

POLICY BRIEF



Is heavy prison sentences a strong deterrent to violence against women?

Gerard Emmanuel Kamdem Kamga, LLD

Summary

This policy brief completed at the Centre for Sexualities, Aids and Gender (CSA&G) at the University of Pretoria provides insights into recent developments in terms of violence against women (VAW) in South Africa from domestic and international perspectives. The main issue revolves around the efficiency of heavy prison sentences as a standalone measure to curb VAW in the country.

KEY FINDINGS

- VAW refers to violence perpetrated against females by their male partners; even though there are situations where males are also victim of this type of violence.
- The scale of femicide in South Africa is among the highest in the world. the murder rate for women in the country increased drastically by 117% between 2015 and 2016/17.
- 80% of the reported sexual offences in South Africa are rape. Not only a woman died every eight hours due to violence but more importantly, of those killed, 50% of them are murdered by their intimate partners.
- Low levels of prosecution of crimes against women reinforce the belief among victims that there is no systematic and guaranteed judicial response to violence against women and that there might be no punishment for their abusers. Yet Judicial response is a relevant tool to curb VAW but it may not be enough.
- States that fail to initiate measures to prevent human rights abuse may be derelict of its obligations to guarantee these rights.

RECOMMENDATIONS

- States can no longer limit themselves to enacting some legislation and issue heavy sanctions for the perpetrators of femicide. A new approach is crucial if VAW is to be dealt with in an appropriate manner.
- The key measure is the standard of due diligence which refers to the standard generally used to determine the types of actions to be initiated by States to address VAW.
- Due diligence compels states to act within the existing and available means to curb both individual acts of VAW and the structural causes of violence. It implies four key obligations to prevent, investigate, punish and provide compensation for acts of VAW including those perpetrated in the private sphere.
- States must initiate certain action prior to any occurrence of VAW. Such actions should aim to raising awareness and change people mind-set and perception about gender inequalities in society. This can be done either through education and training programmes or through the enactment of legislation and policies.

Introduction

This policy brief completed at the Centre for Sexualities, Aids and Gender (CSA&G) at the University of Pretoria provides insights into recent developments in terms of violence against women (VAW) in South Africa from domestic and international perspectives. The main issue revolves around the efficiency of heavy prison sentences as a standalone measure to curb VAW in the country. On page 387, South Africa's National Development Plan, a blueprint for how the country can curb poverty and reduce inequality by the year 2030 reads:

In 2030, people living in South Africa feel safe at home, at school and at work, and they enjoy a community life free of fear. Women walk freely in the streets and children play safely outside.

From the above quote, the safety of women and children is one of the key features for the achievement of the Vision 2030. Looking at the current situation in the country, crimes perpetrated on women have reached unprecedented levels. A recent report by Statistics South Africa showed that the murder rate for women increased drastically by 117% between 2015 and 2016/17. Despite the ratification of international instruments on women's rights, the enactment of policies and legislation guaranteeing the emancipation and equality for women and men and, despite increasing domestic and global attention, the scale of VAW is alarming. Measures initiated by the government may be either inadequate or not enough to efficiently address the problem. Heavy sentencing by the court such as the recent sentence of 32 years' imprisonment in the Karabo Mokoena case does not appear to have had much impact on the incidence of VAW. This policy brief reassesses the problem, explore practical avenues and proposes clear recommendations to policy makers, law enforcement agencies and civil society to help curb VAW.

Judicial response to violence against women: the Karabo Mokoena case

‘The court cannot describe you in any other way but as a devil in disguise.’

On 3 May 2018, Sandile Mantsoe was sentenced to 32 years in prison at the South Gauteng High Court by judge Peet Johnson. Mantsoe was found guilty and sentenced for the murder of his girlfriend, 22-year-old Karabo Mokoena that occurred in May 2017; murder that stirred anger and emotions across South Africa. This resulted in the #MenAreTrash hashtag going viral, an initiative launched the previous year in the country following unprecedented escalation of femicide.

The 32 years’ imprisonment was a cumulative penalty for various crimes perpetrated by Mantsoe on Karabo which include 30 years for murder, 5 years for assault (3 years of which were suspended) and 4 years for attempting to defeat the ends of justice by burning Karabo’s body (2 of which were also suspended). The 2 years for assault and 2 years for defeating the ends of justice will run concurrently. When reading through the judgment, judge Johnson articulated the court’s perception of Mantsoe who was characterised as a danger to the society. As he argues:

‘The court cannot describe you in any other way but as a devil in disguise.’

