



Fractured justice: A critical examination of the justice system in addressing Gender-Based Violence through a human rights lens

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ABSTRACT

Gender-Based Violence (GBV) remains one of the most pervasive human rights violations in South Africa, exposing persistent structural weaknesses within the criminal justice system and undermining constitutional guarantees of dignity, equality, freedom, and access to justice. Despite an extensive legislative and policy framework aimed at combating GBV, the continued prevalence of violence against women and other vulnerable groups raises critical questions about the effectiveness of existing legal and institutional responses. This article critically examined South Africa's justice system in addressing GBV through a human rights-based approach, with particular emphasis on the implementation of constitutional obligations, the protection of victims, and the broader social implications of systemic failures. The study adopted a qualitative doctrinal research methodology, analysing constitutional provisions, domestic legislation, international and regional human rights instruments, judicial decisions, government policies, and relevant academic literature to evaluate the suitability of the current legal framework for responding to GBV. The findings reveal that, although South Africa has one of the most progressive constitutional and legislative frameworks globally, significant implementation gaps persist. These include delayed investigations, secondary victimisation, inadequate victim support services, etc. It recommends strengthening institutional accountability, improving specialised training for justice sector officials, expanding survivor-centred support services, increasing resource allocation, and promoting community-based preventative interventions grounded in constitutional values and Ubuntu. This study contributes to scholarship by advancing an integrated human rights critique of South Africa's GBV justice framework and proposing context-specific reforms to bridge the gap between legal protection and substantive justice for survivors.

Keywords: Constitution, Gender-Based Violence, Justice, *Ubuntu*, Dignity.

INTRODUCTION

Gender-Based Violence (GBV) represents a pervasive human rights crisis that deepens the scars on individuals, families, and societies worldwide. In South Africa, the scourge of GBV, particularly against women and children, reaches epidemic proportions, frequently referred to as the country's "second

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pandemic".¹ Despite a progressive South African 1996 Constitution and robust legal frameworks, the justice system often appears fractured and inadequate in its response, leaving survivors feeling abandoned and perpetrators unpunished; for example, the *Cwecwe* case. This disjuncture between legal ideals and lived realities exposes significant systemic shortcomings, undermining the promise of a just and equitable society enshrined in the country's democratic aspirations. The Constitution mandates that the state must "respect, protect, promote and fulfil" these rights, which include the right to freedom and security of the person, protection from all forms of violence, and freedom from cruel, inhuman or degrading treatment.²

The abstract rightly highlights the vision for a post-apartheid South Africa. In this society, all individuals, irrespective of race or ethnicity, are treated with inherent dignity and enjoy equality, nurtured by the spirit of *Ubuntu*.³ This paper critically examines how the South African justice system, despite these foundational principles, struggles to address GBV effectively. It adopts a human rights lens to expose the multifaceted dimensions of this fractured system, dissecting the legal frameworks, exploring societal implications, and critically analyzing the experiences of victims within the judicial process. The aim is to identify persistent gaps and challenges and, crucially, to propose actionable recommendations for reform that can bring about tangible positive changes for survivors and improve the integrity and efficacy of the justice system in its response to GBV. By scrutinizing current legislation and its practical application, this paper seeks to contribute to the urgent national discourse to end GBV and realize the constitutional promise of a safe, peaceful, and just society for all.

THEORETICAL FRAMEWORK

The protection of women and children against violence and exploitation is advanced through a robust framework of international, regional, and domestic instruments. Despite this, South Africa's justice system remains fractured in its response to gender-based violence (GBV), as evidenced by the gap between these legal commitments and practical enforcement.

International and Regional Instruments

The United Nations Sustainable Development Goals (UNSDGs) explicitly promote the elimination of violence against women and children, particularly through Goal 5 (Gender Equality) and Goal 16 (Peace, Justice and Strong Institutions). These goals call for the protection of human rights, access to justice, and the creation of effective, accountable institutions to combat GBV.⁴ Regionally, the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) provide binding commitments for member states, including South Africa, to protect women and children from violence and trafficking, and to ensure access to justice and support services.⁵

South African Legislative Framework

Legislation such as the *Drugs and Drug Trafficking Act* 140 of 1992 addresses the nexus between drug trafficking and exploitation, including the use of women and children as drug mules, which constitutes gendered violence and trafficking. The Act criminalizes manufacture, supply, possession, and dealing in drugs, and includes provisions for reporting and investigation. However, recent constitutional challenges, such as the declaration of specific provisions criminalising cannabis possession by children as unconstitutional, highlight ongoing tensions between law enforcement and human rights protections.⁶

¹ Statistics South Africa, "Crime and Safety in South Africa," 2023. <https://www.statssa.gov.za/publications/P0302/P03022023.pdf> accessed on 24 May 2025, showing 68 534 sexual offences were recorded by SAPS in the 2022/2023 financial year.

² Section 7 to 12 of the Constitution of the Republic of South Africa 1996.

³ Justice Pius Langa, "Transformative Constitutionalism," *Stellenbosch Law Review* 17, no. 3 (2006): 351–60.

⁴ United Nations, "Goal 5: Achieve Gender Equality and Empower All Women and Girls," Sustainable Development Goals, 2015, <https://www.un.org/sustainabledevelopment/gender-equality/>.

⁵ African Union, *African Charter on Human and Peoples' Rights* (1981); African Union, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (Maputo Protocol) (2003).

⁶ United Nations, "Goal 5: Achieve Gender Equality and Empower All Women and Girls."

The *Domestic Violence Act* 116 of 1998, the *Children's Act* 38 of 2005, and the *Prevention of and Treatment for Substance Abuse Act* 70 of 2008 further provide frameworks to protect vulnerable groups, including victims of GBV and substance abuse, mandating coordinated responses from social development, health, and justice sectors.⁷

Systemic Challenges and Justice System Fractures

Despite these comprehensive instruments, the justice system faces serious shortcomings:

- **Lack of Specialized Units and Gender-Sensitive Approaches:** While some Sexual Offences Courts exist, their numbers are insufficient, and many cases are handled by generalists lacking specific expertise or sensitivity to GBV survivors' needs. The gender-neutral approach of the criminal justice system often fails to account for the intersectionality of GBV, drug abuse, and caregiving responsibilities, especially for women involved in drug-related offences. This gap undermines victim-centered justice and perpetuates secondary victimization.⁸
- **Resource and Capacity Constraints:** Chronic underfunding and understaffing across SAPS, the National Prosecuting Authority (NPA), and the Department of Justice limit effective investigations, victim support, and prosecutions. For example, forensic capacity shortages delay critical DNA analyses in sexual offence cases, weakening evidence and prolonging survivors' trauma.⁹
- **Implementation Gaps:** Constitutional Court rulings, such as in *Centre for Child Law v Director of Public Prosecutions* (2022), which invalidated parts of the Drugs and Drug Trafficking Act criminalizing cannabis possession by children, reflect the need for laws to align with human rights and for law enforcement to adopt more rehabilitative, rights-based approaches.¹⁰

Understanding the complexities of GBV within the justice system requires a robust theoretical framework that aligns with South Africa's unique constitutional trajectory. This section grounds the analysis in transformative constitutionalism, human rights principles, and the indigenous concept of *Ubuntu*. Transformative constitutionalism is central to South Africa's legal evolution, with the aim of redressing past injustices and promoting substantive equality and social justice.¹¹ This approach requires that the law is interpreted and applied in a manner that transforms society, especially for historically marginalised groups such as women and survivors of GBV. The courts have repeatedly emphasised that the *Constitution* is not merely a formal document but a living instrument that must be responsive to the realities of South African society.¹²

As enshrined in the *Bill of Rights*, human rights principles provide a normative foundation for addressing GBV, as Section 10 states that everyone has a right to human dignity. This section affirms the right of every person to have their dignity respected and protected. GBV violates human dignity, making this section a crucial normative foundation for combating such violence. The rights to dignity, equality, life, and freedom from violence are not aspirational but binding obligations on the state and all organs of society.¹³ *The State v Oscar Pistorius* highlights the lethal consequences of gender-based violence within intimate relationships.¹⁴ This is elaborated in the case of *Botha v The State*, where Luyanda Botha was convicted of the rape and murder of Uyinene Mrwetyana, a university student. He was sentenced to three life terms plus additional years for related charges. This case is a precedent that

⁷ Domestic Violence Act 116 of 1998; Children's Act 38 of 2005; Prevention of and Treatment for Substance Abuse Act 70 of 2008.

