




The Efficacy of "Anti-Gender-Based Violence Laws" in Addressing the Scourge of Gender-Based Violence in South Africa

Paul S. Masumbe 

Doctor of Law, Associate Professor, Walter Sisulu University, South Africa

 pmasumbe@wsu.ac.za

Pumza Nomnganga 

Master of Law, Lecturer, Walter Sisulu University, South Africa

 pnomnganga@wsu.ac.za

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ABSTRACT

South Africa has encountered a notable increase in incidents of gender-based violence (GBV) over recent years. The failure of South Africa's criminal justice system to effectively address GBV cases has resulted in the stigmatisation of the system. Consequently, the public's trust in the criminal justice system has diminished. In 2023, three "anti-GBV laws were enacted; these laws aimed at combating GBV, namely the Criminal Law (Sexual Offences and Related Matters) Amendment Act, the Criminal and Related Matters Amendment Act, and the Domestic Violence Amendment Act (DVVA). This study evaluates the efficacy of these laws in mitigating the prevalence of GBV in South Africa. Specifically, the research seeks to determine whether the anti-GBV laws offer protection to victims both before and after their rights are violated by perpetrators of gender-based violence. Additionally, the study investigates whether these laws expedite the legal processes involved in han-

dling GBV cases. A comparison is made between the newly enacted laws and the Domestic Violence Act, which is recognised as the primary legislation governing GBV in South Africa. Recommendations are provided regarding the effective implementation of preventive legal measures outlined in the DVAA to safeguard GBV victims and combat the escalating rates of GBV in South Africa. This is a qualitative study, and it draws its insights from various sources, including articles, case law, legislation, the Constitution, and international legal frameworks.

INTRODUCTION

Gender-based violence (GBV) is defined as the ‘violence that is directed at an individual based on his or her gender. It includes physical, sexual, and psychological abuse; threats; coercion; arbitrary deprivation of liberty; and economic deprivation, whether occurring in public or private life. Gender-based violence takes on many forms and can occur throughout the lifecycle.¹

The article’s main focus is on gender-based violence against women and children due to the high number of cases of GBV that are reported. Bosielo JA in *S v Makatu*² emphasised *“the escalating trend of violent crimes, such as murder and sexual offenses, in the nation. These criminal activities significantly threaten the fundamental societal and ethical structure. The society is experiencing a profound division. A large portion of the population, especially the marginalised and powerless groups like women, children, the elderly, and the sick, live in constant fear. It is a fact that virtually every female in the country is at risk of becoming a victim of either murder or rape. This unfortunate reality is juxtaposed against the backdrop of the emerging constitutional democracy, which promises a better existence for all. These offenses have permeated our picturesque nation’s entire territory like a destructive disease. They pose a severe threat to our emerging democracy and must be eradicated at their core”*.³

GBV is acknowledged as a severe infringement of human rights,⁴ impacting predominantly women and girls, perpetuating ongoing harm.⁵ This hinders their ability to live up to their fullest potential in a state of liberty and peace.⁶

GBV is one of South Africa’s most serious and disturbing problems. According to the 2023/2024 crime statistics, South Africa recorded 10,516 rapes, 1,514 cases of attempted murder, and 14,401 assaults against female victims in July, August, and September. In the same period, 881 women were murdered.⁷ This is a worrying trend that has been identified and reported globally. The Minister of Police described South Africa as being brutal and dangerous to women and children.⁸ In *Tshabalala v S*,⁹ the court observed that hardly a day passes without any incident of gender-based violence being reported.¹⁰ The number of social media campaigns seeking justice for victims of gender-based violence also demonstrates this.¹¹

1 Ziniakova, T. (2021). Gender-Based Violence in International Human Rights Law: Evolution Towards a Binding Post-Binary Framework. William & Mary Journal of Race, Gender, and Social Justice, Vol. 27, Issue 3, 709. (2021). Available at: <https://scholarship.law.wm.edu/wmjowl/vol27/iss3/4> (Last access: 15.01.2025).

