other harmful practices giving rise to such violence;²⁶

²² General recommendation No. 33 (2015), para. 25 (a) (vi).

²³ Ibid., para. 51 (i).

²⁴ General recommendation No. 35 (2017), para. 30 (b).

²⁵ Ibid., para. 29 (a).

²⁶ Ibid., paras. 26 (a) and 29 (c) (i).

(c) 2 (b), (c) and (e), read in conjunction with 5 (a) and 15, by failing to effectively enforce and monitor protection orders against alleged perpetrators and impose adequate sanctions for non-compliance;²⁷

(d) 1 and 2 (b), (c), (e) and (f), read in conjunction with 3, 5 (a), 12 and 15, for failing to systematically prosecute cases of rape and domestic violence *ex officio*²⁸ and ensure that questioning and evidence collection in domestic violence cases are not influenced by discriminatory stereotypes and that women's and girls' testimonies as parties or witnesses are given due weight;²⁹

(e) 1 and 2 (c)–(e), read in conjunction with 5 (a), 12 and 15, for failing to comply with its due diligence obligation to effectively investigate, prosecute and punish cases of domestic violence, including sexual violence, and to provide effective reparation to victims; provide mandatory, systematic and effective capacity-building for the judiciary and law enforcement bodies³⁰ on the strict application of legislation prohibiting such violence³¹ and on gender-sensitive methods of investigation, cross-examination, case management and evidence collection;³² and raise their awareness to eliminate gender bias and discriminatory stereotypes.³³

2. Right to access to justice and victim support services

(a) Lack of legal aid and of measures to support and facilitate reporting by victims

103. The Committee considers that the State party has failed to create a supportive environment for women to report incidents of domestic violence by failing to destigmatize victims, dismantle commonly held victim-blaming beliefs, judicial bias and gender stereotypes and protect women complainants from retaliation by perpetrators.³⁴

104. The State party has also failed to adequately inform victims of their rights and explain judicial procedures, including the importance of showing imminent harm in order to obtain an eviction order and appearing at the hearing on the return date to obtain a final protection order, and to enable, adequately equip and hold the South African Police Service accountable for protecting and assisting victims.³⁵ Requiring victims to meet the perpetrator on the return date is incompatible with the obligation to provide gender-sensitive court procedures that protect the safety of complainants.³⁶

105. The State party has not removed the economic barriers to access to justice faced by victims of domestic violence. The lack of institutionalized affordable or, if necessary, free legal aid³⁷ (CEDAW/C/ZAF/CO/4, para. 17 (a)) and of reimbursement of transportation costs³⁸ deprives many victims without sufficient means of their right to bring their case to court.

106. The frequent delays in court proceedings in cases of domestic violence, and failure by the South African Police Service and the courts to ensure that such cases

²⁷ *Ibid.*, para. 31 (a) (ii); and general recommendation No. 19 (1992), para. 24 (t).

²⁸ General recommendation No. 35 (2017), para. 32 (a).

²⁹ General recommendation No. 33 (2015), paras. 51 (h) and (i).

³⁰ General recommendation No. 35 (2017), para. 30 (e).

³¹ *Ibid.*, para. 26 (c).

³² General recommendation No. 33 (2015), paras. 25 (a) (vi) and 51 (c), (g), (i) and (k).

³³ General recommendation No. 35 (2017), paras. 30 (e) (i) and (ii).

³⁴ General recommendation No. 33 (2015), paras. 18 (g) and 29 (a); and general recommendation No. 35 (2017), paras. 26 (c) and 30 (b) (ii).

³⁵ General recommendation No. 35 (2017), para. 23.

³⁶ *Ibid.*, para. 31 (a) (i).

³⁷ General recommendation No. 33 (2015), paras. 17 (a) and 37 (a); and general recommendation No. 35 (2017), para. 31 (a) (iii).

