**QUESTIONNAIRE**

**“Violence and its impact on the right to health”**

I have the honour to address you in my capacity as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolution 42/16.

I would like to invite you to respond to the questionnaire below. Submissions received will inform my next thematic report on “Violence and its impact on the right to health”, which will be presented to the Human Rights Council in June 2022.

The questionnaire on the report is available at OHCHR website in English (original language) as well as in French, and Spanish: (<https://www.ohchr.org/EN/Issues/health/pages/srrighthealthindex.aspx>).

All submissions received will be published in the aforementioned website, unless it is indicated that the submission should be kept confidential.

There is a word limit of 750 words per question. Please submit the completed questionnaire to ohchr-[srhealth@un.org](mailto:srhealth@un.org). The deadline for submissions is: **18 January 2022.**

Tlaleng Mofokeng

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

**Contact Details**

Please provide your contact details in case we need to contact you in connection with this survey. Note that this is optional.

|  |  |
| --- | --- |
| Type of Stakeholder (please select one) | X Member State  Observer State  Other (please specify) |
| Name of State  Name of Survey Respondent | South Africa  Sonke Gender Justice c/o Namuma Mulindi |
| Email | namuma@genderjustice.org.za |
| Can we attribute responses to this questionnaire to your State publicly\*?  \*On OHCHR website, under the section of SR health | Yes X No  Comments (if any): |

# Background

Within the framework of Human Rights Council resolution 42/16, the Special Rapporteur on the highest attainable standard of physical and mental health has identified sexuality, gender based violence and femicide as one of her priorities during her tenure (See [A/HRC/47/28](https://undocs.org/A/HRC/47/28) paras 50-64). In compliance with her mandate and in line with this priority she has decided to devote her next thematic report to the 50th session of the Human Rights Council in June 2022 to the theme of “Violence and its impact on the right to health.”

# Objectives of the report

The Special Rapporteur intends to shed light on who is seen as victims of violence, and who is affected by what type of violence, with emphasis on the violence experienced by women, children, LGBTI persons and conflict related gender based violence. She will also explore the role of men as perpetrators and their experience as victims of violence. Her analysis will look into the responses that survivors of violence receive with a focus on good practices, as well as the obligations, responsibilities, and protections that arise under the right to health framework and other relevant human rights in this connection. She will also report on emerging trends related to the impact of COVID-19 on all forms of violence and related responses.

In her report, the Special Rapporteur will address, inter alia, issues related to gender based violence, (including inter-personal and intimate violence), as well as structural violence. She will also assess the impact of the criminalization of sex work, same sex relations, transgender persons, abortion, drug use etc. on the enjoyment of the right to health. The Special Rapporteur would like to identify good practices and examples of comprehensive health responses to survivors of violence, and to identify lessons learned at the community, national, regional and international levels.

# Key questions

*You can choose to answer all or some of the questions below. (750 words limit per question).*

When responding to the questions below, please use the glossary with definitions at the end of the questionnaire, and refer to all or some of the forms of violence in focus for this study as applicable in your country, countries or region in focus:

1. *Please describe, share data and information on the characteristics, number of cases, and the profile of victims and perpetrators in your country/ies or region(s) regarding:*
   1. *gender based violence against women*

