



WOMEN'S LEGAL CENTRE

2nd Floor, 5 St Georges
St Georges Mall
Cape Town
8001

+27 21 424 5660

info@wlce.co.za

www.wlce.co.za

**SUBMISSIONS BY THE WOMEN'S LEGAL CENTRE TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON
THE PROMOTION AND PROTECTION OF FREEDOM OF OPINION AND EXPRESSION**

COMPILED BY:

CHARLENE MAY

CHRISCY BLOUWS

JUNE 2021

INTRODUCTION

1. The Women's Legal Centre ("the Centre") welcomes the opportunity to make these submissions to the UN Special Rapporteur on the promotion and protection of freedom of opinion and expression. The Centre is an African feminist public interest law centre based in South Africa. The Centre seeks to advance substantive equality for women through strategic litigation, advocacy, education and training and legal advice. The Centre does its work over five focus areas: the advancement of equality in relationships, the right to be free from violence, women's right to work in just and favorable conditions of work, the right to sexual and reproductive health and rights and women's right to housing, land and property.

DIRECTOR: S Samaai

LEGAL PRACTITIONERS: C May, B Pithey, C Blouws, M Mudarikwa, K Managa, A Stemele

NPO NUMBER: 032-685 NPO

PBO AND SECTION 18A: 930 00 242

VAT NUMBER: 419 025 3296



2. We base our submissions on our daily engagements with women, community-based activists and social justice and women's rights organisations in South Africa. We have also provided strategic litigation support to women who have been victims / survivors of violence and who have sought to speak about their experience and perpetrators in public.

CONTRIBUTION

3. **What barriers, challenges and threats do women in the public sphere face in exercising their freedom of opinion and expression online and offline?**

Women are one of the many groups whose structural disadvantage and vulnerability to violence is embedded in and sustained by the use of harmful, hurtful or hateful speech in South African society. The Centre seeks to draw into focus the impact of speech on women as a vulnerable group in South African society and the impact this structural disadvantage has on women's speech. Misogynistic hate speech is in itself a form of violence against women, and creates and reinforces patriarchal structures and systems that legitimise violence against women. In this way, misogynistic hate speech undermines equality for women even where it does not expressly incite violence or advocate harm.

It follows, that the meaningful pursuit of equality mandated by section 9(4) of the Constitution requires the state to take steps to protect women from all forms of violence, including violence through words and to actively dismantle institutionalised patriarchy that gives rise to violence. Section 10 of The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) works to achieve both these constitutional imperatives. To the extent that the achievement of this purpose infringes the right to freedom of expression, such infringement is

justifiable in light of the importance of the purpose in South Africa's current and historical context.

A striking example of the way in which speech can entrench ideas that perpetuate violence against women can be found in the Equality Court case of Sonke Gender Justice Network v Malema (02/2009; 15 March 2010):

In January 2009, Mr Malema pronounced at a political rally that "When a woman didn't enjoy it [i.e. sex] she leaves the next morning. Those who had a nice time will wait until the sun comes out, request breakfast and taxi money. In the morning, that lady requested breakfast and taxi money. You don't ask for taxi money from somebody who raped you." Sonke Gender Justice Network demanded an apology from the African National Congress, and when no response was forthcoming, filed a complaint with the Equality Court. The Court found that the words could reasonably be construed as hurtful, harmful and demeaning to women, and ordered Mr Malema to make an apology and pay R50 000 compensation to People Opposing Women Abuse.

The Equality Court heard undisputed evidence that the words relied on generalisations about women, rape and consent which reinforce rape myths. The myths and stereotypes reinforce men's dominance and perspectives at the expense of women's equality.¹ In particular, expert evidence suggested that Mr Malema's words sought to imply that "consent is to be inferred from a victim's conduct, rather than explicitly asked and further that inferences of consent can be made after the fact of sex – not beforehand." Mr Malema's remarks trivialised the experience of rape, and centred on the myth of 'real rape'.² Rape myths reflect and shape societal

¹ *Sonke Gender Justice Network v Malema* at p12.

² Roehrs, Stefani "Waiting and watching: Malema's delayed apology and compensation payment and their broader implications" *Agenda: empowering Women for Gender Equity* Vol 25, No 4(90), Gender sexuality and commodity culture (2011) p112 – 117.

responses by creating and encouraging a discourse of what counts as 'real rape' and which victims are 'genuine' victims. Rape myths, and the language used in perpetuating them, silence women who are victims of sexual and domestic violence and make women doubt their own experiences of that violence. It serves to maintain the status quo of power relations and control of men over women.