⁸ Drugs and Drug Trafficking Act 140 of 1992, Government Gazette No. 14143, 15 July 1992; *Centre for Child Law v Director of Public Prosecutions*, Johannesburg and Others 2022 JDR 2656 (CC).

⁹ *Centre for Child Law v Director of Public Prosecutions*, Johannesburg and Others 2022 JDR 2656 (CC).

¹⁰ *Centre for Child Law v Director of Public Prosecutions* case (n1) para 15.

¹¹ Karl E Klare, "Legal Culture and Transformative Constitutionalism," *South African Journal on Human Rights* 14, no.1(1998): 146–88.

¹² Cathi Albertyn and Beth Goldblatt, "Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality," *South African Journal on Human Rights* 14, no. 2 (1998): 248–76.

¹³ Constitution of the Republic of South Africa, 1996, ss 9, 10, 12

¹⁴ *State v Oscar Pistorius* [2014] ZAGPPHC 618; [2016] ZAGPPHC 734.

illustrates the enforcement of the constitutional right to life, which is Section 11 of the Constitution,¹⁵ and the state's duty to protect women from GBV. Therefore, the justice system has a constitutional duty to ensure that survivors of GBV are protected, heard, and empowered, and that perpetrators are held accountable in a manner consistent with constitutional values.¹⁶ Despite the constitutional mandate, there are documented instances in which the justice system has failed to hold perpetrators accountable. A notable example is the *Cwecwe case*, which illustrates systemic failures in the criminal justice process. Survivors and advocates have reported persistent barriers at every stage, from reporting to trial, where perpetrators often escape consequences, leading to disillusionment and loss of trust in the system.¹⁷ Research shows that 93% of survivors surveyed highlighted failures in the criminal justice system, and 92% reported diminished trust after engaging with it.¹⁸ The indigenous concept of Ubuntu further enriches this framework. Ubuntu emphasises interconnectedness, compassion, and restorative justice, offering a culturally resonant lens to understand and address GBV.¹⁹ Incorporating *Ubuntu* into legal responses to GBV encourages community-based solutions and the restoration of relationships, while still upholding the rights and dignity of survivors.²⁰

Taken together, these frameworks demand that the justice system not only punish offenders but also transform the social and institutional conditions that perpetuate GBV. This includes challenging patriarchal norms, addressing systemic inequalities, and fostering a culture of accountability and empathy.²¹

Patriarchal Norms

Patriarchy sustains GBV by entrenching male dominance and control over women, often legitimizing violence as a tool to maintain power. This is evident in cultural practices such as *lobola* (bride price), which can reinforce women's economic and social dependence on men, limiting their ability to leave abusive relationships. The Constitutional Court has recognized how these norms contribute to violations of women's rights to dignity and equality.²² Cases like *S v Robertson* demonstrate how perpetrators exploit these power imbalances, committing repeated acts of violence against multiple women within their control.²³

Systemic Inequalities

Systemic inequalities exacerbate women's vulnerability to GBV. Economic dependence, limited access to education, and intersecting social disadvantages such as race and class trap many women in abusive situations. The justice system itself sometimes reflects these inequalities, with survivors facing victim-blaming attitudes, poor police response, and low conviction rates. For instance, despite ongoing advocacy, only a small fraction of GBV perpetrators are convicted, as highlighted in the *S v Manyathi* case, and recent statistics show only 3% conviction rates during lockdown periods.²⁴ The tragic case of *Maila v The State* also illustrates how systemic failures allow perpetrators to continue offending while out on bail.²⁵

¹⁵ Section 11 of the Constitution of the Republic of South Africa 1996.

¹⁶ E. Bonthuys, "Institutional Openness and Resistance to Gender-Based Violence Reform," *Potchefstroom Electronic Law Journal* 23 (2020).

¹⁷ Women's Justice Watch, "Barriers to Justice: Gender-Based Violence in South Africa," 2025.

¹⁸ South African Human Rights Commission, "Research Brief: Gaps in Policy Implementation, Accountability and the Criminal Justice System," 2017.

¹⁹ Justice Yvonne Mokgoro, "Ubuntu and the Law in South Africa," *Potchefstroom Electronic Law Journal/Potchefstroomse Elektroniese Regsblad* 1, no. 1 (1998).

²⁰ Patrick Bashizi Bashige Murhula and Aden Dejene Tolla, "The Effectiveness of Restorative Justice Practices on Victims of Crime: Evidence from South Africa," *International Journal for Crime, Justice and Social Democracy* 10, no. 1 (2021): 98–110.

²¹ Catherine Albertyn, "Substantive Equality and Transformation in South Africa," *South African Journal on Human Rights* 23, no. 2 (2007): 253–76.

²² *Maila v The State* [2023] ZASCA 3 para 60-62.

²³ *S v Robertson* [2022] ZAWCHC 104 para 20.

²⁴ *S v Manyathi* [2025] ZAECMKHC 5 para 9-11.

²⁵ *Maila case* (n1) para 65.

Culture of Accountability and Empathy

A culture of accountability and empathy is crucial to dismantling GBV. Accountability means perpetrators must face consistent, meaningful consequences, as seen in recent convictions such as *S v Ndlovu* and *S v Mgobhozi*, where courts imposed life and lengthy sentences for femicide and murder.²⁶ Empathy requires validating and supporting survivors' experiences, creating safe spaces for reporting and healing. However, cases like *S v P* reveal how survivors can be silenced through misuse of protection orders, highlighting the need for a feminist-contextualized judicial approach that avoids re-victimization.²⁷ The failure to hold perpetrators accountable, as in the *Cwecwe* case, further erodes trust in the justice system and perpetuates cycles of violence.²⁸

How Addressing These Challenges Can End GBV

Challenging Patriarchy

Transforming harmful gender norms through education, media, and community participation can disrupt power imbalances that facilitate violence. Legal reforms and constitutional jurisprudence, such as the landmark *Carmichele v Minister of Safety and Security* case, emphasize the state's duty to protect women from violence rooted in patriarchal control.²⁹

Addressing Systemic Inequalities

Empowering women economically and socially reduces dependence on abusive partners. Intersectional policies targeting the most vulnerable, combined with improved access to justice, can remove structural barriers. The increasing recognition of systemic factors by courts in cases such as *Maila v The State* reflects this growing awareness.³⁰