2 S. v Makatu. 2014 (2), SACR.

3 S. v Makatu. Supra, para 30.

4 UN High Commissioner for Refugees (hereinafter UNHCR). Sexual and Gender Based Violence. Available at: <https://www.unhcr.org/sexual-and-gender-based-violence.html> (Last access: 15.06.2024).

5 The World Bank. (2019). Gender-Based Violence (Violence against Women and Girls). Available at: <https://www.worldbank.org/en/topic/socialdevelopment/brief/violence-against-women-and-girls>. (Last Access: 15.01.2025).

6 Ncube, P.M. (2021). Protection Orders in South Africa: The Effectiveness of Implementation and Enforcement for Victims of Gender-Based Violence. Unpublished Dissertation. (M.Phil.). University of Cape Town.

7 South African Government. Minister General Bheki Cele: Quarter four Crime Statistics 2023/24. Available at: www.gov.za (Last access: 05.02.2025).

8 Ibid.

9 Tshabalala v S. 2020 (5) SA 1 (CC).

10 Tshabalala case, para 61.

11 Each day in South Africa, a woman or girl is murdered/raped or abused. To name the few cases of gender-based violence that have been doing rounds are, Uyinene Mr-

These crimes are mostly publicised on social media platforms, which results in campaigns and hashtags ‘justice for victims of gender-based violence’, which have created a perception that the criminal justice system is failing to prioritise the interests of victims of gender-based violence. As a result, they resort to social media or commit vigilantism. The effect of gender-based violence is a significant human rights infringement with real social and formative effects on the victims, their families, networks, communities, and society.¹² In response to this scourge, three anti-GBV laws were enacted, namely the Criminal and Related Matters Amendment Act,¹³ the Criminal Law (Sexual Offences and Related Matters) Amendment Act,¹⁴ and the Domestic Violence Amendment Act.¹⁵ This paper focuses on the recently assented anti-GBV laws, arguing for the proper implementation and effectiveness of these anti-GBV laws in protecting and promoting the interests or rights of victims of GBV as well as eliminating the high rise in cases of gender-based violence. It also argues against the public’s perceptions, which are based mostly on social media platforms, that the criminal justice system favours the perpetrators of GBV instead of protecting the victims.

1. SYNOPSIS OF CASES OF GENDER-BASED VIOLENCE IN SOUTH AFRICA

This section presents a brief overview, albeit not comprehensive or exhaustive, of a range of atrocious offences documented in diverse media platforms, perpetrated against women and iden-

tified as having elicited significant public reaction.

- In 2013, a 17-year-old Anene Booysen was brutally attacked, raped, and disembowelled in Bredasdorp, Western Cape. In 2017, a 22-year-old Karabo Mokoena went missing, and her body was later found burned in an open field in Johannesburg.
- In 2019, a 19-year-old university student Uy-inene Mrwetyana was raped and murdered at a post office in Cape Town.
- Pule, a 28-year-old South African woman, 8 months pregnant at the time, was declared missing. After an investigation, police established that her boyfriend, Ntuthuko Shoba, was responsible for her murder by hiring a hitman to kill her.
- Ms Namhla Mtwla was brutally gunned down at the gate of her home in Mthatha, and no arrests have been made regarding her death to date.
- In 2021, a 23-year-old law student, Nosicelo Mtebeni, was killed and her body dismembered; her body was found stuffed inside a suitcase in East London by her boyfriend.
- The body of a female child aged 6 was discovered concealed beneath a bed subsequent to her disappearance being documented on Thursday, the 7th of December 2023, within the vicinity of NU 13 Inyibiba near Mdantsane in the Eastern Cape. The individual responsible for this act met his demise due to the vigilante actions carried out by the community’s residents.