The South African criminal justice statistics reflect these strongly held beliefs which result in systemic under-reporting of sexual violence and 91% of reported sexual offences cases resulting in withdrawals or not guilty findings.

- a. What are the distinct challenges faced by those who experience multiple and intersecting forms of discrimination?

Women in South Africa are subjected to misogynistic, sexist or gendered speech daily at different intervals and different forms from school, to the home, the community, the workplace, public places as well as online. Speech of this nature is an instrument of oppression, inequality and a driver of violence against women:

- *It fosters and entrenches the attitudes, cultures, institutions and systems that sustain inequality and legitimise violence against women.*
- *It seeks to reinforce patriarchal control over women by instilling fear and insecurity, and by humiliating and degrading.*
- *It is a violent tool used to enforce and reinforce discrimination and hate.*

Domestic legislation and case law, as well as regional and international instruments, recognise that misogynistic language and gendered speech form part of the continuum

of violence against women and that misogynistic speech violates women's rights to equality, dignity and freedom and security of the person.

The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) recognises that women are one of the many groups whose structural disadvantage and vulnerability to violence is embedded in and sustained by the use of harmful, hurtful or hateful speech. Equality is particularly important in light of the fact that the majority of women in this country sit at the intersection of different vulnerable groups.

In Carmichele v Minister of Safety and Security 2001 (4) SA 938 (CC) at para 62, this Court said that sexual violence and the threat of sexual violence "is the single greatest threat to the self-determination of South African women" and goes to the "very core of the subordination of women in society".

- b. How have the pandemic, economic crises and recent political unrests affected women's ability to communicate, protest and access information online and offline?

South Africa has some of the higher statistics of rape and domestic violence in the world. The Covid pandemic has exacerbated the effects of this violence experienced by women as they remain a particularly vulnerable group during the pandemic.³ When the world went into lockdown to curb the Corona Virus outbreak, women and children were forced to remain in homes where violence and poverty is rife. Women were unable to access justice due to the Courts not operating regularly and were forced to remain with their abusers.

During the pandemic, most essential services moved to online platforms and where women live in poor working class backgrounds, they often do not have the means to access social media

<https://www.dailymaverick.co.za/article/2021-01-17-the-shadow-pandemic-of-gender-based-violence-in-africa-from-protocols-to-practice/>³

and virtual platforms, once again excluding them from services and compounding their vulnerability.

Shelters were focused on homelessness due to the pandemic and police were focused on reinforcing regulation rules and ensuring that people were indoors by curfew.

Women were unable to fully exercise their rights to protest due to the restrictions on large gatherings, safety protocols and curfew times. Police who have a duty to serve and protect vulnerable and marginalised groups, instead have criminalised women for contravening the disaster management regulations.

Nationwide protests and gatherings started in 2019 in response to the increase of brutal attacks on women in South Africa, in particular the deaths of UCT student, Uyinene Mrwetyana, UWC student Jesse Hess and South African boxing champion, Leighandre Jegels. "These protests sparked the Anti-Gender-Based Violence Movement, which birthed numerous organisations currently working towards protecting women, assisting survivors, and bringing about tangible change within South Africa"⁴. These protests however came to a halt when the country went into level 5 lockdown and could only resume when the country reopened its economy moving into level 3 lockdown. "The government GBV and femicide command centre recorded more than 120,000 victims in the first three weeks of lockdown, and by the middle of April the call centre in Tshwane was receiving between 500 and 1,000 calls a day. Vodacom's support call centres saw a 65% increase in calls from women and children confined to their homes during lockdown and in need of urgent help (Farber, 2020)". The accuracy of these numbers remain in question as the statistics are only indicative of those women who had access to social media, data and a telephone.

⁴ <https://www.greenpeace.org/africa/en/blogs/12868/combating-gender-based-violence-during-covid-19/>

- c. Can you provide examples or information on ways in which freedom of opinion and expression has been abused or appropriated to undermine women's human rights?

The #MeToo movement that gained prominence and momentum over the last two years has also played out in South Africa. Our experience as feminist litigators has been that perpetrators of violence against women are increasingly using the platform that #MeToo gave to women to insist that women should now be in a position to not only name perpetrators, but that such naming be public.