**Profile of victims:**

* In as much as victims of gender-based violence include men, women and children, there is overwhelming evidence that women and children are disproportionately affected.[[1]](#footnote-1)It is estimated, that up to half of the women in South Africa are likely to be raped in their lifetime. 25% of girls are likely to be raped before the age of 16.[[2]](#footnote-2) Rape victims in the country are likely to be young women between the ages of 16 and 25 years.[[3]](#footnote-3)
* Violence against women is more effectively understood from a lifecycle approach. In this way it is clear to see that throughout a women’s lifespan from birth right to her old age she is likely to be a victim of violence of some form. The age group of 16-24 years this being adolescence to adulthood is the most vulnerable group experiencing intimate partner violence, rape and sexual assault by relatives or known and unknown men, dating and courtship violence, economically coerced sex, psychological abuse and the ever increasing “blesser” (sugar daddy) culture. Into adulthood, there is exposure to sexual abuse in the workplace and sexual harassment, marital rape, dowry abuse, and forced pregnancy[[4]](#footnote-4).
* The Medical Research Council of South Africa conducted a study in three provinces in South Africa on GBV. The outcome of their study found 1in 4 women have experienced violence at some point in time in their life
* A Separate study by Gender Links covering confirms all participants in the study had experienced some form of violence be it economic, emotional, physical, or sexual at least once in their lifetime both within and outside their intimate relationship.
* According to a WHO 2016 report, Femicide in South Africa is five times the world’s global average. Female interpersonal violence is 4th highest out of 183 countries listed in the research report.

**Profile of perpetrators:**

* A 2013 Research Study of Four provinces in South Africa, conducted by Gender Links found a large portion of men admitted to having committed some form of violence against women in their lifetime. Gauteng 78% Limpopo 48% Western Cape 35% and Kwa-Zulu natal 41%.
* Studies of the male adult population also published in 2013 estimate rape perpetration rates by males to be at a rate of 28-37% while 7-9% engaged in multiple perpetrator rape.[[5]](#footnote-5)
* In the 2013/2014 Financial year, 62649 sexual offences cases were reported to the SAPS. It was deduced relatives of the victims or intimate partners committed 34.6% of all rapes, casual acquaintances 26.1% while 24.4% of all victims did not know their attackers. 64% of these rapes occurred near the victim’s home or at their home., meaning the victim is known to the area[[6]](#footnote-6).

**Recent Statistics/Number of cases:**

* South Africa’s Crime Statistics for the period 2019-2020 showed an increase of 146 sexual offence cases reported and 116 of these reported cases were rape cases as compared to the same period of reporting in 2018-2019
* The Police Minister of South Africa indicated in the quarterly crime statistics over 9500 cases of GBV were reported between July and September 2021.
* A national study on female homicide in South Africa conducted by the Medical Research Council of South Africa in 2004 revealed a woman is killed every 6 hours. The position has since changed. 2695 women are murdered every year in South Africa, this results in 1 woman every 3 hours.

**Conclusion**

* Violence against women is a major contributing factor to ill-health of women as it affects not only their physical wellbeing but also their emotional wellbeing and a particular consequence for their sexual and reproductive health. Women in violent relationships are at risk for early, unwanted pregnancy and they are at a greater risk for contracting sexually transmitted infections including HIV. This is because they are more vulnerable to being constrained in making sexual reproductive health choices.[[7]](#footnote-7)
  1. gender based violence and other forms of violence against children:
  2. gender based violence against LGBTI or other persons based on real or imputed sexual orientation, sex characteristics, and gender identity:
  3. violence against persons with disabilities, including GBV.
  4. gender based violence against men
  5. conflict gender based violence, including sexual violence
  6. Please share analysis and available evidence on the impact of COVID on the above
     + Within the first week of level 5 lockdown in South Africa, the South African Police Services received 2320 complaints of gender-based violence with only 148 related charges made. This is a 37% increase from the weekly average of gender-based violence cases reported in 2019.[[8]](#footnote-8)
     + The South African GBV and Femicide Command centre recorded an increase in gender-based violence cases reported during the lockdown from 27th March to 16th April with a total of 10,660 cases reported through phone calls, 1503 through unstructured supplementary services data (USSD) and 616 SMS. On 16th April alone the centre received 674 cases[[9]](#footnote-9).
     + Vodacom support call centred recorded a 65% increase in calls from women and children confined in their homes needing urgent assistance.
     + Some Women’s shelters were filled to capacity as a result during the pandemic forcing them to turn away victims in need of assistance. In more unfortunate circumstances, some shelters were forced to close their doors due to lack of funding because of the pandemic.
     + The closure of the courts and legal aid services also had a negative impact as victims were unable to access justice in this period leaving them more vulnerable to continued attack from their perpetrators.

