

**ADDRESSING GENDER-BASED VIOLENCE IN THE POST-SCHOOL
EDUCATION AND TRAINING SECTOR**

**DRAFT POLICY AND STRATEGY FRAMEWORK
SEPTEMBER 2017**

ACRONYMS

Commission for Conciliation, Mediation and Arbitration	CCMA
Commission for Gender Equality	CGE
Convention on the Elimination of All Forms of Discrimination Against Women	CEDAW
Criminal Law (Sexual Offences and Related Matters) Amendment Act	SOA
Declaration to End Violence against Women	DEVAW
Department of Higher Education and Training	DHET
Domestic Violence Act	DVA
Gender-based violence	GBV
Lesbian, gay, bisexual, transgender and intersex	LGBTI
National Policy Framework	NPF
Post-school education and training	PSET
Promotion of Equality and Prevention of Unfair Discrimination Act	PEPUDA
Technical and vocational education and training	TVET
United Nations	UN

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Addressing gender-based violence in the post-school education and training sector:

A Policy and Strategy Framework

1. Introduction

High levels of violence, shaped by a range of highly unequal social relations, have been a prominent feature of South Africa both historically, as well as post-democracy.¹ However, this violence has not affected all equally. Women have been more likely than men to be held responsible for much of the violence inflicted upon them which has also not historically been regarded as criminal, or provided with effective legal remedies. Sexual harassment, for example, was only recognised by the labour courts in 1989², while it took until 1993 for marital rape to be treated as a crime.

This lack of legal and political recognition of violence towards women was addressed relatively soon following the first democratic elections in 1994, with some of government's first commitments in this area made following the 4th United Nations (UN) Conference on Women held in Beijing in 1995. The legislative and policy reforms instituted during this period mean that some responses to the problem of gender-based violence (GBV) have been in place for some time and are well-developed in some instances. However, these developments have been uneven and fragmented, while the violence experienced by lesbian, gay, transgender and intersex individuals has yet to be adequately integrated into conceptualisations of and responses to GBV. Certain sectors have also lagged behind in responding to the problem, including the post-school education and training (PSET) sector. Yet gender-based forms of violence not only interfere with students' studies and careers, but also corrupt the integrity of the education system – particularly when improved marks or other benefits are offered in exchange for sex. Gender-based forms of violence also undermine the development of knowledge, as well as the creation of a citizenry committed to social justice. Most of all, GBV undermines the constitutional rights to equality, dignity and the freedom from all forms of violence.

In recognition of the extent and seriousness of the problem, as well as its effects upon the education system, the Department of Higher Education and Training (DHET) has prepared this Policy and Strategy Framework ("the Framework") to guide universities and colleges' development and implementation of policies and strategies addressing GBV.

1.1. Rationale

Sexual violence on campuses is not new. Some of the earliest documented mobilisation by students against the problem occurred in 1984,³ with policies being developed by some universities from at

¹ Seedat, M, van Niekerk, A, Jewkes, R, Suffla, S and Ratele, K. (2009). 'Violence and injuries in South Africa: prioritising an agenda for prevention.' *The Lancet* 374: 1011-1022.

² See *J v M Ltd*, 1989.

³ De Klerk, V. and Klazinga, L. and McNeill, A. (2007). 'The habitus of the dominant: addressing rape and sexual assault at Rhodes University.' *Agenda* 21(74): 115-124.

least the late 1980s onwards.⁴ Within government the then-Department of Education established a Gender Equity Task Team which released its report containing a range of recommendations intended to promote gender equity in the field of education in 1997. These included measures to address sexual violence within the education sector. White Paper 3, issued by the Department of Education in the same year, also enjoined institutions of higher education to develop policies in this regard. All of these initiatives have created an important body of practice and knowledge around the problem of sexual violence on campuses. Yet this commitment has not been equally evident across all campuses and some universities and colleges still have no policy in place to this day. In particular, the experiences of students and staff within the technical and vocational education and training (TVET) sector remain almost entirely without a voice.

Universities have also not implemented their policies consistently over time, and nor has their original vision been sustained by adequate resourcing. The activism which so often provides the impetus for change has also remained confined to a few universities, limiting the extent to which change has been achieved. Staff and students are often unfamiliar with the contents of their particular institution's policy⁵ while incidents of sexual violence and coercion remain under-reported. Thus, despite more than two decades' worth of policy implementation, the *Report of the Ministerial Committee on Transformation and Social Cohesion and the Elimination of Discrimination in Public Higher Education Institutions* could still observe in 2008 the "pervasiveness of the sexual harassment of female students in a large number of institutions." This concern was echoed again in the 2013 White Paper for Post-School Education and Training when it identified "female students hav[ing] been victims of patriarchal practices and sexual harassment" as a key challenge to the post-schooling system. Hearings conducted between 2014 and 2016 by the Commission for Gender Equality (CGE) into gender transformation in higher education once again highlighted the uneven nature of universities' responses to sexual violence.