These are not the only victims of GBV; the list is endless, which is an alarming factor that needs to be addressed. This paper notes the responses to protecting the victims of GBV, such as the establishment of the Commission of Gender Equality (CGE) in terms of section 187 of the Constitution, which promotes gender equality and protection, development, and attainment of gender equality.¹⁶

wetyana, who was a 19-year-old lady that was tortured to death by a male Post Office employee. Nosicelo Mtebeni, was a 23-year-old final year student who was brutally butchered to death by her boyfriend.

12 Nobanda, L., Nkosi, S.L., Sibanyoni, E.K. (2021). A Possible Explanation of Violence Against Women During the Covid-19 Lockdown in South Africa: A Systematic Review. *Acta Criminologica: African Journal of Criminology & Victimology*, Vol. 34, no. 3.

13 Criminal and Related Matters Amendment Act 12 of 2021 (hereafter CRMAA).

14 Criminal Law Sexual Offences and Related Matters Amendment Act 13 OF 2021 (hereafter SORMA).

15 Domestic Violence Amendment Act 14 of 2021 (hereafter DVVA).

16 Section 187(1) provides that the Commission for Gender Equality must promote respect for gender equality and the protection, development, and attainment of gender equality.

2. LEGAL FRAMEWORK ON GENDER-BASED VIOLENCE IN SOUTH AFRICA

GBV is also a human rights issue as it violates the rights of its victims. GBV is recognised as being not only a South African issue; rather, it is a worldwide problem. The spate of GBV has existed for a long time; in South Africa, it is also linked to the apartheid regime, which discriminated against blacks.¹⁷ However, when South Africa became a democratic country, it tried to eliminate all the roots of apartheid, including gender-based violence. This part analyses the legal instruments developed to fight GBV nationally and internationally.

2.1. International legal instruments on GBV

South Africa adheres to numerous international instruments aimed at fostering equality and non-discrimination. The eradication of gender-based violence stands out as a primary objective in upholding the principles of the global community. Reflecting on the year 1948, when the Universal Declaration of Human Rights was adopted,¹⁸ South Africa, despite refraining from signing the declaration due to the apartheid regime, contributed to the consolidation of a rights framework that promoted international peace at the domestic level.

The International Covenant on Civil and Political Rights (ICCPR), enforced in 1976, prohibits discrimination based on gender.¹⁹ There is a contention that the ICCPR's prohibition of "inhuman

or degrading treatment" should be construed as a prohibition against violence towards women.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979 marked a significant advancement in securing essential rights for women.²⁰ It mandates states to undertake necessary actions, such as legal reforms, to amend or eliminate existing laws, regulations, customs, and practices that perpetuate discrimination against women.²¹

In 1993, the United Nations Declaration on the Elimination of Violence against Women ("DEVAW") was adopted by the UN General Assembly.²² This declaration characterises violence as any form of gender-based aggression leading to, or having the potential to result in, physical, sexual, or psychological harm or distress to women. It encompasses acts such as threats, coercion, or unwarranted deprivation of freedom, whether occurring within the public sphere or in private settings. Member states are urged by DEVAW to diligently strive to prevent, investigate, and, in accordance with domestic laws, penalize instances of gender-based violence, regardless of whether such acts are perpetrated by state entities or private individuals.²³

17 Meyiwa, T., Williamson, C., Maseti, T., Ntabanyanecom, G.-M. (2017). A Twenty-Year Review of Policy Landscape for Gender-Based Violence in South Africa. *Gender and Behavior*, Vol. 15, no. 2.

18 1948 Universal Declaration of Human Rights. This segment underscores the significant international agreements, treaties, declarations, resolutions, and norms concerning gender-based violence. The Universal Declaration of Human Rights from 1948 serves as the fundamental cornerstone at the global level in the fight against violence targeting women. It delineates the fundamental rights and principles of equality, security, freedom, integrity, and dignity for all individuals, including women.

19 1976 International Covenant on Civil and Political Rights.