1. Please describe whether the legal framework prohibits and sanctions these forms of violence and the definitions and forms of violence included in the legal system. Please explain redress options for survivors of violence, (the pathway they go through if they decide to file a complaint), levels of impunity and if access to comprehensive physical and mental care for GBV-survivors is recognized as a form of reparation.

The two prominent pieces of legislation related to gender-based violence and thereto violence against women are the Domestic Violence Act no 116 of 1998 and the Criminal Law Sexual offences and Related Matters Act No32 of 2007.

**Domestic Violence Act (DVA)**

* The DVA has an expansive definition of domestic violence which includes physical, economic, psychological, emotional, verbal, economic abuse as well as intimidation, harassment, stalking and controlling behaviour[[10]](#footnote-10).
* Domestic relationship is not limited to Intimate partner relationship between a heterosexual, same sex couples are included in this definition. In addition, a domestic relationship includes all living in one domicile or having a familiar relationship which includes persons who had been in an intimate relationship but are no longer together leading up to a domestic violence incident. The couple need not be living together when the case is opened[[11]](#footnote-11).
* This legislation places a responsibility on state organs particularly the police to ensure survivors of domestic violence are able to apply for protection orders (restraining orders) to prevent abusers from entering a mutual residence, the survivor’s residence or place of work or from stalking them or using other means such as using friends/relatives or mutual contacts to contact the survivor[[12]](#footnote-12).
* Challenges: This Act places no obligations on the Department of Social Development for the provision of care and support services. A Substantial number of police officers have limited knowledge of the provisions of The Act and their responsibilities thereto, this coupled with the fact, most officers do not view domestic violence as a crime but more of a private family matter. There is a lack of human and financial resources for the implementation of the Act thus making this piece of legislation overall ineffective[[13]](#footnote-13).

**Criminal Law Sexual offences and Related Matters Act (SORMA)**

* The Act defines sexual assault to include a range of acts involving unlawful sexual penetration or attempts at penetration to any extent whatsoever by the genital organs of one person into the anus, mouth, or genital organs of another person or by any object, including any part of the body or animal or part of the body of a person, into the anus, mouth, or genital organs of another person[[14]](#footnote-14).
* The SORMA places legal obligation on the South African police services, the national prosecuting Authority, Correctional Services, Justice and Constitutional Development, Department of Social Development, and the Department of Health in assisting survivors of sexual offences. The Act presupposed that the approach to addressing cases of sexual violence in multi sectoral in nature dealing with the perpetrator as well as the needs of the survivor[[15]](#footnote-15).
* Challenges: A 2015 study conducted by Tshwaranang shows there is lack of coordination between duty bearers in the different roles they play in the chain of justice for victims. There is a shortage of personnel in the justice system for instance the lack of sexual offences courts with assigned prosecutors means many sexual offences cases are not sufficiently dealt with[[16]](#footnote-16).

1. Please share examples of the types of structural and institutional violence with origins within the State, (perpetrated or condoned by the State) or perpetrated by those not representing or affiliated to the state in your country/ies of region, and who is affected. In particular, describe structural/institutional violence in medical settings against women and girls, LGBTI persons and persons with disabilities or any other individuals or groups relevant in your country/ies or regions.
2. Please also share information on the impact of criminalization of sex work, same sex relations, transgender persons, abortion, drug abuse, harmful practices in obstetric care, female genital mutilation on the violence experienced by the affected individuals and their enjoyment of the right to health.