The entrenched nature of the problem has led to a series of scandals over time and episodic student-based protests over the manner in which complaints have been dealt with. These protests have taken place against the backdrop of an educational landscape which brings together inequalities of gender, sex and sexual orientation, race, disability, income and geography in complex ways. Under-funding, which contributes to maintaining inequalities between universities, as well as among universities and colleges, adds yet another dimension to this challenging picture.

These complexities require a policy framework that does not take a one size fits all approach – but which establishes the minimum norms of policy in this arena in order to do away with the uneven recourse to justice across campuses, while simultaneously recognising and responding to the equally significant unevenness of resourcing across campuses. This guidance must strike a balance between institutions' public functions, as well as their autonomy, within the ambit of the country's constitution.

⁴ Hames, M, Beja, N and Kgosimemele T. (2005) 'The Impact of Sexual Harassment Policies in South African Universities: The University of the Western Cape' in J. Bennett et al. *Killing a Virus with Stones? Research on the Implementation of Policies Against Sexual Harassment in Southern African Higher Education*. Cape Town: African Gender Institute

⁵ Joubert, P. and Rothmann, S. and van Wyk, C. (2011). 'The effectiveness of sexual harassment policies and procedures at higher education institutions in South Africa' *SA Journal of Human Resources Management* 9(1) Art. #310, 10 pages. [doi:10.4102/sajhrm.v9i1.310](https://doi.org/10.4102/sajhrm.v9i1.310); Gouws, A. and Kritzing, A. (2007). 'Dealing with sexual harassment at institutions of higher learning: Policy implementation of a South African university' *South African Journal of Higher Education* 21(1): 68-84.

In addition, this framework must synthesise and draw from the existing body of experience in this field so as not to repeat previous weaknesses in policy implementation.

1.2. Purpose of the Policy and Strategy Framework

The *Policy and Strategy Framework Addressing Gender-based Violence in the Post-School Education Sector* aims to provide guidance to PSET institutions around their development of policies addressing GBV. All PSET institutions must comply with the prescripts of this policy and strategy framework which includes both institutional and departmental measures aimed at assessing its implementation. The document is one of the tools through which the DHET seeks to provide an environment conducive to learning and work, as well as promoting social justice in the manner envisaged by the 2013 White Paper for Post-School Education and Training.

The chief objectives of this document are to:

- Detail the international and national regulatory framework compelling institutional and departmental responses to GBV
- Conceptualise GBV and define its manifestation in terms of existing law and policy
- Provide guidance around the structures, mechanisms and processes that PSET institutions must put in place to address GBV
- Recommend steps that universities and colleges should take to both create awareness of GBV policies and prevent incidents of GBV
- Set out a framework for oversight of the DHET and PSET institutions' development and implementation of policy.

1.3. Scope of the Policy and Strategy Framework

This policy and strategy framework will apply to all forms of PSET institutions. These include public universities, higher education colleges, university colleges, TVET colleges, Sector Education and Training Authorities (SETA) and community education and training colleges. It also applies to registered and legally operating private PSET institutions as these too are required to operate in terms of the Constitution, as well as workplace and equality legislation.

The Framework applies to all students, whether full-time or part-time, residential or online, as well as all staff, including those working for agencies contracted to provide services to PSET institutions.

The Framework is intended to address all forms of sexualised violence and abuse, as well as intimate partner violence. Further, while women are most frequently the victims of these particular forms of GBV, the policy and strategy framework recognises that men are also subject to these harms, as are trans and intersex individuals.

2. Conceptual Framework

To date, PSET institutions have focused primarily on sexual harassment, rather than GBV in its various forms. To assist them in expanding their focus this section sets out a conceptual framework for thinking about GBV and offers definitions in law of its various manifestations. It also examines the extent of GBV in South Africa generally, as well as what is known about its extent on campus.

2.1. Conceptualising gender-based violence

Gender is used to differentiate people as either male or female, with these divisions informed by individuals' biology, as well as their demonstration of certain behaviours, abilities and capacities. While these gender constructs and categories change over time and vary widely within and across cultures, most societies value differently the capacities, abilities and traits attributed to men and women, with those defined as feminine often treated as inferior to those defined as masculine. This has the effect of making relations between men and women unequal on a range of dimensions. Within the PSET sector, for example, senior leadership positions and the professoriate continue to be predominantly occupied by men while administrative and support positions are still largely filled by women, with implications for men's and women's earnings.

There is also a close and intimate relationship between gender and sexuality. In the same way that societies associate particular abilities and behaviours with specific bodies, so they similarly map sexual practices and expression onto specific bodies. Dominant conceptions of gender also assume that there are only two sexes, rather than a spectrum, and that people's gender identities will always correspond with their bodily features. Closely linked to this is the belief that people are only attracted to those whose sex is different to their own, constructing heterosexuality as the only 'normal', acceptable form of sexual practice. This leads to heterosexuality, men's and women's behaviour and gender expression being closely policed in many societies to prevent deviation from gendered norms. Where people do not comply with these social expectations, violence, abuse and discrimination may be employed to force conformity, to punish, or to assert dominance. As a consequence, while both men and women experience violence, the nature of the violence they experience is distinctively gendered. The term gender-based violence has thus been coined in recognition of this close relationship between gender and violence.

