



SOUTH AFRICA

**SUBMISSION TO THE UN COMMITTEE ON THE
ELIMINATION OF DISCRIMINATION AGAINST
WOMEN**

80TH SESSION, 18 OCTOBER-12 NOVEMBER 2021

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INTRODUCTION

Amnesty International welcomes the opportunity to make a submission to the United Nations (UN) Committee on the Elimination of Discrimination against Women on South Africa, ahead of its review of South Africa's fifth periodic report in October 2021.

In this submission, Amnesty International sets out its concerns regarding gender-based violence against women, women's access to justice, access to safe abortion, and the criminalisation of sex work in South Africa. It should not be seen as an exhaustive account of the organization's concerns.

GENDER-BASED VIOLENCE AGAINST WOMEN (GENERAL RECOMMENDATION 35)

Amnesty International is concerned with violations of the Convention on the Elimination of Discrimination against Women in South Africa ('the Convention'), given the high, and increasing, rate of gender-based violence in the country. This is in part due to the failure by the State to adequately respond to what President Cyril Ramaphosa has described as a "second pandemic."¹

High Levels of Gender-Based Violence

Gender-based violence in South Africa is pervasive. Between 2019 and 2020, police recorded 171,070 contact crimes committed against women.² In the same period, 2,695 women were murdered, bringing the total number of women murdered to one every three hours. This is almost five times the global average.³

Between April and June 2021, the South African Police Services (SAPS) received a total of 12,702 cases of sexual offences, of which 10,006 were cases of rape. Of domestic violence-related crimes during the same period, women reported 93% of rape cases, 82% of common assault cases, and 96% of sexual assault cases⁴.

Poor Implementation of Legislative Obligations

Despite progressive legislation addressing gender-based violence in South Africa, there are systemic failures in the implementation of policies and legislation. Many women are therefore unable to access and enjoy the rights and protections that have been provided for by law.

Amnesty International found in its *Treated Like Furniture* report that "there is a strong perception of police indifference to women's reports on gender-based violence which fosters miscarriage of justice. One of the longstanding criticisms against the police is the lack of seriousness in handling gender-based violence cases."⁵

Amnesty International is concerned that the South African Police Service (SAPS), as an organ of state, has failed to investigate and eliminate negligence and mishandling of cases by some of its officials, thereby failing in its international and national obligations. Experiences reported by survivors highlight that the police often do not fulfil their obligations as mandated in legislation. For example, one survivor, who was raped three times in 2018 and 2019, reported the first and second cases, but did not report the third due to a lack of confidence in the police who she felt had bungled her cases. They failed 'to adequately investigate the case' even though she knew who the suspects were.⁶

Amnesty International also continues to campaign for justice for Popi Qwabe and Bongeka Phungula, who were shot dead and dumped by the side of the road after they boarded a taxi in Johannesburg in 2017. Two

¹ Department of International Relations and Cooperation, "Address by President Cyril Ramaphosa, On South Africa's Response to The Coronavirus Pandemic", 17 June 2020, dirco.gov.za/docs/speeches/2020/cram0617.pdf, p. 6.

² South African Police Services, "Crime Statistics 2019/2020", 2020, saps.gov.za/services/older_crimestats.php

³ Africa Check, "Five Facts: Femicide in South Africa", 2019, africacheck.org/fact-checks/reports/five-facts-femicide-south-africa

⁴ South African Police Services, "First Quarter Crime Statistics 2021/2022", 2021, saps.gov.za/services/downloads/april_june_2021_22_quarter1_presentation.pdf

⁵ Amnesty International, "Treated like furniture": Gender-based violence and COVID-19 response in Southern Africa (Index: AFR 03/3418/2021), amnesty.org/en/documents/afr03/3418/2021/en/, p. 33. (Treated like furniture)

⁶ Treated like furniture.

men were arrested in connection with their murders but were released due to a lack of evidence. "According to the families, the police failed to investigate the murders, including failing to check for fingerprints in a taxi containing the women's bloodstains and belongings"⁷.