This has occurred in instances where women sought to participate in an investigation into allegations of sexual harassment. The Centre represented complainants before an inquiry where because of rights afforded to the perpetrator the complainants' evidence was dismissed because they refused to subject themselves to cross examination on the basis that the enquiry did not amount to a judicial hearing where they could be afforded protection. The rights of the women to participate was dismissed because the rules governing the inquiry placed the rights of the perpetrator to cross examine complainants ahead of those of the women.

The WLC has also in recent months represented three women who are survivors of sexual and physical violence and who through social media posts shared their experience with others in the public interest to warn other women. The perpetrators of the sexual violence have successfully used the Protection from Harassment and Domestic Violence legislation to silence women and obtain orders against them that prohibit them from sharing the identity of the perpetrator and their experience on their social media platforms. A tool that was adopted to protect women from violence and

harassment has therefore become a tool used by their perpetrators to silence them. In these instances, we have seen the criminalisation of women's freedom of speech with Courts balancing the rights of perpetrators and victims and considering the perpetrators reputation above women's rights to freedom of speech and the need of women to speak their truth. Perpetrators successfully use the Court and law to further victimise and harass women.

- 4. What in your view are the key elements of a gendered perspective on the human right to freedom of opinion and expression? What would a feminist perspective add to the understanding of this right?**

Intersectional feminism provides a useful lens through which to view freedom of opinion and expression, exactly because it prioritises the needs and rights of an individual within a collective. It recognises that even within groups of seemingly similar people there is a need to frame a collective not as a homogenous group but based on each individual circumstance. Only once this is achieved and continually practiced can we achieve substantive equality. This is the approach that the Centre has taken both in its litigation as well as advocacy.

The feminist lens requires that we recognise that misogynistic hate speech fosters and entrenches the attitudes, cultures, institutions and systems that sustain inequality and legitimise violence against women. Patriarchy manifests in speech. Words that may appear neutral will very often create and reinforce male domination and patriarchal institutions, practices and attitudes.⁵

When left unchallenged, these patriarchal institutions, practices and attitudes are the source of violence against women. Our courts have accepted that patriarchy is the structural driver

⁵ Patriarchy has been defined as 'the manifestation and institutionalisation of male dominance over women and children in the family and the extension of male dominance over women in society in general; patriarchy implies that men hold power in all important institutions of society and that women are deprived of access to such power'. Lerner, G. 1989. *The Creation of Patriarchy*. Oxford University Press: New York, p 239.

behind violence against women and is central to the culture and framework in which violence thrives.

In her concurring judgment in Tshabalala v S; Ntuli v S [2019] ZACC 48; 2020 (3) BCLR 307 (CC), Victor J pointed out at para 91 that the “Deconstruction of patriarchy should not only be a victim-centred societal project but it should also break down structures that enhance patriarchal practices that in turn give rise to gender-based violence.” This is the tool that feminism that provides us through which to view and regulate opinion and speech.

This Court has accepted that male domination is the underlying cause of the majority of sexual and ‘gender-based’ violence.⁶ The link between culture and attitudes and physical violence against women was noted in Bridgman NO v Witzenberg Municipality and Others 2017 (3) SA 435 (WCC):

“Human dignity, the achievement of equality, the advancement of human rights and freedoms, and non-sexism are values that found the Republic of South Africa as a democratic state. Nevertheless, sexual and gender based violence, particularly rape, is endemic within South Africa. This undermines each of the founding values above. It enfeebles “defensible civilisation”, as well as our democratic enterprise. It has its origins in and remains a legacy of the domination and patriarchy that characterised slavery, colonialism and apartheid. It has not been attenuated by the legal transition to democracy. Rape culture, incorporating culture of masculinity, male entitlement and immunity from the consequences of gender based violence, permeates South African society.”⁷

This Court has also stressed the need to be hyper vigilant about the ways in which sexism and patriarchy are incorporated into the practices of daily life as to appear socially and culturally

⁶ Concurrance by Langa CJ in *Masiya v Director of Public Prosecutions, Pretoria and Another (Centre for Applied Legal Studies and Another, Amici Curiae)* 2007 (5) SA 30 (CC); 2007 (8) BCLR 827 at para 84.

