

Fixing the Patchwork: A Comparative Analysis of Gender-Based Violence Laws in South Africa and Zambia



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ABSTRACT

This study critically examines the legislative frameworks addressing gender-based violence (GBV) in South Africa and Zambia, with the aim of assessing their effectiveness in preventing, prosecuting, and responding to GBV. Using a comparative legal methodology, the research analysed statutory instruments such as South Africa's Domestic Violence Amendment Act and Criminal Law (Sexual Offences and Related Matters) Amendment Act, alongside Zambia's Anti-Gender-Based Violence Act. The findings revealed that South Africa's fragmented approach, while progressive in intent, suffers from enforcement challenges, limited victim support, and a lack of conceptual clarity. In contrast, Zambia's unified and victim-centred legislation demonstrates procedural efficiency, robust institutional support, and effective community engagement through specialised GBV courts and victim support units. The paper recommends the adoption of a single, consolidated GBV statute in South Africa, informed by Zambia's integrated model. It further advocates for expanded access to protection orders, better rural outreach, and the establishment of specialised courts and police units. The study contributes to the discourse on gender justice by highlighting the importance of coherent legal frameworks and intersectoral coordination in addressing GBV. It provides a model for legislative reform that other jurisdictions in the Global South might consider adopting to enhance gender equality and state accountability.

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INTRODUCTION

Gender-based violence (GBV) remains one of the most pervasive human rights violations globally, deeply rooted in structural inequalities, discriminatory social norms, and historical injustices. According to the World Health Organization (WHO), approximately one in three women worldwide experiences physical or sexual violence, most often by an intimate partner.¹ Despite increased awareness and advocacy, this prevalence has remained largely unchanged over the past decade, signalling a failure of both preventive and responsive legal mechanisms.² In the Southern African context, GBV is particularly acute, with South Africa and Zambia recording alarmingly high rates of domestic violence, sexual assault, and femicide.³

¹ WHO, "Devastatingly Pervasive: 1 in 3 Women Globally Experience Violence," Joint News Release, March 9, 2021, <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence>.

² World Health Organization, *Violence Against Women Prevalence Estimates, 2018: Global, Regional and National Estimates* (Geneva: WHO, 2021), 1.

³ United Nations Economic Commission for Africa, *Violence Against Women: The Case of Africa* (Addis Ababa: UN ECA, 1991).

South Africa's legal response to GBV is governed by a constellation of statutes, including the Domestic Violence Amendment Act (2023), the Criminal Law (Sexual Offences and Related Matters) Amendment Act, and the Criminal and Related Matters Amendment Act.⁴ While these laws have introduced significant reforms, they remain fragmented, often overlapping in scope and lacking a coherent, unified approach to addressing GBV. By contrast, Zambia has adopted the Anti-Gender Based Violence Act—a single, comprehensive legislative framework that integrates prevention, protection, prosecution, and support services within one statute.⁵ This divergence raises critical questions regarding the effectiveness of legislative design in combating GBV.

The lack of a unified framework in South Africa has led to enforcement inconsistencies, confusion among victims and service providers, and limited coordination between the justice system, law enforcement, and support institutions.⁶ Moreover, deep-seated patriarchal attitudes and institutional insensitivity continue to undermine the implementation of existing laws.⁷ Therefore, present study seeks to examine and compare the legislative frameworks addressing GBV in South Africa and Zambia, with particular focus on their design, implementation, and institutional support structures. By applying a comparative legal methodology, the study identifies conceptual, procedural, and structural gaps in South Africa's approach and assesses whether Zambia's unified legal model offers a more effective strategy. The research contributes to the growing discourse on gender justice and legal reform by proposing evidence-based recommendations aimed at enhancing legislative coherence, institutional efficiency, and survivor protection in South Africa.

METHODOLOGY

This study adopted a qualitative, comparative legal research methodology to examine and evaluate the legislative frameworks governing gender-based violence in South Africa and Zambia. As a doctrinal legal analysis, the study relied primarily on the interpretation of statutory law, constitutional provisions, case law, and international legal instruments relevant to the regulation of GBV. The chosen methodology identifies substantive and procedural strengths and weaknesses in each jurisdiction's legal response, assesses the extent to which existing frameworks address the practical realities faced by survivors, and derives lessons that can inform law reform in South Africa. Primary sources for the analysis include key legislative instruments such as the Domestic Violence Act, the Domestic Violence Amendment Act, the Criminal Law (Sexual Offences and Related Matters) Amendment Act and the Criminal and Related Matters Amendment Act in the South African context. For Zambia, the study focuses on the Anti-Gender Based Violence Act 1 of 2011 as the central legislative text. These legal sources are examined alongside relevant constitutional provisions and interpreted with reference to international human rights instruments, including the United Nations Declaration on the Elimination of Violence against Women and the Southern African Development Community (SADC) Model Law on GBV. The study does not involve empirical fieldwork or human participants but draws on publicly available data, case law, and documented stakeholder perspectives to evaluate legislative coherence, accessibility, and implementation. The analysis focuses on three key dimensions: legal definitions, procedural mechanisms, and institutional frameworks. By applying a functional comparative approach, the study identifies strengths, weaknesses, and opportunities for legal reform, particularly in aligning South Africa's GBV response with best practices in the region.