Amnesty International calls on the South African government to:

- Prioritise appropriate, mandatory, initial and continuous training for all relevant professionals, including police and investigating officers, detectives, and other law enforcement officials who work with victims and survivors of gender-based violence on fulfilling their legal obligations.
- Appropriately resource police officers and stations, including ensuring each station has a victim-friendly room.
- Ensure regular, independent monitoring and evaluation of the handling of rape cases by the police, including monitoring the quality and timeliness of investigations, and link performance related targets to these.

WOMEN'S ACCESS TO JUSTICE (GENERAL RECOMMENDATION 33)

Amnesty International is concerned about violations of the Convention, particularly around the State's obligation to provide access to justice for survivors of gender-based violence. Access to justice often depends on, amongst other things, the quality of police and prosecution investigations.

Low Conviction Rates and Attrition

South Africa's Department of Justice and Constitutional Development's 2019/20 Annual Report⁸ indicates a sexual offences conviction rate of 75.2%. However, this percentage is in respect of the few cases that are prosecuted. A study by the Medical Research Council (MRC) in 2017⁹ found that only 65% of cases were referred for prosecution, 34.4% were accepted and enrolled for trial by prosecutors, trials started in only 18.5% of cases and the conviction rate was 8.6% due to high attrition rates.

The MRC study further found that investigations by police and documentation of cases was deficient in many cases. Basic mistakes, such as dockets that did not include the complainant's address or telephone number, or complainant statements that were not signed, were found. In only half the cases where another witness was close to or witnessed the rape, did police take additional witness statements. "The medical examination and sexual assault evidence collection kit (SAECK) was only appropriately collected in 76.7% of adult cases, 57.1% of cases with a 12-17 year old complainant, and 33.8% of cases involving a complainant under 12 years of age. Furthermore, over a fifth of SAECK's completed within the appropriate required time, were not sent to the Forensic Science Laboratory (FSL) and so were never analysed"¹⁰.

As of May 2021, the DNA backlog at the FSL stood at over 200,000 cases and continues to rise. Almost half of these are cases related to gender-based violence.¹¹

Stereotyping and Gender Bias in the Justice System

Women are often fearful of reporting assaults to police as there is an entrenched culture of harmful gender stereotypes and discriminatory attitudes. Some of these attitudes abet and perpetuate rape myths, including blaming and shaming victims (such as the victim wearing revealing clothing).¹² Many women have reported secondary victimisation when they come forward to report a case.¹³ The MRC study found that the likelihood of police arresting a perpetrator is influenced by wrongful beliefs of what constitutes a 'serious' rape, such as only involving physical force or rape committed by strangers. At the level of prosecution, rape myths and victim-blaming can become reasons why prosecutors decide not to proceed

⁷ Amnesty International, "Their murders are still free", 2021, [amnesty.org.za/action/their-murderers-are-still-free/](https://www.amnesty.org.za/action/their-murderers-are-still-free/)

⁸ Department of Justice and Constitutional Development, *Annual Report 2019/20*, 2020, [justice.gov.za/reportfiles/anr2019-20.pdf](https://www.justice.gov.za/reportfiles/anr2019-20.pdf)

⁹ Gender and Health Research Unit and South African Medical Research Council, *Rape Justice in South Africa: Retrospective study of the investigation, prosecution and adjudication of reported rape cases from 2012*, 2017, samrc.ac.za/sites/default/files/files/2017-10-30/RAPSSAreport.pdf (Rape justice in South Africa).

¹⁰ Rape justice in South Africa.

¹¹ South African Police Service, "Speaker notes by the Minister of Police, General Bheki Cele at the occasion of the parliamentary debate on DNA hosted by the National Assembly", 5 May 2021, saps.gov.za/newsroom/msspeechdetail.php?nid=32499

¹² Rape justice in South Africa.

¹³ *Treated like furniture*.

with a case, erring more towards cases that display attributes of a stereotypic ‘real’ or ‘serious’ rape. In this way, prosecutors may discard cases that they deem unlikely to result in a conviction based on their own biases. This bias is also replicated during trial proceedings, on part the of the judge or defence attorney.¹⁴

Amnesty International calls on the South African government to:

- Ensure the South African Police Services sets performance targets that must include elevating the quality of investigation by collecting evidence in a timely, efficient, and sensitive manner, and line with legislative requirements.
- Promote changes in the social and cultural patterns of behaviour of people of all genders with a view to eradicating harmful gender stereotypes and myths around sexual violence, for instance through informed awareness-raising campaigns owned by and directed at everyone in South African society, and with a particular focus on officials working within the justice system.