GBV is most often directed at women and girls as the obvious bearers of the female and feminine. Lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals may also experience GBV, including on the basis of being gender non-conforming and/or not practising heterosexuality. Violence may also be used to feminise men, or undermine their masculinity, ensuring that they are not exempt from some forms of GBV either. The use of violence to institute and maintain particular forms of gender relations is also influenced in complex ways by perpetrators' ideas about their victim's race, disability, social class and citizenship status, amongst other factors. These factors similarly influence how others respond to instances of GBV, as well as people's access to helping resources.

GBV also takes different forms in different societies and at different historical points. These forms may include the physical, sexual, emotional and psychological, as well as the economic. The increasing availability and sophistication of digital technologies, for example, illustrates the need for institutions to be alert to these changing manifestations of violence and abuse in order to ensure their responses remain relevant and up to date.

In South Africa GBV has most often manifested as intimate partner violence, whether in short-term or more permanent relationships; as well as sexual harassment and assault, and rape. Our law defines these behaviours as follows.

2.1.1. Intimate partner violence

Intimate partner violence is one of the forms of family violence dealt with by South Africa's Domestic Violence Act, 116 of 1998. Those to whom the law applies include people who, "are or were in an

engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration” irrespective of whether these relationships are heterosexual or same-sex. The Act defines domestic violence as including, among other things, harassment, abuse of a physical, sexual, emotional, verbal and/or physical nature, stalking and intimidation, as well as any other form of controlling behaviour.

2.1.2. Sexual harassment and stalking

Sexual harassment is defined in labour legislation as unwanted conduct of a sexual nature that can take physical, verbal and non-verbal forms. It is noted that sexual attention becomes sexual harassment if:

- The behaviour is persisted in, although a single incident of harassment can constitute sexual harassment; and/or
- The recipient has made it clear that the behaviour is considered offensive; and/or
- The perpetrator should have known that the behaviour is regarded as unacceptable.

The Protection from Harassment Act, 17 of 2011, further builds on this definition by describing harassment as “...directly or indirectly engaging in conduct that the respondent knows or ought to know causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably:

- (i) following, watching, pursuing or accosting the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
- (ii) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
- (iii) sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of, the complainant or a related person.

2.1.3. Sexual assault

Sexual assault refers to different forms of unwanted touching and sexual contact. The Criminal Law (Sexual Offences and Related Matters) Amendment Act (SOA), 32 of 2007, defines sexual assault as the unlawful and intentional sexual violation of another person without their consent. Sexual violation includes any act which causes direct or indirect contact between the genital organs or anus of one person or, in the case of a woman, her breasts, and any part of the body of another person or an animal, or any object, including any object resembling or representing the genital organs or anus of a person or an animal. It can also include unwanted kissing, as well as contact between one person’s mouth and the genital organs or anus of another person, or a woman’s breasts. The masturbation of one person by another also falls within the definition of sexual violation.

2.1.4. Flashing

In terms of the SOA flashing is defined as exposing genital organs, buttocks, or female breasts to the view of others.

2.1.5. Rape

Rape is an unlawful and intentional act of sexual penetration with another person without that person's consent. Sexual penetration can be vaginal, anal and oral. While acts of oral penetration are only considered rape when penetration is accomplished by a genital organ, in the case of vaginal and anal penetration, both penetration by any body part, or an object, constitutes rape.

South African law recognises that consent must be freely given and thus distinguishes between submission and consent. Where coercive circumstances are present, the law treats these as undermining of consent. Coercive circumstances may include:

- the use of force or intimidation by the alleged perpetrator against the complainant, another person or the property of these persons;
- a threat of harm, real or perceived, by the alleged perpetrator against the complainant, another person or the property of these persons;
- an abuse of power or authority such that the complainant is inhibited from expressing her/his resistance or unwillingness to participate in the act;
- false pretences or by fraudulent means;
- the inability of the complainant to appreciate the nature of the act of sexual penetration, including where the complainant is at the time of the commission:
- asleep or unconscious;
- in an altered state of consciousness, including, but not limited to, under the influence of any medicine, drug, alcohol or other substance, to the extent that her/his ability to consent is adversely affected; or
- mentally disabled.

The notion of coercive circumstances highlights the importance of context in determining whether or not particular acts were genuinely consented to, or submitted to.

2.2. The extent of GBV in South Africa

This policy and strategy framework focuses on two predominant forms of GBV in South Africa: sexualised violence and abuse, ranging from sexual harassment through to rape; and intimate partner violence, including within casual or dating relationships. Their occurrence within PSET institutions must be located within the broader context of GBV in South Africa generally.