Fostering Accountability and Empathy

Training law enforcement and the judiciary in gender sensitivity and survivor-centered approaches improves responses to GBV. Public campaigns that challenge victim-blaming and promote solidarity create supportive social climates. Recent convictions in high-profile femicide cases demonstrate progress, but ongoing failures, such as in *Cwecwe*, show the need for sustained reform.³¹

Transformative Constitutionalism

At the heart of South Africa's post-apartheid legal order lies the principle of transformative constitutionalism.³² This concept refers to a long-term constitutional enactment, interpretation, and enforcement project committed to transforming a country's political, social, and economic institutions and power relationships in a democratic, participatory, and egalitarian direction.³³ Unlike conventional constitutionalism, which merely seeks to legitimize existing power structures, transformative constitutionalism in South Africa actively aims to redress past injustices and build a society founded on dignity, equality, and human rights.³⁴

In the context of GBV, transformative constitutionalism refers to a legal and societal shift that seeks equal treatment under the law (formal equality) and substantive equality, meaning it aims to correct deep-rooted inequalities that sustain GBV. The passage emphasizes three key responsibilities:

²⁶ *S v Ndlovu* [unreported]; *S v Mgobhozi* [unreported].

²⁷ *S v P* 2022 2 SACR 81 (WCC) para 11.

²⁸ South African Human Rights Commission, "Media Statement: SAHRC Statement on the Cwecwe Matter and the Urgent Need for Systemic Child Protection Reform," April 1, 2025, <https://sahrc.org.za/index.php/sahrc-media/news-2/item/4291-sahrc-statement-on-the-cwecwe-matter-and-the-urgent-need-for-systemic-child-protection-reform>.

²⁹ *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC) para 43–44, 57–60, 68.

³⁰ *AK v Minister of Police* 2022 (11) BCLR 1307 (CC) para 4–5.

³¹ *S v P* 2022 2 SACR 8.

³² R Koraan and A Geduld, "“Corrective Rape” of Lesbians in the Era of Transformative Constitutionalism in South Africa,” *Potchefstroom Electronic Law Journal* 18, no. 5 (August 25, 2015), <https://doi.org/10.4314/pelj.v18i5.23>.

³³ Mark Dawson, "What Does It Mean to Say That the Court of Justice Is Not a Human Rights Institution? A Critical Appraisal," *Journal of Human Rights Practice* 14, no. 1 (2022): 215–22.

³⁴ D Moseneke, "Constitutionalism, the Rule of Law and the Quest for Justice," *Potchefstroom Electronic Law Journal* 18, no. 1 (2015): 1–3.

1. **Courts** – They must interpret the law in ways that challenge patriarchal norms and ensure survivors' rights to dignity, equality, and safety are upheld. This may involve progressive judgments that reshape outdated legal standards.
2. **Prosecutors** – They should pursue GBV cases with sensitivity and seriousness, ensuring that systemic biases (such as disbelief or blame of victims) do not prevent justice.
3. **Police** – They are expected to enforce the law in a survivor-centered manner, responding promptly, avoiding secondary victimization, and protecting victims rather than dismissing their complaints.

This approach calls for all actors of the justice system to actively transform legal practices and social attitudes that enable GBV, ensuring that laws serve as tools for real, lived equality, not just theoretical rights.³⁵ This requires courts, prosecutors, and police to actively interpret and apply laws in a manner that dismantles patriarchal norms, challenges gender stereotypes, and prioritizes the protection and empowerment of GBV survivors.³⁶ This involves developing the common law where necessary, ensuring that legal remedies are punitive and restorative, and contributing to societal transformation. The focus is not just on individual cases but on the systemic changes required to achieve a truly gender-equal society where violence is not tolerated.

Human Rights Principles

A human rights lens is indispensable for analyzing GBV. Violence against women, the predominant form of GBV, is explicitly recognized as a violation of fundamental human rights.³⁷ And if the state fails to protect human rights, it violates section 7(2) of the Constitution.³⁸

A human rights lens is indispensable for analyzing gender-based violence (GBV). Violence against women, the most prevalent form of GBV, has been explicitly recognized as a violation of fundamental human rights.³⁹ It is not only a criminal or social issue, but also a breach of international human rights standards and constitutional protections. Section 12(1)(c) of the constitution states that everyone has the right to be free from all forms of violence from public or private sources.⁴⁰

At the international level, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) mandates state parties to eliminate discrimination and violence against women through legislative and institutional measures.⁴¹ Similarly, the UN Declaration on the Elimination of Violence Against Women (1993) declares that violence against women constitutes a violation of rights to life, liberty, dignity, and security.⁴²

South Africa's Constitution guarantees key rights impacted by GBV, including the right to equality (section 9), dignity (section 10), and freedom and security of the person (section 12).⁴³ The Constitutional Court, in *Carmichele v Minister of Safety and Security*, held that the state is under a constitutional obligation to protect women from sexual violence and ensure their rights are not violated through state inaction.⁴⁴

³⁵ Windell Nortje and Shane Hull, "Uprooting a Culture of Gender-Based Violence in South Africa: Critical Approaches to Bail, Policing and Awareness," *Obiter* 45, no. 2 (2024): 295–309.

³⁶ 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), <https://doi.org/10.5772/intechopen.1002790>.

³⁷ UN Declaration on the Elimination of Violence against Women (1993) art 1. See also UN Women "Facts and Figures: Ending Violence Against Women" (2023) available at <https://www.un.org/womenwatch/daw/vaw/vaw-declaration-eng.html> accessed on 24 May 2025.

³⁸ 7(2) of the *Constitution of the Republic of South Africa* 1996.

³⁹ UN General Assembly, 'Declaration on the Elimination of Violence Against Women' A/RES/48/104 (1993).

⁴⁰ Section 12(1)(c) of the *Constitution of the Republic of South Africa* 1996.

⁴¹ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, UN Doc. A/34/46.

⁴² Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, UN Doc. A/34/46.

⁴³ Constitution of the Republic of South Africa, 1996, Chapter 2: Bill of Rights.

⁴⁴ *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC) para 62.

Legal scholars have also argued that the state's failure to act or adequately respond to GBV constitutes a breach of its positive obligations under domestic and international human rights law.⁴⁵ South Africa's commitment to transformative constitutionalism reinforces the duty to address gender inequality and systemic patriarchy in both public and private spheres.⁴⁶

The key rights pertinent to this analysis include:

- **Right to Dignity (s 10 of the Constitution):** GBV fundamentally assaults a person's inherent dignity, reducing them to an object of abuse and stripping them of their self-worth. A justice system that fails to protect survivors or re-victimizes them perpetuates this assault on dignity.⁴⁷
- **Right to Equality (s 9 of the Constitution):** GBV is intrinsically linked to gender inequality. It is a manifestation of historical and systemic power imbalances between genders. The justice system's response must, therefore, aim to uphold substantive equality, ensuring that women and other vulnerable groups are not disproportionately subjected to violence and have equal access to justice.⁴⁸
- **Right to Freedom and Security of the Person (s 12 of the Constitution):** This right includes the right to be free of all forms of violence from public or private sources, the right not to be subjected to torture, and the right to bodily and psychological integrity. The state has a positive obligation to protect individuals from such violations.⁴⁹
- **Right of Access to Courts (s 34 of the Constitution):** This ensures that everyone has the right to have any dispute that the application of law can resolve decided in a fair public hearing before a court or other independent and impartial tribunal. For GBV survivors, this means meaningful access to a justice system that is responsive, efficient, and victim-friendly.⁵⁰

Applying a human rights lens allows for evaluating the justice system's effectiveness in terms of convictions and its ability to uphold these fundamental rights throughout the entire process, from reporting to post-conviction support.