ACCESSING SAFE ABORTION (ARTICLE 12, ARTICLE 16 AND GENERAL RECOMMENDATION 24)

Despite abortion being legally available in South Africa under the Choice in Termination of Pregnancy Act (1997) (CTOPA), barriers to accessing safe abortion services persist. In February 2017 Amnesty International and the Women’s Health Research Unit, School of Public Health and Family Medicine at the University of Cape Town released a briefing entitled: “Barriers to Safe and Legal Abortion in South Africa”¹⁵. The briefing highlights three main barriers, namely the failure by the State to regulate refusals of health care workers to provide care, inequality in access to abortion services, and lack of information on sexual and reproductive rights.

Failure to regulate refusals to provide abortions services

The National Department of Health confirmed to Amnesty International in December 2016 that only 264 (7%) of the country’s 3,880 health facilities are providing termination of pregnancy services¹⁶, risking violations of the government’s obligations under international human rights law.¹⁷ Subsequent investigation by the Mail and Guardian newspaper indicated this may be an overestimate by the Department.¹⁸ The unregulated refusal by health care professionals to provide abortion services is a major contributor to the shortage of health facilities providing abortion services. The CTOPA stipulates that any person who prevents or obstructs access to legal abortion services is guilty of an offence, punishable by a fine or imprisonment.¹⁹ Therefore, in terms of the law, health care providers who are not directly involved with the abortion procedure cannot use their beliefs as a reason for not assisting a woman seeking abortion services with information and appropriate referrals. Despite the clarity of the law, Amnesty International has highlighted an apparent lack of understanding among many health care providers and individuals working in health care facilities of the obligations the CTOPA imposes, along with concern that the lack of clear policy guidelines for all involved in health care provision creates a vacuum for refusals to provide abortion service/care to be applied in an “ad hoc, unregulated and at times incorrect” manner.²⁰

Inequality in access to abortion services

A vast majority, approximately 83%, of South Africa’s population relies on public facilities with unequal access to services, infrastructure and resources cutting across the public/private divide²¹. The public health system services historically marginalised groups who experience intersecting discrimination; such as women and girls, persons with disabilities, internally displaced persons, asylum seekers and refugees, sex workers, indigent persons, and trans and non-binary persons. Access to sexual and reproductive health

¹⁴ Rape justice in South Africa.

¹⁵ Amnesty International, *Barriers to Safe and Legal Abortion in South Africa* (Index: AFR53/5423/2017), 2017, [amnesty.org/en/documents/afr53/5423/2017/en/](https://www.amnesty.org/en/documents/afr53/5423/2017/en/) (Barriers to Safe and Legal Abortion)

¹⁶ Information received by Amnesty International from the National Department of Health, 3 November 2016.

¹⁷ Barriers to Safe and Legal Abortion.

¹⁸ Bhekisisa, “#SizaMap: Find a safe, legal abortion near you with this list of designated providers”, 2017, [bhekisisa.org/article/2017-11-20-sizamap-find-a-safe-legal-abortion-near-you-with-this-list-of-designated-providers-1/](https://www.bhekisisa.org/article/2017-11-20-sizamap-find-a-safe-legal-abortion-near-you-with-this-list-of-designated-providers-1/) (#SizaMap)

¹⁹ Choice on Termination of Pregnancy Act Section 10(1)(c).

²⁰ Barriers to Safe and Legal Abortion

²¹ Statistics South Africa, “Public healthcare: How much per person?”, 2017, statssa.gov.za/?p=10548; Women’s Legal Centre, Legal Resources Centre and Sexual and Reproductive Justice Coalition, “Submission to Parliament: National Health Insurance Bill”, 2019, srjc.org.za/wp-content/uploads/2019/12/2019-11-29-Joint-Submission-NHI-Bill-WLC_LRC_SRJC.pdf, p. 5.

('SRH') services, and particularly abortion services, follows this same pattern of unequal health care access and service provision.