⁷ *Bridgman NO v Witzenberg Municipality and Others* [2017] 1 All SA 466 (WCC); 2017 (3) SA 435 (WCC), para 1. The matter went on appeal in respect of the quantum: *Witzenberg Municipality v Bridgman N.O and others* [2019] JOL 46368 (SCA).

normal and legally invisible. This Court acknowledged the “cloaked but ubiquitous nature of patriarchy in the past”.⁸ In *Volks v Robinson* [2005] (5) BCLR 446 (CC) this Court held:

“This Court has on numerous occasions stressed the importance of recognising patterns of systematic disadvantage in our society when endeavouring to achieve substantive and not just formal equality. The need to take account of this context is as important in the area of gender as it is in connection with race, and it is frequently more difficult to do so because of its hidden nature. For all the subtle masks that racism may don, it can usually be exposed more easily than sexism and patriarchy, which are so ancient, all-pervasive and incorporated into the practices of daily life as to appear socially and culturally normal and legally invisible. The constitutional quest for the achievement of substantive equality therefore requires that patterns of gender inequality reinforced by the law be not viewed simply as part of an unfortunate yet legally neutral background. They are intrinsic, not extraneous, to the interpretive enquiry.”⁹

A further aspect of our intersectional lens is one which continues to support women who choose to name their perpetrators on public and social media platforms in acknowledging that such naming is her right to freedom of expression as guaranteed by our Constitution. We do so as we are cognisant of how patriarchy still exists on social media and within free speech but also within our Courts systems and institutions which are often violent towards women. Where the Centre has consulted with women, they have reported naming their perpetrators for various reasons including:

- *Breaking the silence, where a victim or survivor of gender-based violence usually feels silenced by the system.*

⁸ In *Rahube v Rahube and Others* 2019 (1) BCLR 125 (CC); 2019 (2) SA 54 (CC), the Court stated at para 23:

“African women under apartheid were systemically disenfranchised in a number of ways. It is important to recognise that the pervasive effects of patriarchy meant that women were often excluded even from seemingly gender-neutral spaces. The perception of women as the lesser gender was, and may still be, a widely-held societal view that meant that even where legislation did not demand the subjugation of women, the practices of officials and family members were still tainted by a bias towards men. The prioritisation of men is particularly prevalent in spheres of life that are seen as stereotypically masculine, such as labour, property, and legal affairs.”

⁹ *Volks v Robinson* [2005] (5) BCLR 446 (CC) para 163.

- Healing, which brings about a sense of strength for survivors.
- Truth, which has been denied to women by the perpetrators and institutions.
- Power and control as women reported feeling empowered by naming their perpetrators.
- Debunking shame as publicly naming their perpetrators help reframe women's experience of shame.
- Protecting others and creating a sense of community among survivors and challenging the rape culture.

Through this gendered lens we can use the reasons as listed above to illustrate why women's freedom of speech is protected in terms of the Constitution and allows them to publicly name their perpetrators and abusers, not as a means of achieving retributive justice but in the public interest and to keep others safe which is the reason for many of the online lists of perpetrators on social media. Their speech is also protected because it's the truth.

5. Do you see any legal gaps, inconsistencies or controversies that should be clarified in this report, e.g. between protecting the right to freedom of expression and protecting women from ICT violence? Please indicate any specific issues in the international legal framework that in your view would benefit from further analysis in this report.

- a. What legislative, administrative, policy, regulatory or other measures exist in your State to promote and protect women's freedom of opinion and expression online and offline? To what extent do these measures take into account intersectionality?

Section 16 of the South African Constitution guarantees the right to freedom of opinion and expression. This right is not an absolute right and along with other rights contained in the Bill of Rights is limited by S36 of the Constitution but also by S16(2) itself which does not allow for speech that is harmful and incites violence.

Section 16(2) excludes from the scope of the right to expression that constitutes “incitement of imminent violence or advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.”

The authors Milo, Penfold and Stein take the view that “the use of the word ‘incitement’ [in section 16(2)] indicates that the speech must instigate or actively persuade others to cause harm.”¹⁰ In the context of criminal and labour law, the word “incite” has been interpreted to mean to “reach and seeks to influence the mind of another”.¹¹

The word ‘advocate’ is generally understood to mean to publicly recommend or support. As Iain Currie and Johan de Waal state: “[t]o advocate hatred is to propose or call for it, to make a case for it”.¹² The words “advocates, advises, defends or encourages” in the context of section 11(b) of the Suppression of Communism Act also contemplate communication to an audience.¹³

All too often the strict standard created by section 16(2) permits harmful misogynist speech to go unsanctioned contrary to the core values of our Constitution.¹⁴

The constitutional provision and other legal provisions that protect speech are however neutral in language and implementation, and therefore makes no specific reference to women.