Although sexualised violence takes a variety of forms, there is no data describing the extent of many of its manifestations, especially those categorised as sexual harassment. In relation to rape, data supplied by the South African Police Service in 2015/16 shows approximately 41 503 rapes to have been reported that year. The proportion of students reporting rape is only available for 2012 however. Information for that year finds approximately 10% of adult rapes recorded that year to have been reported by students.⁶

Rape is considerably under-reported to the police. One population-based estimate is that only one in nine women who had been raped and had physical force used against them reported the attack to the

⁶ Add final data from RAPSSA

police.⁷ Research undertaken in Gauteng in 2009 found that almost one in 12 women in the province had been raped, but that only one in 13 women raped by a non-partner reported the matter, while a scant one in 25 of women raped by their partners went on to approach the SAPS.⁸ Overall, the Gauteng study suggested that one in four (25.3%) women interviewed had experienced sexual violence in their lifetimes, while 37.4% men admitted to having perpetrated such violence.⁹

Intimate partner violence has been identified as the most common form of violence experienced by women, reported in one survey by 13.8% of women as opposed to 1.3% of men.¹⁰ Most recently, this was reported by the 2016 South African Demographic Health Survey as having been experienced by 21% of ever-partnered women.¹¹

There has been very little study of LGBTI individuals' experience of GBV. The only study to have made some attempt to explore the extent of sexualised violence against lesbians comprised a convenience sample of 591 women largely recruited by community-based organisations in Botswana, Namibia, South Africa and Zimbabwe. This study found 31.1% to have had an experience of forced sex – 14.9% by men only, 6.6% by women only and 9.6% by both men and women.¹²

Information about men's experience of sexualised violence is equally limited, with a household survey conducted in KwaZulu-Natal and the Eastern Cape determining that about one in ten (9.6%) of the 1 705 men interviewed had experienced sexual victimisation by other men in the course of their lifetimes.¹³

2.2.1. GBV on campuses

No national data exists documenting the extent of GBV on campuses. The few studies which have been undertaken are also specific to particular universities (and often particular faculties) and focus almost exclusively on students' experiences of sexual harassment and rape. Surveys are not comparable and do not enquire about intimate partner violence. Intimate partner violence is generally neglected in most campus-based studies, as is violence towards LGBTI students. The overwhelming majority of studies focus on sexualised forms of violence such as sexual harassment and rape. These reports suggest that GBV on campus manifests in the following ways:

- Grading or rating of appearance by verbal comment, or wolf whistling, or other noises
- Stalking and repeated, unwanted requests for dates

⁷ Jewkes R and Abrahams N. (2002). The epidemiology of rape and sexual coercion in South Africa: an overview. *Social Science and Medicine*, 55(7): 1231-1244.

⁸ Machisa M, Jewkes R, Lowe Morna C and Rama K. (2010). *The War at Home – GBV Indicators Project*. Cyrildene: Gender Links.

⁹ Machisa M, Jewkes R, Lowe Morna C and Rama K. (2010). *The War at Home – GBV Indicators Project*. Cyrildene: Gender Links.

¹⁰ Kaminer, D, Grimsrud, A, Myer, L, Stein, DJ. and Williams, DR. (2008). 'Risk for post-traumatic stress disorder associated with different forms of interpersonal violence in South Africa.' *Social Science and Medicine* 67: 1589 – 1595.

¹¹ Statistics South Africa. (2017). *South Africa Demographic and Health Survey 2016: Key Indicator Report*. Pretoria: Statistics South Africa.

¹² Sandfort TGM, Baumann LRM, Matebeni Z, Reddy V and Southey-Swartz I. (2013). 'Forced Sexual Experiences as Risk Factor for Self-Reported HIV Infection among Southern African Lesbian and Bisexual Women.' *PLoS ONE* 8(1): e53552. doi:10.1371/journal.pone.0053552

¹³ Dunkle K, Jewkes R, Murdock D, Sikweyiya Y and Morrell R. (2013). 'Prevalence of Consensual Male–Male Sex and Sexual Violence, and Associations with HIV in South Africa: A Population-Based Cross-Sectional Study.' *PLoS Medicine* [Online] 10(6): e1001472. doi:10.1371/journal.pmed.1001472.

- Derogatory comments, including in relation to people's gender non-conformity
- Rape
- Sexual assault
- Physical assaults by intimate partners, or against individuals perceived as gender nonconforming.
- Requests/demands for sex in exchange for improved marks,¹⁴ accommodation in residences, or other needs and benefits¹⁵
- Spying, or intruding upon women in residences while bathing or dressing
- streaking and flashing
- In the case of abusive relationships, preventing, or interfering with, a partner's studies, including by withholding fees
- Murder by an intimate partner

These various abuses can occur between students, between staff and students, as well as between staff. They may also be perpetrated by third parties such as visitors to campus, or on-site contractors.

Surveys undertaken from 2006 onward find the following:

- Being asked to exchange sexual favours for marks (or something else) was reported by 4% of both staff and students at one institution¹⁶ and up to 28% of female students at another.¹⁷ In the latter study, 12% of students also reported being failed for refusing a lecturer's advances.¹⁸
- Unwelcome touching was reported as occurring 'sometimes' by 21.9% of students at one university, with 9.2% reporting that this occurred 'often' or 'very often'.¹⁹ At a different university 42% of students reported being fondled.²⁰
- Between 21.9% of male students and 33% of women students reported having 'sometimes' experienced sexist comments, with 11.5% of men and 28.2% of women reporting such comments as occurring 'often' or 'very often.'
- An experience of rape was reported by 2% of students and 3% of staff at one university.²¹

Taken together, these data suggest that PSET institutions must be prepared to work with at least four different groups of staff and students in responding to GBV on campus:

¹⁴ Dastile, N.P. (2008). 'Sexual victimisation of female students at a South African tertiary institution: The victim's perception of the perpetrator' *Acta Criminologica* 21(2): 189-206; Adams, J.D. and Mabusela, M.S. and Dlamini, E.T. (2013). 'Sexual Harassment: The 'silent killer' of female students at the University of Ayoba in South Africa' *South African Journal of Higher Education* 27(5): 1149-1163.