⁴ Domestic Violence Act 116 of 1998, the Domestic Violence Amendment Act 14 of 2021, the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, and the Criminal and Related Matters Amendment Act 12 of 2021 in the South African context. For Zambia, the study focuses on the Anti-Gender Based Violence Act 1 of 2011.

⁵ Rumbidzai Elizabeth Chidoori, *Putting Women First: Zambia's Anti-Gender Based Violence Act of 2011* (Pretoria: African Union, 2011); Zambia, *Anti-Gender-Based Violence Act 1 of 2011* (Lusaka: Parliament of Zambia, April 15, 2011), preamble and sections 31–33.

⁶ South African Human Rights Commission, *Report on Gender-Based Violence in South Africa* (Johannesburg: SAHRC, 2021), 22–24; National Strategic Plan on Gender-Based Violence and Femicide 2020-2030 (2019) Interim Steering Committee (ISC) 22. The Interim Steering Committee created the Gender-based Violence and Femicide National Strategic Plan (GBVF-NSP), established in April 2019, to respond to the gender-based violence and femicide crisis.

⁷ Lisa Vetten, "Addressing Domestic Violence in South Africa: Reflections on Strategy and Practice," in *Expert Group Meeting on Violence against Women: Good Practices in Combating and Eliminating Violence against Women*. United Nations Division for the Advancement of Women, 2005, 17–20.

DISCUSSION

Legislation that deals with Gender-Based Violence in South Africa

South Africa has made significant strides in addressing gender-based violence through the criminalisation of such conduct and the enactment of multiple legislative instruments aimed at prevention, protection, and prosecution.⁸ This section critically examines the principal statutes governing GBV, while engaging with scholarly and policy debates surrounding the fragmented nature of the current legal framework. It argues that the proliferation of separate, uncoordinated laws has led to a disjointed response, undermining the efficacy of state interventions. The analysis proceeds from the premise that the persistence of GBV in South Africa is, in part, attributable to the absence of a coherent and integrated legislative framework. The piecemeal nature of existing statutes not only generates confusion among stakeholders but also impedes a holistic and sustained approach to combating GBV.

Domestic Violence Act

The Prevention of Family Violence Act was one of the earlier legislative measures addressing family violence in South Africa.⁹ It sought to provide legal remedies, such as interdicts, to prevent violence within the family unit.¹⁰ However, the Act's scope was limited. Section 1 applied only to parties in a marriage or to individuals living together in a marriage-like relationship, regardless of whether they were legally married.¹¹ Section 2 further outlined the prohibitions on the respondent, including assaulting or threatening the applicant, entering the matrimonial home, or preventing the applicant or a child from entering the home.¹² Despite these provisions, the Prevention of Family Violence Act was criticised for its narrow application and insufficient protection for victims.¹³

The Domestic Violence Act 116 of 1998 marked a critical advancement in South Africa's legislative response to domestic violence by broadening protection mechanisms and replacing the limited scope of the Prevention of Family Violence Act. Central to the Act is the provision for protection orders, intending to afford victims the fullest legal protection and affirm the state's commitment to eradicating gender-based violence (GBV).¹⁴ The 2023 Domestic Violence Amendment Act (DVAA) represents a significant enhancement of this framework, introducing a more expansive definition of domestic violence to include psychological, economic, and technological abuse, and broadening the scope of domestic relationships to recognise same-sex partnerships and extended family ties.¹⁵

The DVAA introduces several procedural and substantive reforms to improve access to justice. Notably, it permits third-party applications for protection orders,¹⁶ extends protections to children exposed to domestic violence, mandates the removal of firearms from perpetrators,¹⁷ and provides for monetary relief to address the financial dependency that often entraps victims.¹⁸ The inclusion of the Domestic Violence Monitoring Notice and the provision for electronic applications further reflect an effort to

⁸ National Strategic Plan on Gender-Based Violence and Femicide 2020-2030 (2019) Interim Steering Committee (ISC) 22. The Interim Steering Committee created the Gender-based Violence and Femicide National Strategic Plan (GBVF-NSP), established in April 2019, to respond to the gender-based violence and femicide crisis.