¹⁰ Constitutional Law of South Africa, 2nd ed, 42-72.

¹¹ Constitutional Law of South Africa, 2nd ed, 42-6. In the criminal law context see *S v Nkosiyana* 1966 4 SA 655 (A). In labour law, see *Mathong v JS Corporate Security (Pty) Ltd* (2014) 35 ILJ 790 (CCMA).

¹² Currie & de Vaal “The Bill of Rights Handbook” (5th Edition, 2005) 375.

¹³ Claassen’s Dictionary of Legal Words and Phrases (2019) RD Claassen Judge of the High Court of South Africa. See also *R v Adams* 1959 1 SA 675 (Special Court, Pretoria).

¹⁴ Two examples can be found in the decisions of the Broadcasting Complaints Commission which have allowed misogynistic speech to go unsanctioned on two occasions because it did not explicitly advocate hatred and incite violence against women *Smith v SABC (5FM)* [2015] JOL 32755 (BCCSA) and *Lottering v Radio Sonder Grense* [2013] JOL 31062 (BCCSA).

6. What legal administrative, policy or other measures exist in your State to protect women from sexual and gender based violence and harassment online? How effective are they? What impact have they had on women’s empowerment and public participation, including freedom of expression?

The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) is the legislation mandated by section 9(4) of the Constitution to achieve a society in which women fully enjoy all rights and freedoms, experience de facto equality and also equality in terms of outcomes. To achieve this purpose, section 10¹⁵ regulates hateful speech directed at women and other vulnerable groups. Any limitation of the right to freedom of speech imposed by section 10(1) of PEPUDA is in our opinion both reasonable and justifiable under section 36¹⁶ of the South African Constitution, which allows for limitation or restrictions on the rights contained in the Bill of Rights.

*The Constitutional Court has recognised that the threat of sexual violence is as pernicious as sexual violence itself. In *F v Minister of Safety & Security & another (Institute for Security Studies & others as amici curiae)* [2012] JOL 28228 (CC) at para 56, the Court found that these threats “go to the very core of the subordination of women in society. It entrenches patriarchy as it imperils the freedom and self-determination of women.” The Courts have similarly recognised how abusive speech is an instrument in the patterns of physical violence and psychological denigration that exemplifies domestic violence¹⁷.*

The Domestic Violence Act includes in its definition of domestic violence emotional, verbal and psychological abuse.¹⁸ This type of abuse is defined as ‘repeated insults, ridicule, or name

¹⁵ Insert content of S10 of PEPUDA

¹⁶ Insert content of S23 of the Constitution

¹⁷ *S v Engelbrecht* 2005 (2) SACR 41 (W), para 52

¹⁸ Section 1, Definitions: subsection (c).

“emotional, verbal and psychological abuse” means a pattern of degrading or humiliating conduct towards a complainant, including—

(a) repeated insults, ridicule or name calling;
(b) repeated threats to cause emotional pain; or
(c) the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant’s privacy, liberty, integrity or security”.

calling; repeated threats to threats to cause emotional pain'.¹⁹ The relief available to victims of this type of domestic violence is a protection order. A protection order constitutes a serious limitation on various rights of the respondent but is currently considered a justifiable limitation on those rights. The Act recognises that the use of this type of language must be prevented and provides for measures to prevent the perpetrator from continuing with the use of that language. The Act recognises the harm caused and that victims are worthy of protection. Those who are victims of that violence and the harm it causes are entitled to the protections contained in the Act and they can rely on the state to enforce and implement that protection. The remedies available in the Act can be onerous on the respondent (note here, often more onerous than those contained in the Equality Act).

The Protection from Harassment Act includes in its definition of harassment as conduct that 'causes harm or inspires the reasonable belief that harm may be caused by unreasonably engaging in verbal, electronic or other communication aimed at the complainant', or 'sending, delivering or causing the delivery of letters, telegrams, packages to the complainant'²⁰. It too recognises the need to protect victims against certain types of language and speech, and accepts any limitation on the right to freedom of expression is justifiable.