³⁸ General recommendation No. 33 (2015), paras. 17 (a) and (e) and 37 (a).

are not referred to mediation, constitute further obstacles to women's access to justice.³⁹

(b) Limited access to victim support services

107. The Committee acknowledges that the State party enhanced accessibility to the justice system by establishing Thuthuzela Care Centres that provide legal and social services to victims of sexual violence.⁴⁰ However, the Centres are underfunded and inaccessible for many women in rural areas, and not all of them operate around the clock. The national machinery for the advancement of women lacks sufficient authority and resources to provide the oversight necessary to set accountability standards for departments that provide victim support services. The failure by the State party to ensure the budgetary allocations necessary for victim support services (CEDAW/C/ZAF/CO/4, para. 25 (d)), such as psychiatric and long-term psychosocial services, professional training and affordable housing, undermines the right of the victim to an effective remedy.⁴¹

108. The Committee notes the inadequate protection and support services for victims of domestic violence before, during and after legal proceedings, and in particular the absence of State-run shelters for women and their children. It observes that the limited capacity of NGO-run shelters and safe houses that provide medical, psychological and legal services to victims and the lack of professional training opportunities are direct consequences of the limited financial support they receive from the Department of Social Development. It recalls that the State party cannot absolve itself of its obligation to ensure protection and assistance to victims of domestic violence by delegating the provision of such services to NGO-run shelters without adequately funding them and ensuring that their services are accessible to all victims of domestic violence,⁴² including lesbian, bisexual, transgender and intersex women.

109. The Committee considers that women's insufficient economic protection upon divorce, the inadequate consideration of domestic violence in court proceedings to determine custody or visitation rights, long delays in divorce and child custody proceedings, the limited enforcement of maintenance obligations and the State party's failure to introduce free secondary education perpetuate women's dependence on abusive partners.

(c) Findings

110. The Committee finds that the State party is in violation of the following articles of the Convention:

(a) 2 (c), 5 (a) and 15, for failing to remove economic and social barriers to access to justice faced by victims of domestic violence by not providing affordable or, if necessary, free legal aid and the reimbursement of costs for travel to courts, and by failing to create a supportive environment for women to report incidents of domestic violence and ensure gender-sensitive court procedures;

(b) 2 (c) and (e), 11 (c), 12 and 15, for failing to ensure the budgetary allocations necessary for victim empowerment services and provide appropriate

³⁹ General recommendation No. 33 (2015), paras. 51 (j) and 58 (c); and general recommendation No. 35 (2017), para. 32 (b).

⁴⁰ General recommendation No. 33 (2015), para. 17 (f).

⁴¹ General recommendation No. 35 (2017), paras. 31 (a) (iii) and 33 (a).

⁴² Ibid., para. 26 (b); general recommendation No. 28 (2010), para. 34; and CEDAW/C/OP.8/KGZ/1, para. 81.

protection and support services, including a sufficient number of adequately funded Thuthuzela Care Centres, shelters and safe houses, to women and their children;⁴³

(c) 2 (c) and (e), 10, 13 and 16, for failing to ensure women's adequate protection with regard to divorce, child custody and maintenance proceedings, and their social protection, as well as free education for their children, to empower victims of domestic violence to leave abusive relationships.

C. Principal findings of violations under the Convention

111. In the light of the foregoing, the Committee finds that South Africa has violated the following articles of the Convention: 1, 2 (f), 3, 5 (a), 10 (c) and (h) and 16; 2 (b), (e) and (f), read in conjunction with 5 (a), 15 and 16; 2 (b), (c) and (e), read in conjunction with 5 (a) and 15; 1 and 2 (b), (c), (e) and (f), read in conjunction with 5 (a), 12 and 15; 1 and 2 (c)–(e), read in conjunction with 3, 5 (a), 12 and 15; 2 (c), 5 (a) and 15; 2 (c) and (e), 11 (c), 12 and 15; and 2 (c) and (e), 10, 13 and 16. The content of these articles is further developed in the Committee's general recommendation Nos. 18 (1991), 19 (1992), 21 (1994), 29 (2013), 33 (2015) and 35 (2017), and general recommendation No. 31/general comment No. 18 (2019).