⁹ Prevention of Family Violence Act 133 of 1993 Preamble.

¹⁰ See, for example section 2 Prevention of Family Violence Act 133 of 1993.

¹¹ Section 1(2) of the Prevention of Family Violence Act 133 of 1993.

¹² Section 2 of the Prevention of Family Violence Act 133 of 1993.

¹³ Gadinabokao Keaorata, "Shortcomings of the South African Domestic Violence Act 116 of 1998 in Comparative Perspective" (University of Pretoria, 2016), 11.

¹⁴ Preamble of the Domestic Violence Act 116 of 1998 states that "IT IS THE PURPOSE of this Act to afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide; and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of this Act, and thereby to convey that the State is committed to the elimination of domestic violence..."

¹⁵ Mohammed Moolla, "Enhancing the Effectiveness: Strengthening Protection for Domestic Violence Victims Through the Amendment Act," *De Rebus* 18 (2023): 1. 18 (2023): 1.

¹⁶ Section 4(3) of the Domestic Violence Act 116 of 1998 states that "... the application may be brought on behalf of the complainant by any other person, including a counsellor, health service IO provider, member of the South African Police Service, social worker or teacher, who has a material interest in the wellbeing of the complainant: Provided that the application must be brought with the written consent of the complainant, except in circumstances where the complainant is- (a) a minor; (b) mentally retarded; (c) unconscious; or ((1) a person whom the court is, satisfied is unable to provide the required consent."

¹⁷ Section 7(6) of the DVAA.

¹⁸ Section 1 of the DVAA.

modernise and increase accessibility to legal remedies.¹⁹ Section 18B of the Act mandates capacity-building initiatives for law enforcement, reinforcing a victim-sensitive approach to handling GBV cases.²⁰ Moreover, the DVAA underscores the importance of an integrated support system, recognising that legal remedies alone are insufficient. Survivors often require counselling, healthcare, housing, and legal aid, which the Act seeks to facilitate through a multi-sectoral approach. Importantly, the law enables various professionals—including police officers, social workers, educators, and healthcare providers—to assist victims in accessing protection, subject to the complainant’s informed consent, thereby protecting autonomy while preventing misuse.

Despite these progressive reforms, several limitations persist. The DVAA has been criticised for its insufficient gender sensitivity, particularly in its failure to confront the patriarchal attitudes prevalent among law enforcement officials, who frequently perceive GBV as a private, non-criminal matter.²¹ Legal Aid South Africa has noted that although protection orders provide urgent preventive relief from imminent harm, the civil remedies offered by such orders may not suffice in cases involving criminal acts, as the legal process can be protracted.²² This institutional insensitivity, compounded by limited access to courts and technology in rural areas, continues to hinder the effective implementation of the Act. Furthermore, the emphasis on civil remedies, such as protection orders, often fails to deliver immediate or adequate protection in cases involving serious criminal conduct.²³ Basically, while the Domestic Violence Amendment Act marks a vital step forward, its impact is limited by weak enforcement, institutional bias, and poor access in rural areas. Without deeper systemic reform and stronger implementation, the Act’s potential to curb gender-based violence remains constrained.

Criminal Law (Specific Offences and Related Matters) Amendment Act

The Criminal Law (Specific Offences and Related Matters) Amendment Act marks a pivotal development in South Africa’s legal framework for addressing sexual offences and safeguarding vulnerable groups. The Act introduces a range of legal reforms to combat gender-based violence and sexual offences. The key among the reforms is the establishment of the National Register for Sex Offenders. The Criminal Law (Specific Offences and Related Matters) Amendment Act (SORMA), together with the repeal of the common law offence of rape, expanded the range of sexual offences addressed by the Sexual Offences Act (hereafter SOA).²⁴

SORMA’s amendments are particularly relevant to issues of domestic violence, as they aim to strengthen legal protections for vulnerable individuals, many of whom are victims of domestic abuse.²⁵ Key reforms include: expanding the offence of incest, often occurring in domestic settings; introducing the offence of sexual intimidation, which addresses coercion and threats that frequently occur in abusive relationships; and enhancing the regulation of the National Register for Sex Offenders, ensuring that offenders within domestic environments are tracked and monitored.²⁶ Furthermore, SORMA extends the list of individuals entitled to protection under Chapter 6, many of whom may be victims of domestic violence, and broadens the categories of people eligible to apply to the Registrar of the National Register for Sex Offenders. The Act also strengthens reporting obligations for individuals aware of sexual offences committed against vulnerable persons, including those facing domestic abuse, reinforcing the legal duty to protect at-risk individuals.²⁷

¹⁹ Section 4A of the DVAA.