¹⁵ Clowes L, Shefer, T, Fouten, E, Vergnani T. and Jacobs, J. (2009). 'Coercive sexual practices and gender-based violence on a university campus' *Agenda* 80: 22-32.

¹⁶ Ziehl, S. (2006). Report on sexual harassment research at Rhodes University. Available at

¹⁷ Adams, J.D. and Mabusela, M.S. and Dlamini, E.T. (2013). 'Sexual Harassment: The 'silent killer' of female students at the University of Ayoba in South Africa', *South African Journal of Higher Education* 27(5): 1149-1163.

¹⁸ Ibid.

¹⁹ Steenkamp, F. R. (2010). *The prevalence of sexual harassment within a student sample at the Stellenbosch University*. Stellenbosch: Stellenbosch University

²⁰ Ziehl, S. (2006). Report on sexual harassment research at Rhodes University.

²¹ Ibid

- staff and students who have already experienced GBV prior to attending, or being employed by, a PSET institution;
- staff and students subjected to GBV by another student or staff member while employed by, or studying at, a PSET institution;
- staff and students subjected to GBV by third parties over whom PSET institutions have no jurisdiction; and
- staff and students who may be at risk of behaving violently.

While PSET institutions have not traditionally attended to GBV by third parties, or experiences of GBV prior to attendance at, or employment by the institution, these experiences should not be regarded as irrelevant, given their effects on attendance, learning and performance.

3. Regulatory Framework

International treaties, the South African law and policies place onus on the DHET and its allied bodies, as well as universities and colleges, to take meaningful steps to address GBV. These responsibilities derive from the comprehensive policy framework developed in South Africa to address GBV, as well as the regional and international protocols and treaties the country is party to. Taken together, they locate universities and colleges' responses to GBV at the nexus of criminal, civil and labour law.

Below are brief presentations and excerpts from the relevant documents.

3.1.1. International treaties and other conventions

The way in which gender relations and identities influence violence was globally recognised in the 1993 Declaration to End Violence against Women (DEVAW) issued at the conclusion of the UN Conference on Human Rights. DEVAW, which defines GBV, is an important accompaniment to the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) which South Africa ratified, without reservation in December 1995. While CEDAW does not address GBV as such, the Committee tasked with overseeing the implementation of CEDAW has issued *General Recommendation Number 19* which sets out how CEDAW should be interpreted to cover violence against women (as defined by DEVAW) and explains the nature of government obligations to address such violence. As its point of departure, the Committee states that violence against women constitutes discrimination, and thus falls within the purview of the Convention.

Among other measures, General Recommendation Number 19 requires States Parties to ensure that laws against sexual violence give adequate protection to all women, and respect their integrity and dignity. It notes that legislative measures should be accompanied by appropriate protective and support services for victims, as well as gender-sensitive training for those providing these various services and responses.²²

The notion of protection through the law is taken up in the *Beijing Declaration and Platform for Action* (1995). In terms of this document, to which the South African government committed itself at the 4th UN Conference on Women held in Beijing in 1995, governments are called upon to take certain actions in order to address violence against women. These actions include –

²² Par 24(b).

- Adopting and/ or implementing and periodically reviewing and analysing legislation to ensure its effectiveness in eliminating violence against women, emphasizing the prevention of violence and the prosecution of offenders;
- Providing women who are subjected to violence with access to the mechanisms of justice, and, as provided for in national legislation, to just and effective remedies for the harm they have suffered;
- Informing women of their rights in seeking redress through such mechanisms of justice;
- Creating or strengthening institutional mechanisms so that women can report acts of violence against them in a safe and confidential environment, free from the fear of penalties or retaliation;
- Creating, improving or developing and funding training programmes for judicial, legal, medical and police personnel to sensitise such personnel to the nature of gender-based acts of violence so that fair treatment of victims can be assured;²³ and
- Providing well-funded shelters and relief support for girls and women subjected to violence, as well as medical, psychological and other counselling services and free or low-cost legal aid, where it is needed, as well as appropriate assistance to enable them to find a means of subsistence.²⁴

As a signatory to CEDAW, South Africa is required to report on the steps the country has taken to meet these obligations.

Additionally, South Africa has committed itself to the 2030 Agenda for Sustainable Development. Goal 5 addresses itself to gender equality and includes, as one of its targets, the elimination of all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.

The Southern African Development Community (SADC) Protocol on Gender and Development is binding on all member states in the region. Part 6 of the Protocol instructs states to support programmes aimed at changing behaviour and eradicating GBV. States are further required to both enact laws and adopt and implement policies, strategies and programmes which define and prohibit sexual harassment in all spheres, and which provide deterrent sanctions for perpetrators of sexual harassment.