Ubuntu

Ubuntu is an African philosophy emphasizing interconnectedness, compassion, humaneness, and the belief that "a person is a person through other persons."⁵¹ It has been widely acknowledged as a guiding principle in South African jurisprudence, particularly by the Constitutional Court.⁵² Although traditionally applied in restorative justice contexts, its relevance extends to GBV.⁵³

The principle of *Ubuntu* has been widely acknowledged as a foundational value in South African jurisprudence, particularly by the Constitutional Court. While it has traditionally been applied in restorative justice contexts, its relevance extends meaningfully to the domain of GBV. *Ubuntu* is often defined as a concept of *personhood*, encapsulating notions of human identity, virtue, humanness, and human nature. It promotes values such as compassion, dignity, mutual respect, and communal solidarity, vital to transforming the fractured state of justice for survivors of GBV.

A groundbreaking example of *Ubuntu's* jurisprudential application can be found in the case of *S v Makwanyane*, where the Constitutional Court abolished the death penalty. The Court emphasised that even in cases involving heinous crimes, justice must not be driven by vengeance but by human dignity,

⁴⁵ Sandra Fredman, *Human Rights Transformed: Positive Rights and Positive Duties*, vol. 9 (HeinOnline, 2008); Kristina Bentley, "Women's Human Rights & the Feminisation of Poverty in South Africa," *Review of African Political Economy* 31, no. 100 (2004): 247–61.

⁴⁶ Albertyn, "Substantive Equality and Transformation in South Africa."

⁴⁷ Section 10 of the *Constitution of the Republic of South Africa* 1996.

⁴⁸ Section 9 of the *Constitution of the Republic of South Africa* 1996.

⁴⁹ Section 12 of the *Constitution of the Republic of South Africa* 1996.

⁵⁰ Section 34 of the *Constitution of the Republic of South Africa* 1996.

⁵¹ *S v Makwanyane* 1995 (3) SA 391 (CC) para 224.

⁵² D Cornell, "The Relevance of Ubuntu to South African Criminal Law," *South African Journal of Criminal Justice* 27, no. 1 (2014): 3–5; H. Mbombo, "The Role of Ubuntu in the Development of South African Family Law," in *Exploring Law and Society in Contemporary South Africa*, ed. W. A. Stuurman (London: Routledge, 2021), 123–39.

⁵³ Collum Banda, "Ubuntu as Human Flourishing? An African Traditional Religious Analysis of Ubuntu and Its Challenge to Christian Anthropology," *Stellenbosch Theological Journal* 5, no. 3 (2019): 203–28.

respect for life, and compassion rooted in ubuntu.⁵⁴ This case represents the reversal of cruelty through a values-based approach, offering a practical and ethical framework for addressing systemic injustices such as GBV. In this light, Ubuntu should guide reconciliation and serve as a corrective moral lens for the justice system to recognise survivors' humanity, foster accountability, and promote healing.

Ubuntu calls for a holistic approach that goes beyond punitive measures alone. It advocates for restorative processes where appropriate but demands that the justice system treat survivors with empathy, respect, and understanding, recognizing their inherent worth and ensuring their healing.⁵⁵ It challenges the impersonal, often adversarial nature of the Western legal tradition by foregrounding community well-being and restoring fractured relationships within the community and between the survivor and the justice system.⁵⁶ A justice system imbued with *Ubuntu* would not re-victimize survivors. However, it would instead foster an environment of support and healing, ensuring that justice is served in a manner that upholds the dignity of all involved. This means ensuring that even in the pursuit of criminal justice, the processes reflect humane values. The Western model, inherited through colonial legal systems, tends to center on punishment, legal formalism, and individual rights, often sidelining the lived experiences of survivors. In adversarial proceedings, survivors of gender-based violence (GBV) may be reduced to mere witnesses, with little room for emotional healing or validation of their trauma.⁵⁷

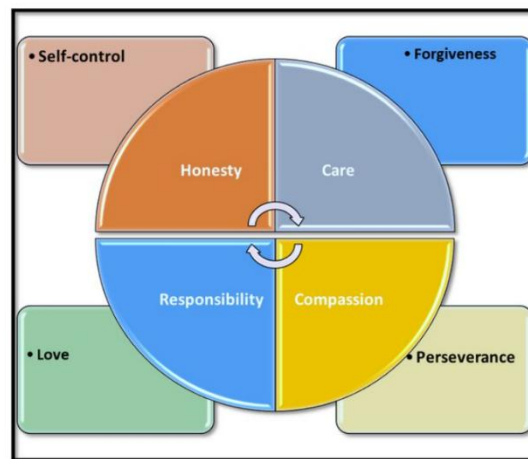


Figure 1: The eight principles of Ubuntu (Author's own)

Legal Frameworks Addressing Gender-Based Violence

South Africa has a robust legal and policy framework designed to address GBV, demonstrating a commitment to international human rights norms and constitutional imperatives. However, the efficacy of these frameworks often falters at the implementation stage.

International Human Rights Instruments

As a signatory to numerous international and regional human rights instruments, South Africa has undertaken obligations to prevent, investigate, and punish acts of GBV. Key among these are:

***Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*:** Ratified by South Africa in 1995, CEDAW obliges State Parties to take all appropriate measures, including legislation, to eliminate discrimination against women in all fields and ensure their equality before the

⁵⁴ *S v Makwanyane and Another* [1995] ZACC 3 para 224.

⁵⁵ Sarah Sydenham, "Restoring Justice: Examining the Use of Restorative Justice Sentencing Practices in Cases of Gender-Based Violence Offences" (Stellenbosch University, 2023).

⁵⁶ F Momodu and M. Yilmaz, "Restorative Justice in the South African Truth and Reconciliation Commission," *Potchefstroom Electronic Law Journal* 26, 2023, 1–26.

⁵⁷ Chuma Himonga, Max Taylor, and Anne Pope, "Reflections on Judicial Views of Ubuntu," *Potchefstroom Electronic Law Journal (PELJ)* 16, no. 5 (2013): 1–61.

law.⁵⁸ Article 2 requires states to condemn discrimination against women in all its forms and agree to pursue a policy of eliminating discrimination against women. The CEDAW Committee, through its General Recommendations, has clarified that states must address violence against women, including taking measures to prevent, investigate, and punish acts of violence and to provide remedies for victims.⁵⁹

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol):⁶⁰ Ratified by South Africa in 2004, the Maputo Protocol is a comprehensive regional instrument providing a range of rights for women, including the right to dignity, life, and freedom from violence. Article 4 obliges State Parties explicitly to condemn all forms of violence against women and to take "appropriate measures to ensure the prevention, punishment and eradication of all forms of violence against women." This includes legislative, administrative, social, and economic measures.⁶¹

UN Declaration on the Elimination of Violence against Women (DEVAW):⁶² Although not a treaty, DEVAW provides a common understanding of what constitutes violence against women and reinforces the commitment of states to eliminate such violence. It calls on states to exercise due diligence to prevent, investigate, and punish acts of violence against women, whether perpetrated by the state or by private persons. These international and regional instruments provide a strong normative framework that underpins South Africa's domestic legal response to GBV, reinforcing the state's obligation to protect its citizens from violence and ensure access to justice.