²⁰ Section 18B of the DVAA.

²¹ South Africa UN Human Rights Council Secretariat “Report of the special Rapporteur on violence against women, its causes and consequences on her mission to South Africa” (2017) 1-129.

²² South African Law Reform Commission Discussion Paper 161 para 18.

²³ South African Law Reform Commission Discussion Paper 161 para 18.

²⁴ See, for example, section 14A Criminal Law (Sexual Offences and Related Matters) Amendment Act 13 of 2021. .

²⁵ For example, section 12 of the SORMA prohibited the unlawful and intentional engagement in an act of consensual sexual penetration between persons who may not lawfully marry each other on account of consanguinity, affinity or an adoptive relationship.

²⁶ The National Register will now include the particulars of any person who has been convicted after the commencement of the SORMA Amendment Act of any sexual offence (irrespective of the age of the victim) or offences in terms of the Prevention and Combating of Trafficking in Persons Act 7 of 2013, if the offence was committed for sexual purposes and offences which relate to child pornography (such as the possession, creation and distribution thereof) in terms of the Films and Publications Act 65 of 1996. The Cybercrimes Act 19 of 2020 inserts offences relating to child pornography into the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

²⁷ Section 54 SORMA.

The Act (SORMA) introduced enhanced protections for vulnerable groups, particularly minors and individuals with disabilities, by mandating the compulsory reporting of sexual offences committed against these groups. SORMA also brought significant improvements to the legal framework governing sexual violence cases, including reforms to the court processes, as well as modifications to the law of evidence and procedural rules.²⁸ These reforms aim to facilitate more effective prosecution of sexual offences and ensure the provision of various support services for victims of sexual violence.²⁹ Additionally, the amendment to SORMA broadened the legal definition of incest. Prior to the amendment, Section 12 prohibited unlawful and intentional acts of sexual penetration between individuals who could not lawfully marry due to an adoptive relationship.³⁰ The revised provision has extended the offence to include unlawful sexual acts involving sexual violation, not limited to penetration, between individuals prohibited from marrying due to either an adoptive relationship or affinity.³¹ This expanded scope reflects a more comprehensive approach to addressing sexual violations within familial and quasi-familial relationships.

One of the most significant advancements introduced by this Act is the establishment of the National Register for Sex Offenders (hereafter NRSO), which serves as a comprehensive record of individuals convicted of sexual offences, intending to prevent them from working with vulnerable groups.³² The primary objective of the NRSO is to protect children and individuals with mental disabilities, ensuring that they are not entrusted to the care of someone whose name appears on the register due to a lack of awareness by their guardians or caretakers.³³

The register empowers parents and guardians to make informed decisions regarding the safety and well-being of their children and mentally disabled family members, helping to prevent their exposure to individuals who may reoffend and exploit their vulnerability through sexual abuse.³⁴ Additionally, the NRSO plays a crucial role in alerting prospective employers to the presence of convicted sex offenders among potential employees, thereby safeguarding vulnerable individuals in institutional and professional settings.³⁵ The NRSO can also play an important role in alerting social media people who want to establish domestic relationships, more especially for online dating, which has become increasingly prevalent. Through alerting the users to individuals with known histories of sexual offenses, the NRSO could assist in reducing the risk of users entering into relationships with potentially dangerous individuals. It is therefore suggested that South Africa should require to vet their clients on dating sites so as to protect the people who are seeking love on different social media platforms.

As a result, the National Register for Sex Offenders not only safeguards vulnerable groups but also provides broader protection to all citizens from several sexual offences. In addition to the register, victims of sexual offences are granted the right to compel offenders to undergo HIV testing to determine whether they may have been exposed to the virus.³⁶ While this provision plays a critical role in protecting the victim's health, the victim must file an application with a magistrate within 90 days and lay a charge of sexual offence with the police.³⁷ Furthermore, SORMA introduces several significant legal provisions, including a redefinition of the common law concept of rape. The revised definition now includes the anal penetration of males under the broader term "sexual penetration" and provides comprehensive regulations addressing sexual exploitation. SORMA also expressly repeals the common law rule regarding consent from a person as young as 12 years old, rendering any consent obtained from a child under the age of 12, whether male or female, legally invalid. The Act addresses the issue of under-resourced courts and

²⁸ Lizelle Ramaccio Calvino and Mafuku Tholaine Matadi, "Enforcement of Gender-Based Violence Legislation in South Africa: The Need for a Paradigm Shift," in *Global Trends in Law Enforcement-Theory and Practice* (IntechOpen, 2023).

²⁹ Calvino and Matadi, "Enforcement of Gender-Based Violence Legislation in South Africa: The Need for a Paradigm Shift," 2.