South Africa has ratified the Maputo Protocol which guarantees that every woman shall have the right to dignity inherent in a human being and to the recognition and protection of her human and legal rights. It requires states to ensure protection against "all forms of violence, particularly sexual and verbal violence."

ICASA's Code of Conduct for Broadcasters expressly regulates and limits the broadcast of material that depicts or promotes violence against women.²¹ The Code excludes material that

¹⁹ Act 116 of 1998 section 1.

²⁰ Act 17 of 2011 section 1.

²¹ GN 446 of 14 February 2003: Notice of the publication of the revised Code of Conduct for Broadcasters (Government Gazette No. 24394). Clause 15 provides:

"Broadcasters shall:—

amounts to *bona fide* discussion, argument and opinion, or scientific, dramatic or artistic material.²²

The right to freedom of expression is limited in all these cases but the limitation is justified in light of the important objectives.

As we see an increase in women turning to social media to oust and publicly name their perpetrators, the very same perpetrators are resorting to using legal mechanisms such as defamation threats and criminal charges for hurt to their dignity (*crimen injuria*) cases to silence/gag women and restrict their freedom of speech. It is unfortunate to see these very laws developed to protect women be used as a means to abuse the court process and further victimise women, criminalising their speech. This directly affects women's empowerment as these cases are costly and require legal representation which women do not always have access to. As a result, women's freedom of expression and public participation is largely restricted due to the fear of reprisals from perpetrators.

-
- (i) not broadcast material which, judged within context, sanctions, promotes or glamorizes any aspect of violence against women;
 - (ii) ensure that women are not depicted as victims of violence unless the violence is integral to the story being told;
 - (iii) be particularly sensitive not to perpetuate the link between women in a sexual context and women as victims of violence"

²² Paragraph 17 provides:

"The abovementioned prohibitions shall not apply to.—

- (i) a *bona fide* scientific, documentary, dramatic, artistic, or religious broadcast, which judged within context, is of such nature;
- (ii) broadcasts which amount to discussion, argument or opinion on a matter pertaining to religion, belief or conscience; or
- (iii) broadcasts which amounts to a *bona fide* discussion, argument or opinion on a matter of public interest."

7. What do you believe States should do to a) uphold women’s human right to freedom of opinion and expression b) protect women from violence, harassment and intimidation online and offline and c) promote women’s public participation?

It is the view of the Centre that an appropriate and proportionate balance need to be struck between the right to freedom of expression, and the rights to equality, dignity and safety and security.

The State has a constitutional duty to address systemic inequality against women and protect women from violence in all its forms²³. This duty must include regulating gendered or misogynistic speech that is hurtful, harmful, hateful or violent. It includes “commonly used” or normalised daily speech that does not expressly advocate hatred, but which forms part of the fabric of patriarchal, sexist society that does violence to women. It also covers speech made in private. The focus of hate speech is all too often expression that occurs in the public space, but in many cases the hate speech directed at women in made in private and without an audience.

- a. What specific measures have platform providers and intermediaries taken to i) protect women’s freedom of opinion and expression; ii) protect women from online gender-based violence, harassment, intimidation and disinformation; iii) promote women’s equal access to the digital space; iv) address grievances and provide remedies to women users; v) ensure accountability of the intermediaries?

Our Courts have extended liability in instances where public platforms are hosted and where comments are made that can be experienced as violating the Constitutional rights of people. In the case of the South African Human Rights Commission v S Bridges the Court instructed Ms Bridges to monitor her Facebook account on a regular basis

²³ The state’s duty under section 7 of the Constitution includes both the negative obligation to protect these rights, but also the positive obligation to take steps to respect, promote and fulfil the rights. See *S v Baloyi (Minister of Justice and Another Intervening) 2000 (2) SA 425 (CC)*, para 11 where the Court held that Court held that the state has a duty “directly to protect the right of everyone to be free from private or domestic violence”; *Christian Education SA v Minister of Education 2000 (4) SA 757 (CC)*, para 47; *Carmichele v Minister of Safety and Security 2001(4) SA 938 (CC)*, paras 44 to 45; *Minister of Safety and Security v Van Duivenboden 2002 (6) SA 431 (SCA)*, para 20.

and to remove the often-racist comments posted on her account from third parties from her profile. The Court indicated that by not doing so she could be found in violation of S10 of PEPUDA and incur vicarious liability for the discriminatory and racist comments posted by her fans²⁴.