Barriers to accessing abortion are exacerbated by the failure to ensure abortion services are available at the primary health care level and especially in rural areas due to large distances to health facilities and the high costs of transport to reach them.

Lack of access to information on sexual and reproductive rights, including how and where to access legal abortion services

Research has also highlighted the lack of knowledge among women and girls in relation to the legality of abortion as a major driver of unsafe abortions.²² Lack of information can lead to unnecessary delays in women and girls accessing abortion services. Delays can result in women and girls being denied abortion services due to gestational limits under the CTOPA. South Africa has high rates of second trimester abortions, which account for over 25% of abortions performed,²³ and are linked to long delays between the date of first clinic appointment and the date of admission for an abortion and complex referral processes.²⁴

A 2018 study noted "the need to push for population-wide education of women about their rights under the CTOPA, and how and where to gain access to services".²⁵ As an essential first step, Amnesty International has recommended that information on which public health facilities provide abortion services and at which gestational ages, should be available on the Department of Health website and at health facilities. However, a subsequent investigation found that "national and provincial health departments have not been able to say where services are provided".²⁶ Furthermore, recent studies have highlighted pervasive stigma towards women and girls seeking to access abortion services.²⁷

Impact of Covid-19 on access to abortion services

The impact of Covid-19 has further limited women's access to abortion. During the national lockdown in 2020, medical and civil society organisations documented complaints relating to the lack of availability of, or access to, sexual and reproductive health services, including safe abortion.

For instance, in 2020, Médecins Sans Frontières (MSF) reported that abortion services in Rustenburg were initially shut down as they were deemed non-essential health care. Restrictions on movement prevented women from accessing abortions within gestational limits.²⁸

Amnesty International calls on the South African government to:

- Take measures to ensure that healthcare providers' refusal to provide care relating to abortion does not impede women's access to abortion services, by providing referrals within their own facility or to a nearby facility.
- Take measures to ensure that facilities and services for SRH, including for abortion, are available and accessible for all, in particular, in rural areas.
- Prioritize the prevention of unwanted pregnancy through access to comprehensive sexuality education and modern contraception, including emergency contraceptives, and abortion services, as provided under the Choice on Termination of Pregnancy Act.
- Improve knowledge among health care workers and adolescents about sexual and reproductive health and rights, including through comprehensive sexuality education that involves both women and girls and men and boys and accessible information on where to access SRH services, including termination of pregnancy services.

²² Rachel Jewkes and others, "Why are women still aborting outside designated facilities in metropolitan South Africa?", 2005, *British Journal of Obstetrics and Gynaecology*, p. 1236–1242; Morroni and others, "Knowledge of the abortion legislation among South African women: a cross-sectional study", 2006, *Reproductive Health*, Volume 3, Issue 7; Harries and others, "Delays in seeking an abortion until the second trimester: a qualitative study in South Africa", 2007, *Reproductive Health*, Volume 4, Issue 7.

²³ Harries and others, "The challenges of offering public second trimester abortion services in South Africa: health care providers' perspectives", *J Biosoc Sci*, 2012, Volume 44, Issue 2, pubmed.ncbi.nlm.nih.gov/22088440/, p. 197-208.

²⁴ Grossman and others, "Surgical and medical second trimester abortion in South Africa: A cross-sectional study", 2011, *BMC Health Services Research*, Volume 11, Issue 224, DOI: 10.1186/1472-6963-11-224.

²⁵ Favier and others, "Safe abortion in South Africa: 'We have wonderful laws but we don't have people to implement those laws'", 2018, *International Journal of Gynecology & Obstetrics*, Volume 38, Issue 44.

²⁶ #SizaMap

²⁷ Greta Betole, "Abortion in South Africa: The Consequences of Conscientious Objection", 2021, *LSE International Development Review*, Volume 1, Issue 2, idr.lse.ac.uk/articles/33/gallery/38/download

²⁸ Doctors Without Borders, "Women and girls face greater dangers during covid-19 pandemic", 2020, msf.org.za/news-and-resources/latest-news/women-and-girls-face-greater-dangers-during-covid-19-pandemic

- Ensure that sexual and reproductive health services, including contraception, safe abortion and post-abortion care are clearly included as 'essential services' and are available at all times and included in the basic package of health services.