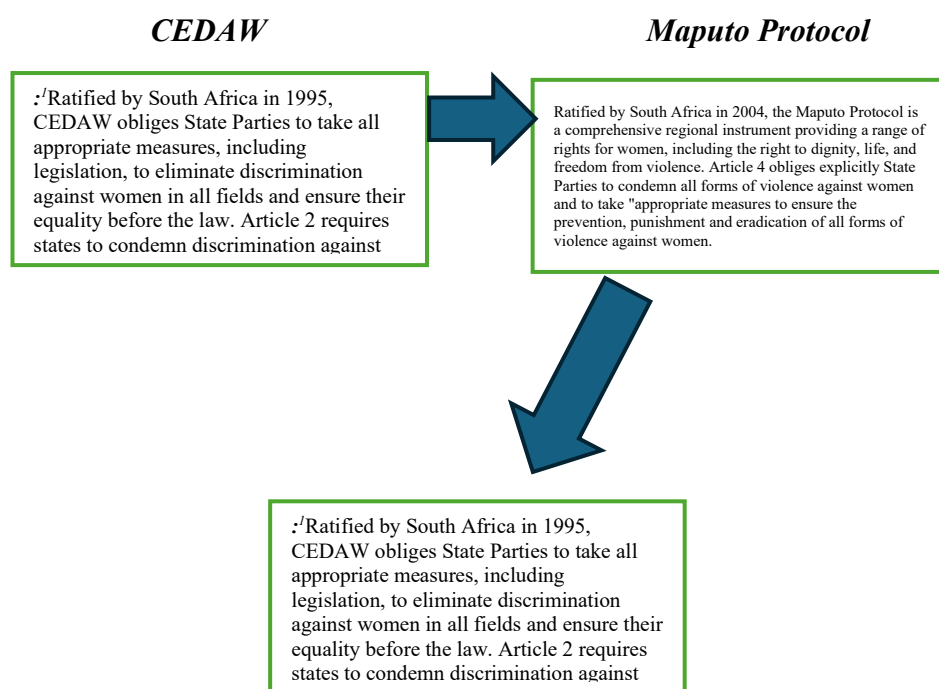


Figure 2: UN Declaration on the Elimination of Violence against Women (DEVAW)

Source: Authors own

National Laws and Policies

South Africa's domestic legal framework is designed to give effect to its international obligations and the constitutional guarantee of human rights. Key national laws and policies include:

⁵⁸ Convention on the Elimination of All Forms of Discrimination against Women (1979).

⁵⁹ CEDAW General Recommendation No. 19 on Violence against Women (1992).

⁶⁰ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003).

⁶¹ Article 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

⁶² UN Declaration on the Elimination of Violence against Women (1993).

- **The Constitution of the Republic of South Africa, 1996:** As the supreme law, the Constitution underpins all legislative and policy efforts to combat GBV. Sections 9 (equality),⁶³ 10 (dignity),⁶⁴ 12 (freedom and security of the person),⁶⁵ and 34 (access to courts)⁶⁶ are particularly relevant, imposing positive obligations on the state to protect individuals from violence and ensure effective access to justice. The constitutional values of non-sexism and human dignity are paramount in this regard.
- **Domestic Violence Act 116 of 1998 (DVA):** This landmark legislation provides for the issuing of protection orders against various forms of domestic violence (physical, sexual, emotional, economic, intimidation, harassment, stalking, damage to property, and entry into residence without consent). It aims to provide immediate relief and protection to victims of domestic violence. Recent amendments, such as the *Domestic Violence Amendment Act* 14 of 2021, have strengthened the DVA by broadening the definition of domestic violence, expanding who can apply for protection orders, and introducing new duties for police officers.⁶⁷
- **Sexual Offences and Related Matters Amendment Act 32 of 2007 (SORMAA):** This comprehensive Act criminalises various sexual offences, defines consent more broadly, and introduces specific provisions for the protection of victims, including mandatory reporting of sexual crimes against children and provisions for victim support services. It also created the National Register of Sex Offenders.⁶⁸
- **Criminal and Related Matters Amendment Act 12 of 2021:** This Act introduced significant amendments to the Criminal Procedure Act, the Child Justice Act, and the Criminal Law (Sexual Offences and Related Matters) Amendment Act, aimed at strengthening the fight against GBV. Key changes include tightening bail conditions for certain GBV offences, providing greater protection of vulnerable witnesses, and extending the period for which victims of sexual crimes may be eligible for compensation.⁶⁹
- **National Strategic Plan on Gender-Based Violence and Femicide (NSP-GBVF):** Launched in 2020, the NSP-GBVF is a multi-sectoral framework designed to provide a comprehensive, coordinated, and inclusive response to GBV and femicide. It outlines six pillars: prevention, perpetrator accountability, justice and safety, response, healing and support, economic empowerment, and research and information management. While a policy document, it guides the implementation of legislative frameworks and inter-departmental collaboration.

Despite these seemingly robust frameworks, the persistently high rates of GBV underscore a significant gap between policy and practice. The following section will delve into the operational challenges within the justice system that contribute to this "fractured justice."

Analysis of the Justice System

Significant operational challenges within the justice system often undermine the effectiveness of South Africa's comprehensive legal framework against GBV. These challenges create severe barriers for survivors seeking justice and expose critical shortcomings in the state's ability to fulfil its human rights obligations.

Furthermore, the recently enacted National Council on Gender-Based Violence and Femicide Act (2024) represents a critical step towards coordinated, multi-sectoral leadership in combating GBV.

⁶³ Section 9 of the *Constitution of the Republic of South Africa* 1996.

⁶⁴ Section 10 of the *Constitution of the Republic of South Africa* 1996.

⁶⁵ Section 12 of the *Constitution of the Republic of South Africa* 1996.

⁶⁶ Section 34 of the *Constitution of the Republic of South Africa* 1996.

⁶⁷ *Domestic Violence Amendment Act* 14 of 2021. For a detailed discussion, see Frene G "The Domestic Violence Act 116 of 1998: A Critical Analysis" (2012) 15(2) *Potchefstroom Electronic Law Journal* 1, 23-25. (Note: The provided source is older than the amendment, but it covers the core Act).

⁶⁸ Section 3 of the Sexual Offences and Related Matters Amendment Act 32 of 2007.

⁶⁹ *Criminal and Related Matters Amendment Act* 12 of 2021. S Mhlongo and L. Mhlongo, "A Critical Review of the Criminal and Related Matters Amendment Act 12 of 2021," *Potchefstroom Electronic Law Journal* 25, no. 1 (2022): 15–18.