³⁰ Calvino and Matadi, "Enforcement of Gender-Based Violence Legislation in South Africa: The Need for a Paradigm Shift," 2.

³¹ Calvino and Matadi, "Enforcement of Gender-Based Violence Legislation in South Africa: The Need for a Paradigm Shift," 2.

³² Section 2 of SORMA. See also Lisa Murphy, Paul Fedoroff & Melissa Martineau "Canada's Sex Offender Registries: Background, Implementation and social policy considerations" (2009) 18 *Canadian Journal of Sexuality* 61.

³³ Nina Mollema, "The Viability and Constitutional of the South African National Register for Sex Offenders: A Comparative Study," *Potchefstroom Electronic Law Journal* 18, no. 7 (2015): 2707–38.

³⁴ Charl Johan Marais, "The Shortcomings of Criminal Law (Sexual Offences and Related Matters) Amendment Act" (Nelson Mandela University, 2018), 10.

³⁵ Marais, "The Shortcomings of Criminal Law (Sexual Offences and Related Matters) Amendment Act," 10.

³⁶ Karrisha Pillay, "Testing for HIV/AIDS: The Constitutional Standard," *Law, Democracy & Development* 5, no.2(2001):213–21.

³⁷ Marais, "The Shortcomings of Criminal Law (Sexual Offences and Related Matters) Amendment Act," 10.

promotes a victim-centred approach by establishing sexual offences courts, victim support rooms, and care centres. It also includes provisions aimed at the adoption of a comprehensive policy framework to regulate all aspects related to the handling of sexual offences.³⁸ The Act envisions that the enforcement of draft regulations will introduce the necessary mechanisms to create, regulate, and enforce a more efficient judicial system, while also providing the inter-sectoral infrastructure necessary to support victims of sexual violence.³⁹

Although the Sexual Offences Act was enacted with laudable objectives, including the creation of the National Register for Sex Offenders (NRSO) in South Africa, its implementation has attracted significant criticism. While the Register aims to enhance the protection of vulnerable groups, particularly women and children, concerns have emerged regarding its practical efficacy and administrative viability. Critics argue that widespread misconceptions about its function, coupled with logistical and bureaucratic shortcomings, have compromised its intended purpose.⁴⁰ Furthermore, scholars and human rights advocates have raised constitutional concerns, suggesting that the NRSO may infringe upon the inherent dignity of offenders by subjecting them to ongoing social stigma and disproportionate consequences. The South African Law Reform Commission (SALRC) has also questioned the utility of the NRSO, asserting that its existence lacks compelling empirical justification and does little to advance the rehabilitation and reintegration of offenders into society.

Criminal and Related Matters Amendment Act

The Criminal and Related Matters Amendment Act focuses on reforming the Criminal Procedure Act to enhance the regulation of bail and sentencing, particularly in cases involving domestic violence and offences committed against vulnerable groups.⁴¹ This legislation responds to the increasing concern over GBV by imposing more stringent requirements for bail applications in domestic violence cases and those involving the violation of protection orders.⁴² Under the Act, no police or prosecutorial bail may be granted in cases of GBV, such as when a husband slaps his wife and is subsequently arrested.⁴³ Previously, police bail could be granted in such cases on the grounds that assault is a minor crime.⁴⁴ The new amendments require the accused to remain in custody until their first court appearance, during which they may apply for release.⁴⁵

The Act prioritises the victim's safety in bail determinations.⁴⁶ Before granting bail, the court must consider the victim's views and the potential danger the accused may pose. The court is also required to evaluate whether the accused has threatened violence against the victim or others and whether they have a history of domestic offences.⁴⁷ If the court decides to grant bail, it must assess whether a protection order has previously been obtained by the victim. If not, the court is required to issue a protection order as if the complainant had applied for it. Moreover, the Act empowers victims by allowing them to participate in proceedings concerning the release of the perpetrator on parole or correctional supervision.⁴⁸ This emphasis on victim participation throughout the criminal justice process aims to give victims a voice in decisions that directly impact their safety and well-being. The legislation underscores the importance of victim engagement at various stages of the justice system, thereby promoting a more inclusive and responsive legal process.⁴⁹

The Act expands the circumstances in which the complainant can give evidence through intermediaries so as to allow the vulnerable witnesses, such as children, persons who suffer from physical and psychological conditions, to testify in court through an intermediary in proceedings other than

³⁸ Section 62(1) of the SORMA.

³⁹ South African Human Rights Commission Research Brief: "Unpacking Gaps and Challenges in Addressing Gender-Based Violence in South Africa" (April 2018).