3.1.2. The Constitution

The South African Constitution is the highest law of the land and seeks to guarantee a minimum core set of entitlements to all citizens. In relation to violence, the following rights apply:

- *Section 9:* Everyone is equal before the law and has the right to equal protection and benefit of the law. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. No person may unfairly discriminate directly or indirectly against anyone.
- *Section 10:* Everyone has the right to human dignity and the right to have their dignity respected and protected.

²³ All provisions taken from paragraph 124.

²⁴ Par 125(a).

- *Section 12(1)*: Everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either private or public sources.
- *Section 12(2)*: Everyone has the right to bodily and psychological integrity, which includes the right: to security in and control over the body; and not to be subject to medical and scientific experiments without their informed consent.

These provisions, in turn, give rise to legislation that gives expression to the Bill of Rights.

3.1.3. The Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000

The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) addresses discrimination and harassment with the intent to give effect to Section 9 of the Constitution. One of its objects is also to comply with South Africa's international treaty obligations, including CEDAW.

PEPUDA is not limited to an employment context but extends to all citizens, and prohibits discrimination of any kind on the grounds of sex, gender or sexual orientation. It specifically prohibits gender-based violence and any form of harassment that:

- i) Causes or perpetuates systemic disadvantage;
- ii) Undermines human dignity; or
- iii) Adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the aforementioned ground.

3.1.4. Labour legislation

Certain labour laws also give effect to the equality provisions contained in the Constitution. The Employment Equity Act, 55 of 1998, states, "No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice," and mandates that employers take steps to eliminate unfair discrimination in the workplace.

The Minister of Labour further highlights the importance of equality for workers and specifically addresses harassment in the Code of Good Practice on the Handling of Sexual Harassment in the Workplace, developed under section 203(1) of the Labour Relations Act, 66 of 1995. The Code recommends that all persons designated to support and assist complainants have the appropriate skills and experience; are appropriately trained; and given adequate resources to carry out these duties. The Code suggests that employers seek to maintain an environment where the dignity of all employees is respected, complainants are taken seriously and complainants do not fear reprisals. Where employers are aware of incidents of sexual harassment and fail to take action against these, they may be held vicariously liable for their occurrence by the courts.

Labour legislation and the right to equality have direct and obvious applicability to PSET institutions in their role as workplaces. PSET institutions are more than workplaces however; they are also educational institutions required to promote a positive learning environment. This includes a fiduciary duty towards students that obligates institutions to protect students from harm while on campus and from persons employed or associated with the institution. Thus PSET institutions are required to uphold the rights to freedom and security of the person, which incorporate the right to be free from all forms of violence, and take note of the civil and criminal laws emanating from these provisions in the Bill of Rights.

3.1.5. Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007

The SOA is now the main body of legislation dealing with sexual violence against both adults and children. It sets out comprehensive definitions for a range of sexual offences, from flashing to rape. Section 11 of the SOA states that “engaging the services of a person 18 years or older for financial or other reward, favour or compensation” is in violation of the law. This addresses *quid pro quo* harassment where particular benefits are offered in exchange for sex (such as improved marks, access to a residence, or the offer of a job or promotion). The abuse of power and authority evident in such transactions may also be considered one of the coercive circumstances nullifying consent in relation to the definition of rape contained in the Act. The inclusion of this provision within criminal law makes it clear that PSET institutions are required to take strong and decisive action against staff who offer students benefits in exchange for sex – including by recognising such conduct as rape.

The Act also introduces a supportive structure aimed at ensuring its effective implementation. This structure encompasses the establishment of an Inter-Sectoral Committee, the adoption of a National Policy Framework (NPF) for the Management of Sexual Offences and the development of national instructions, directives and training courses for police officials, prosecutors and medical practitioners dealing with sexual offences. Importantly, the NPF also places certain duties on DHET in relation to sexual offences (outlined later in this framework).

3.1.6. The Domestic Violence Act, 116 of 1998

The DVA is a civil remedy created in response to the prevalence of domestic violence in the country. It aims to afford victims of domestic violence with the maximum protection from domestic abuse that the law can provide and so convey the state’s commitment to the elimination of domestic violence. The DVA creates a protection order that prohibits the abuser (or respondent) and anyone acting on their behalf from engaging in acts of physical, sexual, emotional/psychological and economic abuse. Violation of any of the terms of the order constitutes contempt of court and may lead to the respondent’s arrest.

3.1.7. The Protection from Harassment Act, 17 of 2011

The DVA and the Labour Relations Act provide a measure of protection from abuse and harassment to family members and employees respectively. The Protection from Harassment Act seeks to provide remedies to those not covered by these two Acts. Like the DVA, the Protection from Harassment Act provides a civil remedy that prohibits the respondent, or anyone acting on their behalf, from engaging in behaviour prohibited by the court. The Act also introduces important protection from digital forms of harassment.

A comprehensive legal framework is thus in place to address different manifestations of GBV in South Africa. PSET institutions must ensure that their particular institution’s responses do not fall below the standard set by this framework.