20 Convention on the Elimination of All Forms of Discrimination against Women Adopted and opened for signature, ratification, and accession by General Assembly resolution 34/180 of 18 December 1979 entry into force 3 September 1981, in accordance with article 27(1).

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

22 Declaration on the Elimination of Violence against Women Proclaimed by General Assembly resolution 48/104 of 20 December 1993.

23 Article 2 of DEVAW. Violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

2.2 South African laws on GBV

South Africa has made huge progress in developing a legal framework that aims at eliminating gender-based violence and promoting and protecting the victims of gender-based violence. Apart from the provisions of the South African Constitution that promote equality,²⁴ non-discrimination,²⁵ and dignity²⁶ in all races and genders, South Africa has passed legislation in this regard with far-reaching consequences on GBV. There are laws that are enacted, for example Domestic Violence Act of 1998 as amended by the Domestic Violence Amendment Act of 2021, which is known as the legislation that protects the victims of GBV. The alarmingly high rates of GBV in South Africa led to the amendment of the Criminal and Related Matters Amendment Act,²⁷ Criminal Law (Sexual Offences and Related Matters) Amendment Act,²⁸ and the Domestic Violence Amendment Act.²⁹ These laws were formulated after the 2018 National Presidential Summit on GBV, which gave rise to the country's National Strategic Plan of GBV.³⁰ The 'anti-gender-based violence laws' focus on the rights and interests of victims of gender-based violence in the criminal justice system.

DVAA came into operation on 5 August 2022. The purpose of the Act is to inter alia amend the CPA to further regulate the granting and the cancellation of bail in domestic-related offences.³¹ It also seeks to regulate sentences in respect of offences that have been committed against vulnerable persons. This resulted in the amendment of the CPA.³²

DVAA also precludes the release on bail of the person arrested for allegedly committing an offence listed under section 1 of the Domestic Violence Act, which involves persons who are in a

domestic relationship. DVAA seeks to protect the victims of domestic and gender-based violence by tightening bail provisions applicable to such matters.

The Criminal Law (Sexual Offences and Related Matters hereinafter SORMA) Amendment Act took place on 31 July 2022. An essential objective of the SORMA Amendment Act is to enhance the legal framework by introducing a range of new sexual offences.

The SORMA Amendment Act establishes a new offence known as sexual intimidation.³³ This transgression occurs when an individual, with intent and unlawfully, communicates a threat to a complainant that gives rise to a reasonable apprehension of impending harm in the complainant, suggesting that a sexual offence will be perpetrated against the complainant, a family member, or an individual in a close relationship with the complainant.

The scope of the offence of sexual intimidation is broader and encompasses the threat of impending harm. Any sexual offence had awareness of a child being a victim of a sexual offence, they were obligated to report such details to a law enforcement officer. Failing to comply constituted an offence, and upon conviction, the individual could face a maximum sentence of five years' imprisonment.³⁴

The enactment of the Criminal and Related Matters Amendment Act (CRMAA) took effect on 5 August 2022. In contrast to the SORMA Amendment Act and the DVAA, which specifically address issues related to domestic violence and sexual offences, the scope of CRMAA is broader and more general. This legislation modifies various laws, including the Criminal Procedure Act³⁵ and the Criminal Law Amendment Act³⁶, to enhance support for victims of gender-based violence.

CRMAA sanctions the utilisation of intermediaries to facilitate testimony in court by vulnerable witnesses, such as children, elderly individuals, or those with physical, mental, or emotional

24 Section 1 (a) of the Constitution of 1996 is founded on the values of (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms; (b) non-racialism and non-sexism.

25 Section 9 (3) of the Constitution of 1996.

26 Section 10 of the Constitution of 1996.

27 Act 12 of 2021.

28 Act 13 of 2021

29 Act 14 of 2021 amending the Domestic Violence Act 116 of 1998.

30 The National Strategic Plan on Gender Based Violence and Femicide is a policy document developed to address GBVF in South Africa.