⁴⁰ Mollema, "The Viability and Constitutional of the South African National Register for Sex Offenders: A Comparative Study."

⁴¹ Marga Van Rooyen, "Legislative Development," *Just Africa Journal* 1 (2022): 2.

⁴² Marga van Rooyen 'legislative development' (2022) 1 *Just Africa Journal* 2.

⁴³ Van Rooyen, "Legislative Development," 2.

⁴⁴ Marais, "The Shortcomings of Criminal Law (Sexual Offences and Related Matters) Amendment Act," 10.

⁴⁵ Van Rooyen, "Legislative Development," 3.

⁴⁶ Rooyen *Just Africa Journal* 3.

⁴⁷ Section 4(h) CRMAA.

⁴⁸ Section 4 CRMAA.

⁴⁹ Section 4 CRMAA.

criminal proceedings.⁵⁰ In the past, many vulnerable witnesses felt offended when they had to testify in court, and this resulted in such witnesses claiming that they had been treated unfairly.⁵¹ The effect of the amendment lies in the fact that the witnesses will not have to be physically present in court to testify, but may do so with the help of an intermediary from another informal venue.⁵² The witness will be more comfortable and does not have to face any person whose presence may upset him or her. While the Act has tightened the requirements for bail provisions regarding the offenders of GBV, such bail requirements are not framed to deal with GBV as a separate crime.⁵³ This is because these requirements are constituted to deal with the offenders of domestic violence or those who infringe on the conditions of a protection order.⁵⁴

In summary, South Africa's response to gender-based violence reflects notable legislative developments, yet its fragmented nature undermines legal coherence and survivor protection. Despite the introduction of progressive statutes such as the DVAA and SORMA, implementation challenges, institutional bias, and limited rural access continue to hinder their impact. The piecemeal structure of these laws has led to inconsistent enforcement and a lack of intersectoral coordination. These shortcomings highlight the urgent need for a unified and victim-centred legal framework. Against this backdrop, the next section turns to Zambia, whose integrated approach to GBV legislation offers valuable comparative insights and potential lessons for reform in South Africa.

The Zambian Approach to Gender-Based Violence

South Africa and Zambia, sharing a legacy of British colonialism, have developed legal systems grounded in common law traditions. Both countries enshrine constitutional supremacy in their legal orders: Zambia through Article 1(3) of its Constitution, and South Africa through Chapter 2 of its own, which articulates a strong commitment to human dignity, equality, and the protection of human rights.⁵⁵ This shared constitutional architecture provides a meaningful basis for comparison, particularly in the area of gender-based violence, where both jurisdictions face persistent challenges but have adopted different legislative and institutional approaches.⁵⁶

In Zambia, the legislative response to GBV is consolidated in the Anti-Gender Based Violence Act, which represents a unified legal framework for the prevention, prosecution, and redress of GBV.⁵⁷ The Act integrates criminalisation, procedural guidelines, and victim support measures within a single statute.⁵⁸ In contrast, South Africa's response remains fragmented across several legislative instruments, including the Domestic Violence Amendment Act of 2021 and the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007. This legal fragmentation has been criticised for creating confusion, inefficiencies, and inconsistencies in adjudication, ultimately hindering the effective protection of survivors. Scholars such as Ntlama and Durojaye have underscored that the piecemeal approach in South Africa weakens the enforcement of GBV laws, as overlapping mandates and procedural disparities delay justice and frustrate victims' access to remedies.

Zambia's legislative framework provides procedural clarity in the reporting and investigation of GBV cases.⁵⁹ Victims may initiate complaints, but the Act also allows for third-party reporting, thereby empowering concerned individuals and institutions to act on behalf of vulnerable victims, such as children

⁵⁰ Section 4 CRMAA.

⁵¹ Mollema, "The Viability and Constitutional of the South African National Register for Sex Offenders: A Comparative Study."

⁵² Mollema, "The Viability and Constitutional of the South African National Register for Sex Offenders: A Comparative Study."

⁵³ Philip Stevens, "Recent Developments in Sexual Offences against Children—A Constitutional Perspective," *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 19, no. 1 (2016), 8.

⁵⁴ Stevens, "Recent Developments in Sexual Offences against Children—A Constitutional Perspective," 8.

⁵⁵ The Constitution of Zambia (amendment) Act 2 of 2016. Art 1(3). See also Abraham Mwansa 'Law, Religion and Human Rights in Zambia: The Past, Present and the Practice (2002) 8 *African Human Rights Law Journal* 536. The Constitution of the Republic of South Africa, 1996. Sec, 10 provides that everyone has inherent dignity and has the right to have their dignity respected and protected. Sec, 9(1) postulates that 'everyone is equal before the law and has the right to equal protection and benefit of the law'.