1. Please share information on the health and other type of responses provided by the State and/or other actors in your country/ies or regions in focus to survivors of each/some of the aforementioned forms of violence. Please assess what works well and not so well, and whether COVID-19 impacted the response and how.
2. Please specify the budget allocated in your country/ies in focus, to health related response to survivors of all/some forms of violence mentioned above. Please indicate the percentage of the national budget devoted to this; the percentage of the international aid provided or received for this. Please explain the impact of Covid 19 to the funding of responses to all/some forms of violence in your State/institution.
3. Please describe the needs of survivors of the abovementioned forms of violence as identified by your State/institution. Please share survivor-self identified needs and those of their families, with a focus on health emergency and long-term needs.
4. Please share examples of good practices and examples of comprehensive health responses to survivors of violence and indicate efficient multi-sectorial efforts at the community, national, regional and international levels by State or non-State actors.

* The National Prosecuting Authority has a Sexual offences and Community Affairs Unit. This Unit, since its establishment, has been working to develop best practices and policies that seek to improve prosecution, particularly in the areas of sexual offences, maintenance, child justice and domestic violence. The Unit has thus established Thuthuzela Care Centres that seek to provide an integrated strategy for prevention, response and support most specifically for rape victims[[17]](#footnote-17).
* Thuthuzela Care Centres (TCCs) are designed to be one-stop facilities that have been introduced as a critical part of South Africa’s anti-rape strategy, aiming to reduce secondary victimisation and to build a case ready for successful prosecution. Fifty-one centres have been established since 2006[[18]](#footnote-18). The umber currently stands at 67.
* The TCCS are based at community clinics or major hospital. A survivor is allowed to report a case of rape directly at a TCC. Staff then assist with immediate medical attention at the centre and arrange for counselling services at the centre. Staff will then assist a survivor to open a case at the relevant police station. The Centre has the capacity to arrange for ongoing counselling and assist the survivor with court preparation if case goes on to trial[[19]](#footnote-19).
* Challenges: In as much as the centres do a lot in terms of a multi-disciplinary approach. the TCCS are resource heavy. This being financial resources and human capital. The TCCS require donor funding and rely on the civil society sector for their coordination. As the civil society sector is generally strapped in terms of financial resources and therefore human capital this has an impact on the effectiveness of the centres. Also due to the centres being resource heavy it has been difficult to spearhead the establishment of the centres throughout the country. Currently the TCCS are situated mostly in urban areas.

1. Please describe State and other actors initiatives and measures to prevent these forms of violence, specific budget allocated to prevention, and good practices in this regard.