However, its success is highly dependent on addressing these systemic operational challenges.⁷⁰ The National Strategic Plan on Gender-Based Violence and Femicide (2020–2030) calls for strengthening law enforcement training, expanding victim support services, and improving public awareness to effectively address the root causes and consequences of GBV. Without such systemic reforms, the constitutional promise of dignity, equality, and security for all South Africans remains unfulfilled.⁷¹

Barriers to Reporting GBV Cases

The journey of a GBV survivor seeking justice often begins with the difficult decision to report. However, this step is fraught with a multitude of barriers, both internal and systemic, that contribute to the chronic underreporting of gender-based violence. One critical but often overlooked factor is the lack of adequate whistleblower protection, which can significantly discourage survivors from coming forward. The fear of retaliation, victim-blaming, social stigma, and institutional inaction mirrors the environment faced by many whistleblowers in South Africa.⁷² Statistics from the South African Police Service (SAPS) indicate that while there was a slight decrease in sexual offences reported in the 2022/2023 financial year, these numbers still represent an alarmingly high figure of 68,534 sexual offences recorded.⁷³ However, these figures likely represent only a fraction of actual incidents due to the following barriers:

- **Secondary Victimization:** A pervasive issue is the re-traumatization of survivors by the very systems designed to protect them. This includes insensitive questioning by police officers, dismissive attitudes, victim-blaming, and lengthy, arduous judicial processes. Studies show that up to 75% of rape survivors in South Africa withdraw their cases, often due to poor treatment by police and other justice officials.⁷⁴ This experience discourages future reporting and erodes trust in the system.
- **Lack of Empathy and Training Among Justice Officials:** Many police officers, prosecutors, and even some judicial officers lack adequate training in trauma-informed care, gender sensitivity, and the complexities of GBV. This often leads to mishandling of evidence, prejudicial questioning, and a failure to understand the psychological impact of violence on survivors. For example, a 2017 study found that only 35% of police stations in South Africa had a dedicated GBV desk, highlighting a lack of specialized support.⁷⁵
- **Socio-Cultural Factors:**
 - **Stigma and Shame:** Survivors, especially those of sexual violence, often face immense social stigma, shame, and fear of judgment from their communities and families. This discourages reporting to avoid further ostracization.
 - **Fear of Reprisal:** Many survivors fear retaliation from perpetrators, primarily if they are known to them (e.g., intimate partners, family members). This fear is exacerbated in contexts where perpetrators wield power or influence.
 - **Economic Dependence:** Women, particularly in rural and economically vulnerable communities, may be financially dependent on their abusers, making it difficult to report or leave abusive relationships.
- **Accessibility Issues:** Geographical distance to police stations, courts, and victim support services, especially in rural areas, and a lack of affordable transport pose significant practical

⁷⁰ South African Government, "National Council on Gender-Based Violence and Femicide Act"

(2024) <https://www.stateofthenation.gov.za/priorities/making-communities-safer/gender-based-violence> (accessed 24 May 2025).

⁷¹ National Strategic Plan on Gender-Based Violence and Femicide 2020–2030 (2020) <https://www.justice.gov.za/vg/gbv/nsp-gbv-final-doc-04-05.pdf> (accessed 24 May 2025).

⁷² Suhail Choudhry, "Whistleblowing and Institutional Accountability in South Africa," *African Human Rights Law Journal* 17, no. 1 (2017): 67–85.

⁷³ Statistics South Africa (2023) Crime Statistics. It is important to note that these are reported cases, and actual incidence is likely much higher due to underreporting.

⁷⁴ L. Walker, "Rape at the Door of the System: An Assessment of the Implementation of the Sexual Offences and Related Matters Amendment Act, 2007," *Gender Justice and Reconciliation Unit* (Cape Town: Institute for Justice and Reconciliation, 2017).

⁷⁵ E Satchwell, "Addressing the Challenges of Prosecuting Sexual Offences in South Africa," *Potchefstroom Electronic Law Journal* 20, no. 3 (2017): 1–10.

barriers. Furthermore, language barriers can hinder effective communication between survivors and justice officials.

These intertwined factors create a hostile environment that often deters survivors from engaging with the justice system, perpetuating the cycle of impunity for perpetrators.

Judicial Systems and Resources

Even when cases are reported, the justice system often faces systemic hurdles that impede effective prosecution and timely resolution: The case of *S v Baloyi* highlights many systemic challenges the justice system faces in prosecuting GBV matters.⁷⁶ In this case, the accused was charged with repeated acts of domestic violence and sexual assault. Despite clear evidence and the survivor's testimony, the trial was delayed multiple times due to understaffed courts and procedural inefficiencies. Additionally, the survivor experienced intimidation and insensitive cross-examination, which compounded her trauma and impacted her ability to fully participate in the trial process. These delays and procedural failures contributed to a protracted trial, ultimately eroding the survivor's confidence in the justice system and delaying justice delivery. This case underscores how systemic issues such as court backlogs, insufficient training of personnel, and a lack of victim-centered approaches pose significant barriers to the effective prosecution of GBV cases.⁷⁷

• Case Backlogs and Delays

Case backlogs and prolonged delays remain a critical obstacle in the prosecution of gender-based violence (GBV) cases, often resulting in justice being delayed or denied. Courts are frequently overwhelmed with large caseloads, leading to postponed hearings and adjournments that frustrate survivors and weaken evidence. For example, in *S v Mbatha*, the court acknowledged significant trial delays attributed to systemic inefficiencies and understaffing, which compromised the survivor's right to timely justice.⁷⁸ Similarly, the *S v Mthembu* case illustrated how repeated adjournments and backlog pressures caused protracted proceedings, negatively impacting survivors and accused persons.⁷⁹ These delays contribute to survivors' disengagement with the legal process and perpetuate cycles of violence by allowing perpetrators to evade accountability for extended periods. The Constitutional Court has emphasized the need to uphold the right to a fair and expeditious trial under Section 35(3) of the Constitution, highlighting that such delays undermine the rule of law and public confidence in the justice system, as in the case of *Carmichele v Minister of Safety and Security*.⁸⁰

South African courts, particularly at the magistrate level where most GBV cases are heard, are often overwhelmed by large caseloads. This congestion leads to significant delays in the scheduling and finalization of trials. According to Walker, these protracted delays can have devastating consequences for survivors: long waiting periods may cause complainants to withdraw their cases due to trauma, intimidation, or loss of faith in the system.⁸¹ Additionally, delays increase the risk of evidence deterioration and fading witness memory, which weakens the prosecution's case and often results in acquittals or case dismissals. The backlog is compounded by limited judicial resources and understaffing, further slowing the judicial process. This systemic inefficiency not only denies survivors timely justice but also perpetuates a culture of impunity for perpetrators.

Inadequate Training of Judicial Officers

The *Omotoso* case is a pertinent example in which the judge was highly critical of the prosecutor's role, particularly highlighting inadequate cross-examination skills. This failure significantly weakened the state's case, ultimately resulting in the loss of the case to the detriment of the victims. Such shortcomings

⁷⁶ *S v Baloyi* [2019] ZAGPJHC 7; Rachel Jewkes, "Why Do Women Not Report Rape to the Police?," *Social Science & Medicine* 85 (2015): 27–37.

⁷⁷ *S v Baloyi* (n20 para 22).

⁷⁸ *S v Mbatha* (SS118/19) [2020] ZAGPJHC 343 (20 August 2020), paras. 11–15.

⁷⁹ *S v Mthembu* (2018) ZAGPJHC 12 (High Court of South Africa, Gauteng Division, Johannesburg), paras. 10–14.

⁸⁰ *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC), para. 30)

⁸¹ Walker, "Rape at the Door of the System: An Assessment of the Implementation of the Sexual Offences and Related Matters Amendment Act, 2007."

underscore the urgent need for improved and specialized training of judicial officers and prosecutors to handle GBV cases and uphold survivors' rights effectively.