The Independent Communications Authority of South Africa was established to regulate and monitor the communications sector in South Africa. The body has a code of conduct in terms of which its members are held accountable. They regulate broadcasting, electronic communications as well as postal communication. Provision here is made for a complaints mechanism in terms of which the public can lodge complaints should they believe that the any of these forms of communication has breached the code of conduct.

The Broadcasting Complaints Commission of South Africa is further established to regulate conduct by public broadcasters including radio and television. It too has its own code of conduct and has established a quasi-judicial body where members of the public can complain in instances where they believe the content broadcasted is unnecessarily gratuitous, violent or offensive or in another form discriminatory.

None of the above complaint's mechanisms are specifically designed for women and adopt a gender-neutral position.

²⁴ <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/317-equality-courts-orders-sunette-bridges-to-ensure-she-does-not-promote-hate-speech-harassment-and-violence-on-her-facebook-page>

b. To what extent do you find these measures to be fair, transparent, adequate and effective in protecting women's human rights and promoting women's empowerment?

The criminal justice system in South Africa is often criticised for its inefficiency when responding to the needs of women and especially women who have experienced violence²⁵ The UN Special Rapporteur on Violence Against Women its cause and consequences pointed out in her Report²⁶ that the lack of implementation of laws and policies have led to underreporting and a lack of overall confidence on the part of women in the criminal justice system to address violence against women. As we we're compiling these submissions the President signed into the law the newly adopted Cyber Security Act 2017. The legislation seeks to create a safer environment for users online, but it has taken significant years to develop from draft legislation to legislation accented to by the President. We will need to see whether there is political will and the financial resources to address the implementation of this newly adopted legislation.

We would submit that insufficient attention and resources are set aside on the implementation of the legislation. This includes awareness raising and education initiatives that ensure that the most vulnerable in our society are aware of their rights and able to exercise them.

8. What role has legacy media played in aggravating or addressing the challenges women face in exercising their freedom of expression? What do you think the legacy media can do to empower women and make the public space safe for them, especially for women journalists?

²⁵ <https://www.hrw.org/reports/2001/safrica/ZA-FINAL-07.htm>

²⁶ Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to South Africa* (14 June 2016)

The formal or legacy media in South Africa was historically used to support and protect the apartheid status quo. The media was very much used as a tool which served as an extension of the state and the national broadcaster and newspapers were often used by government to promote apartheid and its ideology. Within this “reality” white people and especially white men were elevated to a level of power and control that South Africa is still struggling to address twenty years post-apartheid. Women and black woman in particular were treated horrendously under the apartheid regime having little to no rights.

There is a clear lack of diversity within media companies and although during apartheid there was some outspoken and pro-rights community-based publications and broadcasters this has not translated to real transformation and press freedom²⁷.

Of particular concern is the ongoing political interference in the national broadcaster which in recent years has seen political pressure being exerted to favourably showcase the ruling party. Pressure to not print stories of state corruption and state capture led to many journalists at the national broadcaster being unlawfully dismissed²⁸.

We have also seen an increase in harassment and threats being made against especially women journalist who have been threatened with sexual violence²⁹ should they continue investigating or writing particular stories about particular politicians involved in corruption³⁰. We have seen leaders in political parties use social media platforms very effectively to name journalist who are “deserving” in their opinion of threats and harassment. Given the nature of social media these instances have led to

²⁷ <https://qz.com/africa/1108617/media-freedom-in-south-africa-media-is-held-back-by-a-lack-of-diversity-and-undue-political-influence/>

²⁸ <https://www.news24.com/news24/SouthAfrica/News/sabc-8-have-all-been-fired-20160719> and <https://www.news24.com/news24/SouthAfrica/News/press-council-concerned-about-threats-against-journalists-20190808>

²⁹ <https://www.dailymaverick.co.za/article/2019-03-06-karima-brown-threatened-with-rape-via-whatsapp-by-eff-supporters/>

³⁰ <https://themediainline.co.za/2019/05/rape-and-race-threats-against-sas-women-political-journalists/>

women journalist being threatened with violence and rape, which the Editors Forum and other media bodies have called out publicly.