⁵⁶ See *Kaputo v The People (Appeal 196 of 2020)* 2022 [ZAMCA] 105 at para 1.1.

⁵⁷ The Anti-Gender-Based Violence Act 1 of 2011(AGBV Act). Chidoori, *Putting Women First: Zambia's Anti-Gender Based Violence Act of 2011*, 31.

⁵⁸ Muchinda Muma, "An Analysis of the Anti-Gender Based Violence Act as a Positive Mechanism against Harmful Customary Practices Affecting Women," *Zam. LJ* 46 (2015): 151.

⁵⁹ Article 6(1) & (2) of the AGBV.

and persons with mental disabilities.⁶⁰ Complaints may be lodged at any police station based on convenience to the victim, and police officers are legally mandated to respond promptly.⁶¹ Officers must conduct interviews in a language understood by the victim, assist with access to medical services, and ensure the safety of the complainant.⁶² These victim-centred procedures reflect a commitment to accessible justice and timely intervention.

Investigation of GBV offences in Zambia is led by the Victim Support Unit (VSU) of the Zambian Police, which collaborates with the United Nations Development Programme to enhance investigative capacity.⁶³ The recent establishment of a forensic DNA laboratory represents a significant advancement in evidentiary support for GBV cases. Biological material such as semen, blood, and saliva is used to identify perpetrators and establish the circumstances of the offence, thereby strengthening the probative value of forensic evidence. Police are required under the Act to record complaints in detail, assist victims with preserving evidence, and facilitate their access to protective services.⁶⁴

In contrast to South Africa's predominantly civil-law approach, which places the onus on victims to initiate legal proceedings—particularly in domestic violence matters—Zambia employs a prosecutorial model that centralises state responsibility in the enforcement of gender-based violence (GBV) laws. Under this model, the National Prosecution Authority (NPA) is entrusted with the institutional mandate to prosecute GBV offences, thereby shifting the burden of legal redress from the survivor to the state.⁶⁵ The NPA Act provides for the establishment of a witness protection fund to cover transportation, counselling, and related costs.⁶⁶ Prosecutors are expected to adopt victim-centred approaches that prioritise accountability while respecting due process. This reinforces public confidence in the justice system and promotes equitable outcomes. The prosecutorial framework is designed to challenge harmful societal norms and to institutionalise a culture of non-tolerance towards GBV.

A distinguishing feature of the Zambian model is the establishment of fast-track courts dedicated to the adjudication of GBV cases.⁶⁷ These courts are operational in Lusaka, Kabwe, Ndola, Chipata, Mongu, and Choma, and are intended to accelerate access to justice, particularly for women and children. The courts have been praised for reducing delays, increasing victim participation, and ensuring that survivors are shielded from intimidation by alleged perpetrators.⁶⁸ These specialised courts issue a range of orders, including protection, restraining, compensation, and eviction orders, as well as counselling mandates aimed at rehabilitation.⁶⁹ Their operation reflects an integrated approach to both adjudication and support, and has been endorsed by the United Nations as a model of good practice.

Community engagement forms a vital pillar of Zambia's GBV strategy.⁷⁰ Traditional leaders have been sensitised and trained to challenge cultural practices that perpetuate gender inequality and violence, such as early marriage, female genital mutilation, and fertility taboos.⁷¹ Programmes supported by international agencies like USAID and the United Nations Joint Programme have empowered local leaders to enforce anti-GBV laws in their chiefdoms.⁷² Community awareness initiatives—including those targeting men and boys through campaigns like “He4She,” “Good Husband Campaign,” and “I Care About Her”—have played a transformative role in shifting harmful gender norms.⁷³ These efforts are

⁶⁰ Article 6(1) & (2) of the AGBV.

⁶¹ Article 6(4) of the AGBV.

⁶² Article 7 read with Article 8 of the AGBV.

⁶³ Eastern and Southern Africa Gender Platforms, “Zambia Gender-Based Violence Assessment,” 2023, 34; Thelma CHANSA Chanda, “Cultural Factors Contributing to Gender-Based Violence in Zambian Societies,” *World Journal of Advanced Research and Reviews*, 2024, 22.

⁶⁴ Article 8(1) of the AGBV.

⁶⁵ Section 5 of the Zambian National Prosecuting Authority Act 34 of 2011.

⁶⁶ Section 15 of the Zambian National Prosecuting Authority Act 34 of 2011.

⁶⁷ Zambia Law Development Commission's Report on the review of the Anti-Gender Based Violence Act 1 of 2011 (2023) 6.