3.1.8. Department of Higher Education and Training policy

Policies of the DHET set out specific objectives and activities to be instituted in attending to sexual offences and harassment.

- The White Paper 3, *A Programme for the Transformation of Higher Education, 1997*, strongly objects to incidents of rape and sexual harassment on campuses and urges institutions to develop policies in this regard. The policies are to include reporting and grievance procedures,

victim support and counselling, confidentiality, protection of complainants and mechanisms for ensuring due process and protection of respondents.

- *The White Paper for Post-School Education and Training, 2013*, sets, as one of its objectives, the creation of a post-school system able to contribute to a fair, equitable, non-racial, non-sexist and democratic South Africa. In relation to the TVET colleges specifically it identifies as another objective the improvement of student support services. In relation to universities, the White Paper highlights the importance of improving student performance, as well as access to, and successful completion of, a university education for students. It notes, as an impediment to these goals, the victimisation of female students by patriarchal practices and sexual harassment.
- *The Policy Framework for the Realisation of Social Inclusion in the Post-School Education and Training System, 2016*, calls on PSET institutions to “ensure that their institutional policies include social inclusion mechanisms and are guided by principles of substantive equality that aim to remove all barriers that perpetuate and create inequalities in society.” The Policy Framework makes it mandatory for PSET institutions to develop policies eliminating sexual harassment, including by setting standards and guidelines for dealing with offenders.

These DHET policy commitments are further reinforced by the NPF mandated by sections 62-65 of the SOA. The NPF specifically tasks the DHET with:

- developing policy, standards and guidelines for the management of sexual offences;
- training educators on the management of sexual offences and supporting staff dealing with victims of sexual offences; and
- monitoring and evaluation of their interventions, including by submitting quarterly and annual progress reports to the Directors-General Intersectoral Committee for tabling in Parliament.

This overview of South Africa’s comprehensive policy framework makes it clear that GBV is the responsibility of PSET institutions and they must take action both to prevent its occurrence, as well as to provide justice to those who have been subject to it. It is also imperative that institutions take action based on the consequences of violence for students’ educations. These consequences have been best-documented in relation to sexual harassment and include withdrawing from participation in class (including avoiding classes where the perpetrator is present); an inability to concentrate; abandonment of activities, clubs or associations; a decrease in grades, including failing courses; transfer to other courses, changing degrees, or universities – or dropping out altogether. Staff may become demotivated, leading to a decline in performance, or resignation from the institution. Research, or opportunities for further study, may be jeopardised. For both staff and students there may be a loss of commitment to the institution.

Criminal justice system responses to sexual violence in particular are becoming increasingly specialised. This is to ensure that complainants are assisted by people knowledgeable in the causes and consequences of sexual violence and who will consequently do no further harm to the complainant. PSET institutions must follow this trend by developing specific policies on GBV. These abuses cannot be adequately addressed through policies dealing with general misconduct and disciplinary proceedings.

4. Framework for the development and implementation of policy

Various inquiries, reviews and research reports point to other persistent problems dogging PSET institutions' responses to GBV. One such significant challenge is low levels of reporting, including by staff, to structures responsible for addressing sexual harassment and rape. As is the case more generally, those who experience sexual harassment and/or rape are more likely to report such incidents to their families and friends, than to formal structures. A number of factors contribute to this²⁵:

- Vague policy that leaves the reporting process unclear
- Lack of knowledge about existing policy
- lack of trust in university structures, including the fear of being victimised
- Being dissuaded from pursuing formal complaints
- Reluctance to engage with processes seen to be lengthy and which offer inadequate support and protection to complainants
- Feelings of confusion, guilt and uncertainty over the incident(s), including self-blame, or concerns about possible complicity
- Fear of being labelled and stigmatised
- Complex feelings of respect and admiration for the perpetrator, including not wanting to adversely affect his future and career
- Inadequate psycho-social support
- Believing that ignoring it will cause it to stop
- Institutional silence around sexual harassment, suggesting that it is not something to be raised.

The design, location and management of institutional structures and mechanisms can also limit the effectiveness of responses. The fragmentation of responses across a range of university structures such as human resources, student affairs, legal offices, and equity and transformation units, can result in their not communicating with each other, resulting in confusion over who to report to, as well as the follow-up of cases. Most such structures are reported as being under-resourced and having just one person available to manage all processes. Personnel managing these processes may have received no training to do so, in addition to lacking institutional authority. More generally, there may be confusion around what constitutes sexual harassment²⁶ and a lack of knowledge about the existence and contents of the policy. Finally, universities are perceived as wishing to conceal or brush aside

²⁵ Norton Rose Fulbright and Centre for Applied Legal Studies (2013). *Independent Inquiry into Allegations of Sexual Harassment at the University of the Witwatersrand, Johannesburg*. Formal Inquiry Report prepared by Norton Rose Fulbright and Centre for Applied Legal Studies; Hames, M, Beja, N and Kgosimemele T. (2005) 'The Impact of Sexual Harassment Policies in South African Universities: The University of the Western Cape' in Bennett, J. and Beja, N. and Gouws, A. and Hames, M. and Kgosimemele, T. and Kritzing, A. and Mosarwe, B. and Tidimane, C. and Wenhold, M. (2005). *Killing a Virus with Stones? Research on the Implementation of Policies Against Sexual Harassment in Southern African Higher Education*. Cape Town: African Gender Institute