D. Grave or systematic nature of the violations

112. Pursuant to article 8 of the Optional Protocol and rule 83 of its rules of procedure, the Committee must assess whether the violations of rights are grave or systematic.

113. The Committee considers violations to be "grave" if they are likely to produce substantial harm to victims. A determination regarding the gravity of violations must take into account the scale, prevalence, nature and impact of the violations found.

114. The term "systematic" refers to the organized nature of the acts leading to the violations and the improbability of their random occurrence. The systematic denial of equal rights for women can take place either deliberately or as a result of discriminatory laws or policies, with or without such purpose. The systematic nature of violations can also be assessed in the light of the presence of a significant and persistent pattern of acts that do not result from a random occurrence.

115. The Committee assesses the gravity of violations in the State party in the light of the suffering experienced by women and girls subjected to domestic violence. It notes the physical and psychological harm caused by domestic and sexual violence, especially in child and forced marriages, as well as the adverse impact such violence may have on women's and girls' right to education, economic empowerment, sexual and reproductive health and rights, and equal rights in marriage and family relations. The situation gives women and girls who are victims of domestic violence two options: to remain in the abusive domestic relationship; or to leave the relationship at the risk of retaliation, separation from their children, poverty and stigmatization, and with limited access to justice, protection and support services. In either case, victims often find themselves without effective protection from further violence. Victims of domestic violence must thus choose between staying in the abusive relationship or enduring the social, economic and safety consequences of leaving it. In both cases, they are at risk of violations of their rights.

116. The Committee finds that the State party is responsible for:

⁴³ General recommendation No. 35 (2017), para. 31 (a) (iii).

(a) Grave violations of rights under the Convention, considering that the State party has failed to protect a significant number of women and girls from domestic violence and to provide adequate access to justice, protection and support to enable women to leave abusive domestic relationships, thereby exposing them to or unnecessarily prolonging their severe physical and mental suffering;

(b) Systematic violations of rights under the Convention, considering that the State party has knowingly omitted to take effective measures:

(i) To address patriarchal attitudes and social norms that legitimize domestic violence and to destigmatize victims;

(ii) To specifically criminalize domestic violence and femicide, enforce and monitor civil remedies against perpetrators, repeal provisions that tolerate harmful practices giving rise to domestic violence, enforce general criminal law provisions punishing domestic violence and prosecute ex officio domestic violence and rape;

(iii) To establish appropriate institutional arrangements, oversight and accountability measures to protect victims of and prevent domestic violence;

(iv) To remove the economic and social barriers faced by victims of domestic violence and create a supportive environment that enables victims to obtain access to justice.

117. The Committee considers that the State party has knowingly accepted these omissions, which are not a random occurrence, as evidenced by the extremely high levels of domestic violence in the State party. They constitute elements of systematic violations of rights under the Convention.

VIII. Recommendations

A. Legal and institutional framework

118. The Committee recommends that the State party:

(a) **Specifically criminalize and establish penalties commensurate with the gravity of all forms of domestic violence and femicide and introduce ex officio prosecution with the possibility of issuing a final warning rather than sentencing the perpetrator when a victim withdraws her complaint upon reconciliation;**

(b) **Harmonize the definition of gender-based violence across all legislation, identify the specific responsibilities of governmental departments to address domestic violence and require them to provide budgetary benchmarks or dedicated resources for gender-responsive budgeting;**

(c) **Provide dedicated funding for the implementation of the National Strategic Plan on Gender-based Violence and Femicide and ensure that the Gender-based Violence and Femicide Council is adequately resourced, independent and has a strong mandate;**