**Glossary of definitions for the purpose of this questionnaire**

* Gender based-violence, is violence directed toward, or disproportionately affecting someone because of their gender or sex. Such violence takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering, threats of such acts, harassment, coercion and arbitrary deprivation of liberty. Examples include, sexual violence, trafficking, domestic violence, battery, dowry related violence, coerced or forced use of contraceptives, violence against LGBTI people, femicide, female infanticide, harmful practices and certain forms of slavery and servitude. Gender-based violence may be perpetrated against women, girls, men, boys, and non-binary persons. Gender-based violence, including sexual violence, may linked to a conflict.
* Gender based violence against women (including girls) refers to violence that is directed against a woman because she is a woman or that affects women disproportionately. (CEDAW, [General recommendation 19](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/GEC/3731&Lang=en), 1992). It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender based violence affect women to different degrees depending on their experience of varying or intersecting forms of discrimination including on the basis of ethnicity/race, socioeconomic status, age, disability, being lesbian, bisexual, transgender or intersex, etc. [(CEDAW, General recommendation 35, 2017).](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=enhttps://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en)
* Violence against children refers to all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse against children. (CRC, [General Comment No. 13](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f13&Lang=en), 2011). Violence experienced by boys and girls may also be a form of gender-based violence.
* Gender based violence perpetrated against LGBTI or other persons based on real or imputed sexual orientation, gender identity, and /or sex characteristics includes killings, imposition of death penalty for homosexuality, death threats, beatings, corporal punishment imposed as a penalty for same-sex conduct, and/or transgender persons, arbitrary arrest and detention, abduction, incommunicado detention, rape and sexual assault, humiliation, verbal abuse, harassment, bullying, hate speech and forced medical examinations, including anal examinations, and instances of so-called “conversion therapy” and forced/coerced medically unecessary procedures on intersex children and adults. (Report of the Independent Expert on protection against sexual orientation and gender identitiy, ([A/HRC/38/43](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/43), 2018, [OHCHR, Born Free and equal](https://www.ohchr.org/Documents/Publications/Born_Free_and_Equal_WEB.pdf), OHCHR, [Background note on human rights violations against intersex perople).](https://www.ohchr.org/Documents/Issues/Discrimination/LGBT/BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf)
* Conflict related gender-based violence: Conflict can result in higher levels of gender-based violence against **women and girls**, including arbitrary killings, torture, **sexual violence** and forced marriage. Women and girls are primarily and increasingly targeted by the use of sexual violence, including as a tactic of war. M**en and boys** have also been victims of sexual violence, especially in contexts of detention. *Conflict related sexual violence* refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict. That link may be evident in the profile of the perpetrator, (often affiliated with a State or non-State armed group, which includes terrorist entities); the profile of the victim, ( frequently an actual or perceived member of a political, ethnic or religious minority group or targeted on the basis of actual or perceived sexual orientation or gender identity); the climate of impunity, (generally associated with State collapse, cross-border consequences such as displacement or trafficking, and/or violations of a ceasefire agreement). The term also encompasses trafficking in persons for the purpose of sexual violence or exploitation, when committed in situations of conflict”. (Report of the Secretary General [S/2019/280](https://undocs.org/en/S/2019/280), 2019.)
* Systemic or institutional violence refers to institutional practices, laws or procedures that adversely affect groups or individuals psychologically, mentally, culturally, economically, spiritually, or physically. This violence has its origins within or outside the state, and is a major obstacle for the realization of the right to health, a right which is interconnected with rights to the underlying determinants of health.

1. WHO 2014 [↑](#footnote-ref-1)
2. Mpani and Nsibande 2015 *Understanding Gender Policy and Gender-Based Violence in South Africa: A literature Review* for Soul City [↑](#footnote-ref-2)
3. Supra p7 [↑](#footnote-ref-3)
4. Watts et al (2002) *Violence Against Women; Global and Magnitude* [↑](#footnote-ref-4)
5. Mpani and Nsibande(2015) *Understanding Gender Policy and Gender-Based Violence in South Africa: A literature Review* for Soul City p7 [↑](#footnote-ref-5)
6. SAPS Report 2014 [↑](#footnote-ref-6)
7. Glasier A et al (2006) Sexual Reproductive Health: a Matter of Life and Death [↑](#footnote-ref-7)
8. AUC-WGDD et al 2020 Gender Based Violence in Africa During the Covid-19 Pandemic [↑](#footnote-ref-8)
9. Ibid [↑](#footnote-ref-9)
10. Domestic Violence Act 116 of 1998 [↑](#footnote-ref-10)
11. ibid [↑](#footnote-ref-11)
12. ibid [↑](#footnote-ref-12)
13. Mpani and Nsibande(2015) *Understanding Gender Policy and Gender-Based Violence in South Africa: A literature Review* for Soul City [↑](#footnote-ref-13)
14. Criminal Law Sexual Offences and Related Matters Act No 32 of 2007 [↑](#footnote-ref-14)
15. Supra [↑](#footnote-ref-15)
16. Mpani and Nsibande(2015) *Understanding Gender Policy and Gender-Based Violence in South Africa: A literature Review* for Soul City [↑](#footnote-ref-16)
17. npa.gov.za/resources/public\_awareness/TCC\_brochure\_August\_2009 [THUTHUZELA CARE CENTRES (npa.gov.za)](https://www.npa.gov.za/sites/default/files/resources/public_awareness/TCC_brochure_august_2009.pdf) [↑](#footnote-ref-17)
18. Supra [↑](#footnote-ref-18)
19. Supra [↑](#footnote-ref-19)