The judge went on to remind the culprit that the weight of justice is always to be felt by everyone irrespective of their economic background or social status:

‘I am guessing you thought that your riches would get you everywhere but they got you nowhere.’

Upon Mantsoe's lawyer pleading for lighter sentence, the judge argued that there were no mitigating factors to give him a lesser sentence and therefore 'deserved nothing less than a harsh punishment' for killing and burning Mokoena's body.

The entire trial, including judicial motivations as well as the sentence were deemed a serious response from the State in its initiative to curb VAW. It is laudable that in the present situation, State authorities tried act in compliance with domestic and international standards on the broad issue of VAW in general and intimate partner violence (IPV) in particular. Nonetheless, the preoccupation from the Karabo Mokoena case remains as to know whether a heavy prison sentence can be the ideal solution to address instances of femicide. Broadly speaking, the answer to this question is not simple.

■ 'No one deserves to be raped!!'

As these words are being laid on paper, today the 6th of August 2018 it happens that 3 days ago on Friday evening, 23 years-old Khensani Maseko, a female student at Rhodes University apparently took her own life as her lifeless body was found dead in her family home in Johannesburg. Even though investigations are still pending, it was said that last May, she may have been raped by her then boyfriend. Her final message on social media was not common, for she posted her date of birth side by side with her date of death with caption 'no one deserves to be raped!!' Similarly to Karabo's murder, Kensani tragic death rocked the entire country, a death occurring in August, that is the women's month. Anger has been perceptible following this tragic event and pressure has been put on authorities to cope with VAW once and for all. Rhodes university's SRC elected called for an academic shutdown for

Monday 6 August 2018 and organised a mass student protest. Investigations were opened but unlike the previous cases of femicide, the outcome may not change much to the situation.

In relation to the above cases of Mokoena and Kensani, another tragic instance of femicide in South Africa occurred years earlier in 2016 when 23 year-old Linda Matati was kidnapped, raped and killed by Thabo Happy Mosia and Julian Ntoyi. The justice system has been slow to process this case and after multiple adjournments, it is only on 4 February 2019 that the trial resumed. As a reminder, the key issue at the heart of this policy brief is to know whether a heavy prison sentence can serve as a deterrent to VAW. Before answering this question, it is vital to firstly understand what VAW amounts to including its scope, drivers, consequences and impacts.

Overview on violence against women

VAW refers to violence perpetrated against females by their male partners; even though there are situations where males are also victim of this type of violence.

VAW constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms.

In terms of [Article 1 of the UN Declaration on the Elimination of Violence against Women](#) 'the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.' The UN Declaration further states that VAW constitutes a violation of the rights and

fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of VAW. Another key document framing VAW is [the Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW) issued by the UN General Assembly in 1979. In 1992, during the eleventh session of the Committee on the Elimination of Discrimination against Women, its General Recommendation N°19 observed that VAW is violence directed against a woman because she is a woman or affects women disproportionately.

With regard to the scope of VAW, Article 2 [of the UN Declaration on the Elimination of Violence against Women](#) provides as follows:

Violence against women shall be understood to encompass, but not to 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.

Having briefly reviewed the concept of VAW, it is important to pay close attention to the scale of such violence before exploring the avenues to cope with it. The recent statistics on VAW in South Africa clearly attest to the gravity of the situation.

Recent statistics on violence against women

From the above definition and characterisation of VAW, women or girls are at the heart of this phenomenon. It depicts a specific typology of violence that is not trivial but specifically directed toward a clearly defined target with gender as the ultimate criterion.

The police recorded a total of 39,828 rapes for the year 2016/17 which averaged out at 109 rapes each day.

The fact that men are the main perpetrators of VAW and girls has been established by various data and reports. Most of the time, these perpetrators belong to the inner circle of their victims such as being members of their families, their work colleagues or living in the same areas. In such circumstances, preventing VAW becomes a complex assignment, for victims and aggressors are most of the time, familiar to one another. For example, in terms of sexual offences [the country's crime statistics for the period between 1 April 2016 and 31 March 2017](#) released by the South African Police Service shows a total of 49,660 sexual offences. It was further mentioned that 80% of the reported sexual offences were rape and 68,5% of the sexual offences victims were women. For the year 2016/17, the police recorded a total of 39,828 rapes which averaged out at 109 rapes each day. One should keep in mind that the definition of rape within the context of South Africa is broad and includes the oral, anal or vaginal penetration of a person whether male or female with a genital organ, anal or vaginal penetration with any object and the penetration of a person's mouth with the genital organs of an animal.