(d) **Amend section 26 (1) of the Marriage Act and section 3 of the Recognition of Customary Marriages Act to raise the minimum age of marriage to 18 years for both women and men without exception, empower courts to invalidate child and forced marriages, prohibit *ukuthwala* involving girls and the payment of bride prices and enforce the prohibition of child and forced marriage, particularly in rural areas and within traditional communities;**

(e) **Repeal provisions of the Recognition of Customary Marriages Act that allow, tolerate or condone harmful practices such as polygamy and *ukuthwala***

and amend the Act to define the criteria for ascertaining the free, full and informed consent of the women concerned;

(f) Adopt the Women Empowerment and Gender Equality Bill and ensure that it defines and prohibits all forms of direct and indirect discrimination against women and provides stronger mandates to the national machinery for the advancement of women to regulate service provision and to the Commission for Gender Equality to oversee and hold the Government accountable for the implementation of gender equality legislation.

B. Law enforcement

119. The Committee recommends that the State party:

(a) Exercise due diligence to prevent, investigate and punish domestic violence and provide effective remedies to victims of domestic violence;

(b) Ensure that perpetrators of domestic violence are not released on bail, are prosecuted and receive penalties commensurate with the gravity of the offence, as well as adequate correctional and rehabilitation services to prevent recidivism;

(c) Provide mandatory, recurrent and effective capacity-building for the judiciary, law enforcement officers, forensic medical experts, health-care personnel and social workers with regard to all forms of domestic and sexual violence, the strict application of the Domestic Violence Act and the Sexual Offences Act, gender-sensitive questioning, proper case management and the collection and use of forensic evidence, and their role in protecting, encouraging and assisting victims in reporting cases of domestic violence;

(d) Prosecute all cases of rape ex officio, including when the victim is 16 years or older or withdraws her complaint against the perpetrator;

(e) Provide systematic training to ensure that law enforcement officers investigate domestic violence cases swiftly, independently and thoroughly, including when a victim withdraws her complaint upon reconciliation with the perpetrator;

(f) Provide the South African Police Service with the skills and means, including sufficient vehicles, information technology tools and training, necessary to serve, enforce and monitor protection orders, accompany victims to collect personal belongings and confiscate firearms from perpetrators;

(g) Strengthen accountability mechanisms to punish officers of the South African Police Service for non-compliance with their duty to investigate and their obligations under the Domestic Violence Act, corruption or collusion with perpetrators;

(h) Provide confidential debriefing spaces and psychological support to officers of the South African Police Service undergoing trauma, and incentives to register domestic violence cases by including gender-based violence indicators in their performance evaluation plans;

(i) Introduce an electronic case management system and provide training on its use to prevent the loss of dockets.

C. Access to justice

120. The Committee recommends that the State party:

- (a) Remove barriers to justice faced by women and girls, including by providing institutionalized affordable or, if necessary, free legal aid for domestic violence victims, irrespective of the perpetrator's legal representation, and the reimbursement of transportation costs, and by funding organizations providing legal assistance to victims;
- (b) Require court clerks to assist victims with completing application forms for protection orders and inform them about the need to show imminent harm and to appear on the return date for obtaining an eviction or a final protection order, as well as the need to report recurring violence;
- (c) Train magistrates and clerks to formulate protection orders that effectively protect victims and prohibit further acts of domestic violence, and ensure that applicants are received outside court working hours, are referred to victim support services and that they can make applications online and in victim-friendly facilities;
- (d) Ensure that police officers located in Thuthuzela Care Centres are available around the clock, increase the number of adequate victim-friendly facilities in police stations and ensure that officers and volunteers undergo training on gender-sensitive protocols;
- (e) Ensure that victims of domestic violence have access to effective remedies, including rehabilitation, and that cases are not referred to alternative dispute resolution procedures or traditional courts prioritizing mediation;
- (f) Create a supportive environment to encourage victims to report incidents of domestic violence by:
 - (i) Destigmatizing victims, dismantling commonly held victim-blaming beliefs, protecting victims from threats and retaliation by perpetrators before, during and after legal proceedings and imposing strict penalties for breaches of protection orders;
 - (ii) Ensuring that victims have access to forensic psychiatric evidence, especially in rural areas, and fast-tracking forensic medical examinations at day hospitals;
 - (iii) Ensuring that court proceedings are not unduly prolonged, avoiding direct confrontation of victims with perpetrators, eliminating judicial gender bias and raising awareness among the judiciary and police of the need to give due weight to women's and girls' testimonies as parties and witnesses;
 - (iv) Ensuring that courts adequately take into account domestic violence when determining child custody or visitation rights;
- (g) Establish a centralized electronic case management system in the judiciary to ensure the effective and efficient handling of cases of domestic violence.