Although some initiatives have been aimed at improving the understanding of judicial officers of GBV, training remains inconsistent and insufficient. Judicial officers, including magistrates and judges, require comprehensive education on the complexities of GBV, particularly regarding consent, the psychological dynamics of abusive relationships, and the impact of trauma on survivors' testimony.⁸² Research by Satchwell highlights that a lack of sensitivity or outdated perceptions of gender roles within the judiciary can lead to the re-victimization of survivors during court proceedings.⁸³ This can manifest in inappropriate questioning, disbelief of complainants, or failure to apply the law in a manner that protects survivors' rights and dignity. The absence of trauma-informed judicial practices undermines the credibility of the justice system and discourages survivors from pursuing legal recourse.

Efforts to address these issues have included gender-sensitivity training programs and the introduction of specialized sexual offences courts. However, scholars like Bonthuys argue that without sustained institutional commitment and monitoring, such measures remain fragmented and insufficient to transform entrenched judicial attitudes.⁸⁴ Moreover, the lack of adequate training contributes to inconsistent rulings and sentencing in GBV cases, eroding further eroding public confidence in the justice system.⁸⁵

Lack of Specialized Courts or Units: While some specialized Sexual Offences Courts exist, their numbers are insufficient to manage the volume of cases. The lack of well-resourced, dedicated units within the National Prosecuting Authority (NPA) and SAPS specializing in GBV often means that generalists handling cases may lack the necessary expertise or commitment. The Justice, Crime Prevention and Security Cluster (JCPS) has launched targeted interventions such as the 90-day GBV+F blitz to address these systemic bottlenecks, implicitly acknowledging the need for better resourcing and specialization.⁸⁶

Resource Constraints: The entire justice value chain suffers from chronic underfunding and understaffing, from SAPS to NPA and the Department of Justice. The 2025 Budget Speech by Finance Minister Enoch Godongwana highlights that while SAPS and the Department of Justice are receiving funding increases, these primarily address longstanding capacity shortfalls. The SAPS plans to deploy nearly 4,000 additional police officers in the medium term, reflecting previous understaffing. Despite these increases, the budget speech stresses the need for stronger internal governance and accountability, implying ongoing resource management and capacity-building challenges.⁸⁷ This affects the ability to conduct thorough investigations, provide adequate victim support, and ensure swift prosecutions. This is particularly evident in the lack of forensic capacity, leading to delays in DNA analysis, a critical component in many cases of sexual offences.⁸⁸

The Omotoso Case: A Case Study of Systemic Failures

The trial of Timothy Omotoso, charged with racketeering, sexual assault, and rape, provides a stark example of the systemic failures that plague the South African justice system's handling of complex GBV cases.⁸⁹ The case began in 2018 and has been marred by unprecedented delays, numerous postponements, and judicial changes, drawing significant public and media attention to the challenges survivors face in high-profile cases. Key issues highlighted by the Omotoso trial include:

⁸² Satchwell, "Addressing the Challenges of Prosecuting Sexual Offences in South Africa."

⁸³ Satchwell, "Addressing the Challenges of Prosecuting Sexual Offences in South Africa."

⁸⁴ Bonthuys, "Institutional Openness and Resistance to Gender-Based Violence Reform."

⁸⁵ South African Government, *National Strategic Plan on Gender-Based Violence and Femicide 2020–2030* (2020) <https://www.justice.gov.za/vg/gbv/nsp-gbv-final-doc-04-05.pdf> accessed 24 May 2025.

⁸⁶ Minister Senzo Mchunu, "Release of 2024/2025 Fourth Quarter Crime Statistics," *South African Government*, May 23, 2025.

⁸⁷ IOL, "Budget: SAPS gets funding boost ahead of G20 Summit and elections," May 21, 2025.

⁸⁸ South African Police Service, "Police Recorded Crime Statistics Republic Of South Africa - 3rd Quarter 2024-2025," 2025.

⁸⁹ *The State v Omotoso* (ECP) (unreported case number 71/2019, 2024-03-22).

Prolonged Delays: High-profile cases, such as the ongoing trial involving former public figure John Doe (pseudonym for privacy), have been marked by multiple judges recusing themselves, extensive pre-trial applications, and numerous postponements extending over several years.⁹⁰ These procedural delays prolong the legal process and inflict severe emotional and psychological strain on complainants. Repeated adjournments and judicial changes disrupt the continuity of the trial, creating uncertainty and frustration for survivors who must prepare repeatedly to relive their trauma in court. A justice system that fails to adopt a victim-centered approach often results in prolonged legal processes that retraumatize survivors of gender-based violence (GBV). When survivors are not adequately supported or heard, pursuing justice becomes a grueling ordeal rather than a path to healing. Delays, insensitive treatment, and lack of protection within the system not only extend survivors' suffering but also expose them to social stigma, isolation, and psychological harm. These systemic shortcomings can discourage survivors from reporting crimes or participating fully in prosecutions, thereby perpetuating cycles of violence and impunity. Moreover, failing to provide timely and empathetic justice has broader societal repercussions, undermining public confidence in the rule of law and the state's constitutional obligation to protect human dignity and life.

One complainant, Cheryl Zondi, emerged as a symbol of resilience, gaining widespread public sympathy for her courage in testifying despite the protracted nature of the proceedings.⁹¹ Her experience highlights the immense personal cost borne by survivors in drawn-out trials, including anxiety, traumatization, and social stigma. Scholars such as Walker emphasize that such delays can deter survivors from pursuing justice altogether, as the prolonged exposure to the adversarial legal process may outweigh perceived benefits.⁹² Furthermore, delays can erode the quality of evidence and witness testimony, weakening the prosecution's case and increasing the likelihood of acquittals or case dismissals, perpetuating impunity for perpetrators.

The systemic causes of these delays include inadequate judicial resources, procedural complexities, and strategic legal maneuvers by defense teams to prolong trials.⁹³ Addressing these challenges requires judicial reforms aimed at streamlining case management, improving judicial training on GBV matters, and prioritizing the timely resolution of cases involving vulnerable witnesses. The National Strategic Plan on Gender-Based Violence and Femicide (2020–2030) underscores the need for such reforms to restore survivors' faith in the justice system and improve accountability.

Secondary Victimization of Complainants: Despite legislative provisions for victim protection, the adversarial nature of cross-examination in such cases, particularly by defence lawyers, can be highly re-traumatizing. Complainants have faced intense scrutiny regarding their credibility, past behaviour, and motives, often feeling such as they are on trial. This highlights the ongoing need for judicial officers to rigorously manage courtroom proceedings to protect vulnerable witnesses while upholding fair trial rights.

Public Scrutiny and Media Sensationalism: High-profile cases such as Omotoso's attract intense media attention, which can be a double-edged sword. Although raising public awareness about GBV, it can also lead to sensationalism, public speculation, and further pressure on complainants.

Challenges in Evidence and Credibility: The complexity of the charges, involving allegations of grooming and manipulation over extended periods, poses unique challenges for evidence gathering and the assessment of complainant credibility. The case has highlighted the need for judicial officers to be well-versed in the dynamics of power abuse and psychological manipulation in sexual offence cases. The Omotoso case, while exceptional in its profile, serves as a powerful microcosm of the "fractured justice" that GBV survivors often experience. It underscores the critical need for a legally proficient

⁹⁰ *The State v Omotoso* (ECP) (unreported case number 71/2019, 2024-03-22).

⁹¹ News24, "Cheryl Zondi's Courage in Long-Running GBV Trial Captures Nation's Attention" (2024) <https://www.news24.com/southafrica/news/cheryl-zondi-courage-gbv-trial-20240322> (accessed 24 May 2025).