⁶⁸ Elena Lakso Tesáková, “The Establishment of Fast Track Courts and User Friendly Courts in Kabwe and Lusaka to Fight Gender Based Violence Cases Ambitions,” *Juridiska Institutionen*, 2017, 2.

⁶⁹ Eastern and Southern Africa Gender Platforms, “Zambia Gender-Based Violence Assessment,” 27.

⁷⁰ Eastern and Southern Africa Gender Platforms, “Zambia Gender-Based Violence Assessment,” 28.

⁷¹ Eastern and Southern Africa Gender Platforms, “Zambia Gender-Based Violence Assessment,” 28.

⁷² Alison Channon and Emmanuel Ngulube, “I Care About Her: Building a Movement of Champions in Zambia to End Violence against Women and Girls,” OXFAM Policy and Practice, March 5, 2015, <https://policy-practice.oxfam.org/resources/i-care-about-her-building-a-movement-of-champions-in-zambia-to-end-violence-aga-345992/>.

⁷³ Channon and Ngulube, “I Care About Her: Building a Movement of Champions in Zambia to End Violence against Women and Girls.”

supported by community-based structures such as Community Action Groups and Village One-Stop Centres, which offer first aid, legal guidance, and referrals to shelters or courts.⁷⁴ These centres also assist in perpetrator apprehension and foster partnerships between local communities and law enforcement agencies.

In addition to legal and community-based responses, the Zambian framework provides robust psychosocial support to survivors.⁷⁵ The Department of Social Welfare, under the Ministry of Community Development, conducts safety assessments and links victims to services such as counselling and temporary shelters. Counselling is recognised by the Anti-Gender Based Violence Act as a core component of survivor rehabilitation. Police officers and NGOs alike offer professional psychosocial support, with organisations such as Lifeline Zambia operating 24-hour counselling services across all mobile networks.⁷⁶ This integration of mental health care within the GBV response infrastructure reflects an understanding of the long-term impacts of violence and the need for trauma-informed services.

Collectively, Zambia's approach to GBV is both holistic and rights-based. By consolidating legislative provisions, streamlining procedural mechanisms, and embedding community ownership into the legal framework, the country has created a coherent model that enhances survivor protection, reduces delays, and improves judicial outcomes. In contrast, South Africa's fragmented legal response lacks the same degree of institutional coherence and unified statutory protection, despite its strong constitutional and international commitments. Zambia's example illustrates the value of an integrated legal and institutional framework that addresses the multifaceted nature of GBV, and it offers a valuable model for South Africa and similarly situated jurisdictions seeking to strengthen their legal responses to gender-based violence.

RECOMMENDATIONS

It is recommended that South Africa adopt a consolidated statutory framework on gender-based violence to remedy the fragmentation that currently characterises its legal response. The establishment of specialised GBV courts and dedicated police units is essential to enhancing access to justice and ensuring comprehensive survivor protection. Additionally, the expansion of community-based interventions is necessary to challenge entrenched gender norms and support sustainable prevention efforts. In the Zambian context, legislative reform is equally urgent. It is recommended that Zambia adopt measures aimed at the codification of minimum standards to guarantee broader access to emergency protection orders and to provide for the creation of survivor compensation funds. Moreover, the extension of the fast-track court system to a national level would constitute a significant step towards strengthening survivors' access to justice and ensuring the effective adjudication of GBV-related claims.

CONCLUSION

This comparative study has demonstrated that Zambia's Anti-Gender Based Violence Act offers a more coherent and integrated legislative framework than South Africa's fragmented GBV laws. While South Africa has made significant strides through the Domestic Violence Amendment Act and related statutes, the multiplicity of legal instruments has resulted in procedural confusion, enforcement inconsistencies, and limited coordination across institutions. In contrast, Zambia's unified approach—anchored in a single statute—has facilitated procedural clarity, the establishment of specialised courts, and coordinated community-based support systems. The findings confirm that a consolidated legal model, supported by strong institutional and community engagement, enhances the accessibility, efficiency, and responsiveness of GBV interventions. South Africa stands to benefit from adopting a more integrated legislative framework informed by Zambia's model, particularly in promoting survivor-centred justice, reducing delays, and fostering intersectoral coordination.

⁷⁴ Channon and Ngulube, "I Care About Her: Building a Movement of Champions in Zambia to End Violence against Women and Girls."

⁷⁵ Keesbury Jill Askew Ian, Chiyaba Grace Wanjiru Monica, and Kate Wilson, "Comprehensive Responses to Sexual Violence in East and Southern Africa: Lessons Learned from Implementation," *Population Council*, 2011.

⁷⁶ *Frontieres Avocats Sans*, *Challenges of Implementation of the Anti-Gender-Based Violence Act 2011 in Zambia* (Brussels: European Union, 2017).

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