CRIMINALISATION OF SEX WORK (ARTICLE 6)

Sex workers in South Africa are at high risk of human rights violations, including rape, violence, extortion, arbitrary arrest and detention, forced eviction from their homes, harassment, discrimination, exclusion from health services, and lack of legal redress.

The current South African legal framework, through the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007, criminalises both the sex worker and the client.

In March 2017, the Department of Justice released its South African Law Reform Commission (SALRC) report on 'Adult Prostitution'. Despite submissions by sex worker advocacy groups, public health and human rights experts, and the Commission for Gender Equality which highlighted the various harm to sex workers that results from all forms of criminalization of sex work.²⁹

This criminalisation increases the vulnerability of sex workers to violence and promotes their marginalisation. It has also been shown to undermine global HIV prevention efforts³⁰ and is counter to the best practice reflected in the South African National Sex Worker HIV Plan 2016-2019, which recognizes the challenges for implementing a human rights-based approach to health in the context where sex work is criminalized and supports decriminalization of sex work³¹. Moreover, criminalization forces sex workers and their clients further underground, thus exposing sex workers to more human rights violations.

Sex workers face many human rights abuses, including the inability to access SRH services, health care, and are the victims of violence by clients, the public and the police, as well as unlawful arrests and extortion.³²

Despite the SALRC report, South Africa's governing party, the African National Congress, took the decision in 2017 to decriminalise sex work.³³ This follows President Cyril Ramaphosa noting that "sex work is essentially work as well" when he was deputy president in 2016³⁴, and committing to decriminalise sex work at the signing of the Gender-Based Violence and Femicide Declaration in March 2019 as president, where he said he "will work with all stakeholders to develop policy around the decriminalisation of sex work".³⁵ The "fast tracking and promulgation" of legislation to decriminalise sex work is included in the National Strategic Plan on Gender-Based Violence and Femicide as published in early 2020.³⁶ The State has to-date not pursued this.

Amnesty International calls on the South African government to:

- Reform legislation towards the decriminalisation of sex work, including providing clear time frames for the completion of the law reform process.
- Refrain from introducing new laws that criminalize or penalize sex workers.
- Ensure the meaningful participation of sex workers in the development of policies and laws that directly affect their lives and safety.
- Ensure that sex workers have equal access to justice, health care, and other public services, and to equal protection under the law.

²⁹ South African Law Reform Commission Report, *Sexual Offences Adult Prostitution*, 2017, justice.gov.za/salrc/reports/r-pr107-SXO-AdultProstitution-2017-Sum.pdf; Asijiki, "Submission Made to the Multiparty Woman's Caucus on the Sex Work Discussion Paper Released Under the SALRC Project 107", 2017, asijiki.org.za/wp-content/uploads/CGE-submission-to-MPWC.pdf

³⁰ See generally Global Commission on HIV and the Law, Risks, Rights and Health, 2012; UNAIDS Guidance Note on HIV and Sex Work, Annex 3; UNAIDS, UNFPA, UNDP, Sex Work and the Law in Asia and the Pacific, 2012; UNDP, UNFPA, APNSW, SANGRAM, The Right(s) Evidence: Sex, Violence and HIV in Asia – A Multi-country Qualitative Study, 2015; thelancet.com/series/HIV-and-sex-workers

³¹ South African National Sex Worker HIV Plan 2016-2019.

³² Chandre Gould and Nicole Fick, *Selling sex in Cape Town: Sex work and trafficking in a South African city*, 2008.

³³ eNCA, "ANC resolves to decriminalise sex work", 20 December 2017, enca.com/south-africa/anc-resolves-to-decriminalise-sex-work

³⁴ SABC News, 12 March 2016, "Sex work is essentially work" says Ramaphosa", 12 March 2016, youtube.com/watch?v=7ioZFpMiK2M

³⁵ Sowetan Live, "Sex work might be decriminalized", 29 March 2019, sowetanlive.co.za/news/south-africa/2019-03-29-sex-work-might-be-decriminalised/

³⁶ Department of Justice and Constitutional Development, *National Strategic Plan on Gender-Based Violence and Femicide*, 2020, justice.gov.za/vg/gbv/NSP-GBVF-FINAL-DOC-04-05.pdf, p. 73.



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