31 S. v Robertson. 2023 (2) SACR 156 (WCC).

32 Act 105 of 1997.

33 Section 14A of the Sexual Offences Related Matters Amendment Act 13 of 2021.

34 Laws and policies to prevent and respond to violence against women and children in South Africa by University of Cape Town Children's Rights Institute.

35 Criminal Procedure Act 51 of 1977. Hereafter CPA.

36 Criminal Law Amendment Act 105 of 1997.

conditions, in proceedings other than criminal trials.³⁷ Historically, many vulnerable witnesses have experienced intimidation and distress while testifying in court, leading to a feeling of being unheard or unfairly treated.³⁸ This has discouraged witnesses and eroded public trust in the legal system.³⁹ The amendment allows these witnesses to testify without being physically present in court, utilising an intermediary from a more informal setting, promoting their comfort and avoiding potential distress. The Act imposes stricter criteria for bail considerations in cases involving domestic violence offenses or violations of protective orders,⁴⁰ criminalising breaches of court orders aimed at safeguarding individuals from the accused.⁴¹

Furthermore, CRMAA mandates harsh minimum sentences for convictions of murder or attempted murder where the victim is/was in a domestic relationship with the perpetrator, as well as in cases of rape involving a child, elderly person, individual with a disability, or someone in a domestic relationship with the perpetrator.⁴² The imposition of minimum sentences aims to shield vulnerable groups from violent crimes, addressing instances where the justice system failed to protect gender-based violence victims, sometimes resulting in continued suffering or tragic outcomes despite seeking help from authorities.⁴³ All these Acts underscore the government's commitment to preventing such occurrences, signalling zero tolerance for gender-based violence and ensuring decisive action against offenders to safeguard victims' rights.

3. EFFECTIVENESS OF THE IMPLEMENTATION AND ENFORCEMENT OF THE ANTI-GBV LAWS FOR VICTIMS OF GBV IN SOUTH AFRICA

From the above analysis and discussion, it has been observed that the recently enacted anti-GBV laws provide measures that may successfully curb the scourge of GBV in South Africa. It is also apparent that the criminal justice system played a role in this pandemic, as it has been identified as neglecting the victims of GBV; this is also evidenced in *S. v Tshabalala*.⁴⁴ This section responds to the recurring nature of these offenses and implicates the implementation and enforcement of these anti-GBV laws. It also argues that proper implementation and enforcement of these laws may be the solution to the scourge of GBV in South Africa.

Tlaletsi AJ in *AK. v Minister of Police*⁴⁵ held that *'The state has a duty to protect women against all forms of gender-based violence that impair their enjoyment of fundamental rights and freedoms. It has to take reasonable and appropriate measures to prevent the violation of those rights. The South African Police Service (SAPS) is one of the primary state agencies responsible for the protection of the public in general, in particular women and children, against the invasion of their fundamental rights by perpetrators of violent crimes. The courts are also under a duty to send a clear message to perpetrators of gender-based violence that they are determined to protect the equality, dignity, and freedom of all women'*.⁴⁶

These amendments are important as they simplify the process for individuals seeking protection orders against perpetrators. This constitutes a crucial measure in enhancing personal safety against violence and abuse. The amendments are geared towards ensuring accountability among personnel responsible for assisting individuals reporting domestic abuse or seeking protection orders. Provisions of the Criminal Law (Related Matters Amendment Act) place a duty on the public to report any form of GBV that they have or may have noticed on someone else's behalf. Failure to

37 Section 59 of CRMAA.

38 Mbandlwa, T. (2022). Women's Day, Women's Month for Who? For South African Women or South African Government and Politicians? *Journal of Pharmaceutical Negative Results* (13), 269.

39 Nomnganga, P. (2021). The Right to a Speedy Trial for Crime Victims in South Africa. LLM Dissertation at Walter Sisulu University (Unpublished), 31.