D. Victim support

121. The Committee calls upon the State party:

- (a) To increase the number of and provide sufficient funding to Thuthuzela Care Centres to ensure that they can operate around the clock, provide adequate medical and psychosocial support to victims of sexual violence, particularly in rural areas, and train social workers on trauma counselling;

(b) To adopt the Victim Support Services Bill, define victim empowerment services as mandatory services, adequately fund NGO-run shelters and safe houses, increase the daily benchmark allocation per resident using the same funding model in all provinces, remove bureaucratic obstacles to Department of Social Development subsidies and the requirement for NGOs to have infrastructures in at least four provinces and facilitate the acquisition by NGOs of the land where their shelter premises are based;

(c) To ensure that shelters and safe houses have sufficient capacity to receive victims of domestic violence, including those with psychiatric conditions and lesbian, bisexual, transgender and intersex women victims, and their children, provide dedicated allocations for skills development in shelters in all provinces and fully implement the recommendations in the 2019 Commission for Gender Equality report on the state of shelters in South Africa;

(d) To ensure that survivors of domestic violence and their children have access to affordable housing, free education, long-term psychosocial support, loans, credit and other basic services and financial support, and are economically empowered to gain economic autonomy to leave and recover from abusive relationships;

(e) To ensure that women have economic protection upon divorce, reduce the length of divorce proceedings, enforce maintenance obligations and provide adequate child support to mothers leaving an abusive relationship.

E. Prevention and awareness-raising

122. The Committee recommends that the State party:

(a) Adopt, effectively implement and adequately fund preventive measures to challenge and dismantle the root causes of domestic violence, including patriarchal attitudes and discriminatory stereotypes that perpetuate or legitimize domestic violence and harmful practices that give rise to such violence and confine it to the private sphere, and combat the culture of silence and impunity surrounding domestic and sexual violence;

(b) Implement and financially support civil society organizations conducting awareness-raising programmes for the general public and political, traditional and religious leaders, initiators, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and the media to promote understanding of the criminal nature of all forms of domestic violence, including psychological and economic violence, rape and harmful practices and the incompatibility of certain cultural practices with women's rights, and address the stigma faced by victims;

(c) Strengthen educational programmes on women's rights and gender equality at all levels of education to eliminate stereotyped gender roles and sensitize girls and boys on the harm caused by gender-based violence;

(d) Raise awareness among police officers, social workers, teachers and lecturers of their duty to report child abuse in their communities, and sexual violence, including intimate partnership violence, at universities, respectively;

(e) Implement sustained drug abuse and alcoholism treatment and education programmes in communities and schools.

F. Accountability and data collection

123. The Committee recommends that the State party:

(a) **Establish accountability mechanisms and a system to monitor and evaluate the implementation of the National Strategic Plan on Gender-based Violence and Femicide and regularly collect, analyse and publish disaggregated statistical data on the number of complaints about all forms of domestic violence, the rates of dismissal and withdrawal of complaints, including upon reconciliation, the rates of prosecution and conviction, the sentences imposed on perpetrators and the reparations provided to victims;**

(b) **Conduct research and a dedicated survey on gender-based violence to obtain more reliable data on the extent and economic impact of gender-based violence, including domestic violence, in the State party.**