Not only a woman died every eight hours due to violence but more importantly, of those killed, 50% of them are murdered by their intimate partners.

Another category of sexual offences is sexual assault for which [South Africa's crime statistics for 2016/17](#) reported 6,271 cases in 2016/17 compared with 6,212 in the 2015/16 period. Connecting these statistics to the above judgement, it can be observed that the Karabo Mokoena case is certainly only the tip of the iceberg. On this account, a Statistics SA Demographic and Health Survey in 2016 found that, 1 in 5 South African women older than 18 years had experienced physical violence. Incidence varies according to income and marital status. Separated and divorced women were 40% more likely to experience violence compared to 31 % who were in relationship. [More recent statistics](#) reveal not only that a woman dies every eight hours due to violence but more importantly, 50% of those killed are murdered by their intimate partners. These estimates confirm that in terms of VAW, South Africa has one of the highest murder rates compared to other countries in the world. In the past few years, VAW has worsened in the country and a search for genuine solutions requires an assessment of its drivers.

Drivers of violence against women

Feminist and norm theories posit that the causes of VAW reside in social, political, cultural and economic structures of our society and are rooted in patriarchy, masculinity and the unequal division of labour. Societies and communities have long been organised along patriarchal lines, a system in which boys and men retain power while girls and women are excluded from its exercise.

Institutionalised gender role and gender inequality result in limited decision-making power, lack of control over financial resources and contribute to keep women in a state of vulnerability and subject to VAW.

There is a persistent trend in gender inequality whereby women are denied emancipation and opportunities to enjoy socio-economic rights. Men are almost always permitted to play an active role in the community, to work for pay and provide for the family, while women are usually assigned to the domestic sphere and to unpaid work such as for instance domestic work and child care. Institutionalised gender roles and gender inequality result in women being limited in terms of decision making and not having control of finances, which makes women more vulnerable and subject to VAW.

Most religions are established along patriarchal lines and hence are perceived as a key factor facilitating VAW. It is striking that it is always a male God (and not a female Goddess) who is carved within the collective human psyche. This suggests the superiority and even the divinity of the male gender compared to the female one.

In South Africa 3,3% of men and 2,3% of women think it is acceptable for a man to hit a woman.

With regards to cultural norms, certain societies tolerate wife beating and consider men's 'right' to discipline their wives as an efficient conflict resolution mechanism. It is within this context that early exposure to violence in childhood may become a key factors influencing VAW in adulthood. As reported in [Crime Statistics Series Volume](#)

V, 3,3% of men and 2,3% of women in South Africa think it is acceptable for a man to hit a woman.

At the society level, the legal framework to address VAW remains not only poor but also inconsistent. Even when suitable legislation and policies are available, implementation remain problematic.

Having explored the concept of VAW in terms of its definition, scope, drivers and statistics, it appears that a harsh punishment alone may not succeed to resolve this issue. In addition to the justice system, other measures are needed to tackle this phenomenon in an efficient manner.

Recommendations: curbing violence against women through the due diligence standard

It is vital to understand that heavy legal penalties as a standalone remedy may not always deter criminals. As a result, particular measures are needed to effectively curb VAW. This lead to the concept of 'due diligence' which refers to the standard generally used to determine the types of actions to be initiated by States to address VAW. This concept was rediscovered through the case of *Velasquez Rodriguez V. Honduras* where the Inter-American Court of Human Rights ruled that States must take action to prevent human rights violations committed by non-states actors, investigate allegations of violations and issued sanctions against culprits.

States' compliance to the standard of due diligence implies four key obligations to prevent, investigate, punish and provide compensation for acts of VAW including those perpetrated in the private sphere.

Due diligence is a yardstick for measuring a State's effectiveness in addressing VAW. It was mentioned in 1993 by [the Declaration on the Elimination of Violence against Women](#) adopted by the UN. Article 4(C) of this document urges States to:

exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.

States that do not put in place measures to prevent human rights abuse may be derelict of its obligations to guarantee these rights. States' compliance to the standard of due diligence implies four key obligations to prevent, investigate, punish and provide compensation for acts of VAW including those perpetrated in the private sphere. States must use the same level of commitment in relation to preventing, investigating, punishing and providing remedies for acts of VAW as they do with other forms of violence.