40 Mpako, A., Ndoma, S. (2023). South Africans see gender-based violence as most important women's-rights issue to address. Institute for Justice and Reconciliation.

41 Domestic Violence Amendment Act and the Harassment Act 12 of 2011.

42 Section 59 of CRMAA.

43 Maila v The State, 2023, ZASCA 3.

44 *S. v Tshabalala*, 2022, ZAGPJHC 881.

45 *AK. v Minister of Police*, 2022, ZACC 14.

46 *AK. v Minister of Police* supra, para 3.

do so may result in an offence and a sentence of at least 5 years. This entails that the normal trend is that it is only the duty of the police to protect society; however, the public must not normalise GBV, and that it is not only the victim who must lay charges or report the GBV.

This paper argues against the public's perception of the judiciary and concurs with Ntlama⁴⁷ that the judiciary is independent and the confidence in the judiciary cannot be replaced by the invidious philosophies that appear to compromise the independence of the judiciary.⁴⁸ The public is compelled by this Act to report such instances even without the victim's permission. These anti-GBV laws have paved the way in reducing GBV that has bitten South Africa, and attempts to restore the dignity and reputation of both the criminal justice system and the judiciary. In essence, the legislature has, as a result, effected an overhaul of the Domestic Violence Act to be more responsive to the need to afford maximum protection to women and girls who are exposed to domestic and gender-based violence.⁴⁹ This is propelled by the global quest for the creation of a specific crime or offence of domestic violence. South Africa is appropriately taking heed of that call with the hopes

of reducing the scourge of domestic violence and maybe, with time, reducing it to a comfort level of societal safety.

CONCLUSION

The scourge of GBV in South Africa has resulted in the enactment of more effective laws regulating GBV. Although South Africa is known as a country that promotes and protects human rights through its Constitution, it is disheartening to witness it being recorded globally as a country that is almost helpless in fighting GBV. This scourge has caused major issues for mostly the criminal justice system. Enacting the anti-GBV laws has shed light on not disapproving of the public's opinion on the way that the criminal justice system has been handling things regarding GBV. From the above discourse, these anti-GBV laws promote the protection and possible ways that the courts must adhere to when dealing with cases of GBV and protect the rights and interests of the victims. Proper implementation and enforcement of the provisions of DVAA on protection orders can become a great initiative in eliminating or significantly reducing GBV. This paper affirms that the duty to curb the scourge of GBV does not lie only in the criminal justice system alone; the legislative framework that regulates GBV also places a duty on the public as well, that they must report any suspicious incidents of GBV.

47 Ntlama, N. (2020). Gender-Based Violence Ignites Re-emergence of Public Opinion of Judicial Authority. *De Jure Law Journal*, 286-306.

48 Ibid.

49 George, L. (2020). Gender-Based Violence Against Women in South Africa. *Ballard Brief: Vol. 2020, Issue 2, Article 7*. Available at: <https://scholarsarchive.byu.edu/ballardbrief/vol2020/iss2/7> (Last access: 15.05.2024).

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1. 1948 Universal Declaration of Human Rights;
2. 1976 International Covenant on Civil and Political Rights;
3. Constitution of the Republic of South Africa, 1996.
4. Convention on the Elimination of All Forms of Discrimination against Women;
5. Criminal and Related Matters Amendment Act 12 of 2021;
6. Criminal Law Amendment Act 105 of 1997;
7. Criminal Law Sexual Offences and Related Matters Amendment Act 13 of 2021;
8. Criminal Procedure Act 51 of 1977;
9. Declaration on the Elimination of Violence against Women Proclaimed by General Assembly resolution 48/104 of 20 December 1993;
10. Domestic Violence Act 116 of 1998;
11. Domestic Violence Amendment Act 14 of 2021;
12. Harassment Act 12 of 2011.

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5. S. v Tshabalala 2022 ZAGPJHC 881;
6. Tshabalala v S. 2020 (5) SA 1 (CC).