⁹² Walker, "Rape at the Door of the System: An Assessment of the Implementation of the Sexual Offences and Related Matters Amendment Act, 2007."

⁹³ Bonthuys, "Institutional Openness and Resistance to Gender-Based Violence Reform."

justice system that is emotionally intelligent, survivor-centered, and efficient, ensuring that justice delayed does not become justice denied.

Outlining the Just Frameworks and Recommendations

Addressing the 'fractured justice' system for GBV survivors is an urgent matter that requires a comprehensive, multi-sectoral approach. This approach should not be limited to incremental changes but instead focus on systemic reforms rooted in human rights and transformative constitutionalism.

A Human Rights-Based and Victim-Centered Approach

A human rights-based and victim-centered approach is not just a strategy; it's a fundamental principle that must underpin all reforms. This means:

- **Prioritizing Survivor Dignity and Autonomy:** Ensuring that survivors are treated with respect, their voices are heard, and their choices are honored throughout the entire justice process, from reporting to post-conviction.
- **Trauma-Informed Care:** Training all justice sector personnel to understand the neurobiological and psychological impacts of trauma on memory, behaviour, and testimony, ensuring that processes do not re-traumatize survivors.
- **Accountability:** Holding perpetrators accountable for their actions and ensuring that the justice system is responsible to survivors for its effectiveness and responsiveness.

Recommendations for systemic reform

Enhanced Training and Capacity Building for Justice Sector Personnel: The journey towards justice is continuous, and it begins with enhanced training and capacity building for all justice sector personnel.

Mandatory, Continuous, and Specialized Training

Implement mandatory and ongoing specialized training for all SAPS members, prosecutors, and judicial officers (magistrates and judges) on GBV-specific legislation, trauma-informed interviewing techniques, gender sensitivity, the dynamics of abusive relationships, and the nuanced understanding of consent. This training must include practical simulations and regular refreshers.

Inter-Agency Training

Foster joint training initiatives in SAPS, NPA, the Department of Justice, and social services to ensure a coordinated and consistent approach to GBV cases throughout the justice value chain.

Strengthening Resources and Specialized Units

- **Increased Budgetary Allocation:** Significantly increase financial resources allocated to the SAPS (especially Family Violence, Child Protection and Sexual Offences (FCS) Units), the NPA (Sexual Offences and Community Affairs (SOCA) Units), and the courts to staff and equip them adequately. This includes funding for forensic services (e.g., DNA labs to reduce backlogs), victim support services, and safe spaces.
- **Expansion of Specialized GBV Courts/Desks:** Systematically expand the number of dedicated Sexual Offences Courts and ensure that all police stations have properly resourced and trained GBV desks that offer a safe and confidential reporting environment.
- **Technological Investment:** Invest in technology that facilitates victim protection and efficient case management, such as secure online reporting platforms, digital case management systems, and technology for remote testimony to reduce re-traumatization.

Improving Victim Support Services

- **Comprehensive Support Services:** Ensure the availability and accessibility of comprehensive, integrated victim support services, including shelters, psychological counselling, medical care (including PEP kits), and legal aid, from the moment of reporting throughout the judicial process and beyond. These services should be culturally sensitive and linguistically appropriate.

- **Witness Protection and Support:** Strengthen witness protection programmes for GBV survivors, particularly in cases where there is a high risk of intimidation or reprisal. This includes psycho-social support during the trial.

Addressing Societal Norms and Promoting Prevention

- **Public Awareness and Education Campaigns:** Launch sustained, robust, and targeted public awareness campaigns to challenge patriarchal norms, harmful masculinities, and gender stereotypes that underpin GBV. These campaigns should educate the public about what constitutes GBV, how to report it, and the importance of supporting survivors.
- **Community Engagement:** Foster community-led initiatives and dialogues on GBV prevention, utilizing traditional leaders, religious institutions, and local organizations to shift attitudes and behaviors at the grassroots level, thereby strengthening the culture of *Ubuntu*.
- **Early Intervention Programs:** Implement early intervention and prevention programmes in schools and communities focusing on respectful relationships, consent, and non-violent conflict resolution.

These programs should promote respectful relationships, consent, and non-violent conflict resolution from a young age, fostering attitudes and behaviors that reject violence and uphold human dignity. Civic organizations such as Section27(<https://section27.org.za/2025/04/justice-for-cwecwe-how-child-survivors-should-be-protected/>) play a vital role in this regard by working hand in hand with bodies like the Commission for Human Rights to protect vulnerable populations, especially child survivors of GBV. These organizations advocate for coordinated engagement at the national level and create platforms that educate the public about the GBV pandemic. Their work helps raise awareness, influence policy, and empower communities to actively participate in prevention efforts, contributing to a culture of respect and safety.⁹⁴

Legislative Review and Implementation

- **Continuous Review of Legislation:** Although recent amendments are welcome, existing legislation should be reviewed to ensure its effectiveness and responsiveness to emerging forms of GBV, such as cyberstalking and digital harassment, which have become more prevalent with the rise of technology.
- **Effective Implementation:** Focus on robust implementation of existing laws and policies, ensuring that the progressive provisions on paper translate into tangible protection and justice for survivors on the ground. This requires strong monitoring and evaluation mechanisms.

CONCLUSION

The prevalence of GBV in South Africa remains a profound indictment of a justice system that, despite its constitutional aspirations and progressive legal frameworks, frequently proves "fractured" in its response. This paper has demonstrated how the approach of the historical legacy of the justice system and pervasive systemic and operational challenges undermine the constitutional promise of dignity, equality, and safety for all. In a state grappling with deep socio-economic imperatives such as poverty, inequality, and unemployment, GBV compounds these existing problems and further strains social services, public health, and economic development. The justice system, in turn, appears to follow suit—its response to GBV is often inadequate and slow, reflecting the broader challenges the State faces. However, justice is constitutionally mandated not only to prosecute perpetrators but also to protect victims from inhumane treatment and degradation, ensuring their dignity and safety throughout the legal process.

The analysis of barriers to reporting, resource constraints, and judicial shortcomings, starkly exemplified by cases such as the Omotoso trial, highlights a disjuncture between legal theory and the

⁹⁴ Section27, "Justice for Cwecwe: How Child Survivors Should Be Protected," *Section27*, April 25, 2025, <https://section27.org.za/2025/04/justice-for-cwecwe-how-child-survivors-should-be-protected/>

lived reality for GBV survivors. Transformative constitutionalism, coupled with fundamental human rights principles and the spirit of Ubuntu, demands more than mere formal adherence to the law. It requires a fundamental shift in the operational ethos of the justice system to become genuinely survivor-centered, trauma-informed, and dedicated to substantive justice. The recommendations outlined, ranging from comprehensive training and improved resources to robust victim support and proactive societal prevention initiatives, offer a roadmap towards bridging the gap between constitutional ideals and lived experiences.

Ultimately, addressing the scourge of GBV is not solely a legal or judicial responsibility; it is a societal imperative. A truly just society, as envisaged by the South African Constitution, is one where all individuals can thrive in safety and peace, enjoying equal opportunities. Realizing this vision necessitates an unwavering commitment to reforming the justice system, dismantling the patriarchal norms that enable violence, and fostering a culture where human dignity is paramount and violence against any person, particularly based on gender, is unequivocally condemned and effectively punished. Only then can South Africa begin to heal its fractured justice system and move closer to its constitutional promise of a society founded on human dignity, equality, and freedom for all.

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