Firstly, with regard to the obligation to prevent, the government should initiate certain action prior to any occurrence of VAW. This can be done either through education and training programmes or through the enactment of legislation and policies. The Presidential GBV (Gender Based Violence) and Femicide Summit held between 1 and 2 November 2018 by State authorities were a good initiative to prevent VAW in South Africa.

Secondly, in terms of their obligation to investigate, States should properly investigate VAW using all available means and with the same commitment as that exhibited in investigating other categories of crimes. In investigating cases of VAW, States must use all their resources either in terms of human capacity or financial means to provide necessary information about what happened.

Low levels of prosecution of crimes against women reinforce the belief among victims that there is no systematic and guaranteed judicial response to violence against women.

Thirdly, States should fairly and effectively take sanctions against the perpetrators of VAW given that low levels of prosecution of crimes against women reinforce the belief among victims that there is no systematic and guaranteed judicial response to VAW. In terms of due diligence, States are therefore required to review existing legal framework and take effective measures and where necessary, adopt laws and sanctions that punish police, security forces or any other agents who engage in acts of VAW especially during the performance of their duties.

Lastly, the fourth obligation from due the standard of diligence is that of compensation which is about the right to remedy. Compensation can take various forms including money, counselling and support of various sorts provided by public authorities.

In sum, the main concern raised at the beginning of this policy brief was to know whether heavy penalties could be the ideal solution to curb VAW. This could work except the fact that when used as a standalone measure, it may instead lead to unintended results which do not solve the problem. A set of additional and complementary measures is therefore required. The adoption of the standard of due diligence by States and other policy-makers may be a game changer. This standard not only permits authorities to initiate measures prior to the occurrence of VAW, that is through prevention, but it also allows for the possibility to take action after the crime was committed.

References

Crime Statistics Series. Volume V Crime against women in South Africa Report 03-40-05, statistics south Africa, An in-depth analysis of the Victims of Crime Survey data (2018). Available at <http://www.statssa.gov.za/publications/Report-03-40-05/Report-03-40-05June2018.pdf>

Committee on the Elimination of Discrimination Against Women, General Recommendation 19 (11th session, 1992). Declaration on the Elimination of Violence Against Women. U.N. Doc. A/RES/48/104 (1993)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

Factsheet: South Africa's crime statistics for 2016/17 available at <https://africacheck.org/factsheets/south-africas-crime-statistics-201617/>

Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, prepared by Rashida Manjoo U.N. Doc. A/66/215 (2011).

Special Rapporteur on Violence Against Women, the Due Diligence Standard as a Tool for the Elimination of Violence Against Women. U.N. Doc. E/CN.4/2006/61 (2006).

Special Rapporteur on Violence Against Women, UN Doc. A/HRC/23/49 (2013).

The Beijing Declaration and Platform for Action available at <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

UN Secretary-General, In-Depth Study on All Forms of Violence against Women, UN Doc. A/61/122/Add. 1 (July 2006).

UN Declaration on the Elimination of Violence against Women, A/RES/48/104 (1993) available at <http://www.un.org/documents/ga/res/48/a48r104.htm>

About the author

Gerard Emmanuel Kamdem Kamga is a Researcher at the Centre for Sexualities, Aids and Gender (CSA&G) at the University of Pretoria. He holds a doctoral degree in laws from the University of Pretoria and has a multidisciplinary background including in Law, Human Rights, Gender Analysis, Security, Political Science and Critical Theory. Gerard's works revolve around the social and human conditions and question the existing global, regional and domestic systems of governance and policies as well as their impacts on gender, social justice, human rights and the rule of law. He has published extensively in reputed national and international accredited and peer reviewed journals.

Gerard is also a Research Fellow at the Free State Centre for Human Rights at the University of the Free State, a facilitator and guest lecturer at the University of Pretoria and an admitted Sworn Translator and Commissioner of Oaths at the High Court of South Africa.

About the CSA&G

The Centre for Sexualities, AIDS and Gender (CSA&G) was established in 1999 as the Centre for the Study of AIDS (CSA) initially as a standalone centre to help guide and shape the [University of Pretoria's](#) (UP) HIV response, its engagement with communities from which staff and students are drawn and implement both service and research programmes. The CSA&G has found an intellectual home within UP's [Faculty of Humanities](#), but works across all nine UP faculties, support services and its Executive.

The CSA&G uses an intersectional approach to working with constituents and broader issues of human rights and social justice. An 'intersectional' approach, refers to the fact that forms of oppression intersect with and co-constitute each other, so that our work must focus on people as complex bearers of multiple, contextual and fluid identities.