²⁶ Gouws, A. and Kritzing, A. (2007). 'Dealing with sexual harassment at institutions of higher learning: Policy implementation of a South African university'. *South African Journal of Higher Education*, 21(1): 68-84; Chauke, P, Dlamini, N, Kiguwa, P, Mthombeni, A, Nduna, M. and Selebano, N. (2015). 'Half of the picture: Interrogating common sense gendered beliefs surrounding sexual harassment practices in higher education', *Agenda*, 29(3): 106-117; Mayekiso, T.V. and Bhana, K. (1997). "Sexual harassment: Perceptions and experiences at the University of Transkei", *South African Journal of Psychology*, 27(4): 230-235.

allegations of sexual harassment and/or rape in the attempt to protect the institution's reputation. The situation in TVET colleges is entirely unknown at this point.

Most of these factors are amenable to intervention via clear, well-worded policy documents and effective and responsive practices. They point both to the key elements of any policy, as well as the strategies required to effect its implementation.

4.1. Key principles

The key principles guiding this policy and strategy framework are:

- *Comprehensive and multi-faceted approaches to GBV:* PSET institutions' responses to GBV cannot focus on one aspect or manifestation of the problem alone. Even though the nature of the response may differ, all forms of GBV must be responded to. Further, interventions to address GBV must be multi-faceted, comprising complaints processes and procedures; support to complainants and (where possible), assistance to the perpetrator in changing their behaviour.
- *Comprehensive and multi-faceted approaches to GBV prevention:* PSET institutions' responses to GBV should include comprehensive prevention, education and information about GBV policies; and programmes, including social mobilisation and campaigns, intended to promote safety on campus and prevent GBV.
- *Specialisation:* Responding to GBV requires specialised knowledge and skills. All staff and students involved in addressing GBV in any way must be skilled, gender-sensitive, have ongoing training and conduct their work in accordance with clear guidelines, protocols and codes of ethics. Programmes and other responses must reject ideologies that excuse or justify men's violence, or blame complainants.
- *Confidentiality:* All responses to GBV must maintain the confidentiality and privacy of the complainant whose safety and physical and psychological needs must be prioritised.
- *Victim-centred:* Assistance to the complainant must support and encourage her/his sense of personal control, which includes respecting the complainant's informed decision at every stage of the process. Reporting, investigative or support staff must offer comprehensive information about all processes and options in a manner which is non-judgemental, appropriate, clear and sensitive to the complainant in terms of language, culture, disability, gender and sexuality.
- *Zero tolerance:* Policies must contain a clear statement by the university or college rejecting all forms of GBV. This message should not be diluted or made ambiguous by the policy referring to false complaints, or procedures for dealing with allegedly false complaints. Should investigations yield evidence of false complaints these can be dealt with in the same way misconduct is ordinarily dealt with.
- *Accountability:* Implementation of the policy must be routinely monitored and evaluated and senior managers held accountable for its effective implementation. This includes maintaining documentation and records in accordance with health, police and legal requirements and the need for confidentiality, security and choice.

4.2. Key policy objectives

PSET institutions' policies must meet the following five objectives:

Objective 1: To establish just, specialised procedures for the reporting, investigation and resolution of complaints

Objective 2: To provide for comprehensive, specialised support and other assistance to complainants of GBV.

Objective 3: To promote the safety of all students and staff by putting in place comprehensive prevention programmes intended to raise awareness of policies and services addressing GBV, as well as other measures aimed at **preventing incidents** of GBV in the PSET sector.

Objective 4: To ensure the effective implementation of policy and programmes through attention to budgeting; monitoring and evaluation; and the creation of a system of accountability.

Objective 5: To allow for the establishment of national structures and mechanisms intended to enable PSET institutions' implementation of their institutions' policies.

4.2.1. Objective 1: To establish just, specialised procedures for the reporting, investigation and resolution of complaints

Policies must be developed in an open and transparent manner, allowing for comment from students and their various associations, staff, unions and other workplace associations. When undertaken in this way, discussions provide important opportunities for expanding understanding of different forms of GBV, as well as thinking about the factors giving rise to its occurrence on any particular campus.

4.2.1.a. Defining GBV

Policies addressing GBV should not conflate its various forms into one but should contain sections setting out the specifics of responding to sexual harassment, rape and attempted rape, as well as intimate partner or dating violence. This is to acknowledge the different laws, procedures and sanctions applicable to each form of violence, as well as the different forms of intervention that may be required, especially when the aggressor is a third party.

Policies must contain clear definitions of the behaviour and acts they prohibit, and be aligned with existing legislation. This includes noting that certain forms of conduct meet the criteria for crimes. Further, policy must clearly set out the particular institution's position on relationships between staff and students. The policy must recognise and address misconduct by students both towards students and staff, as well as addressing misconduct by staff towards other staff, as well as students.

4.2.1.b. Reporting and response structures

GBV matters may be dealt with by multiple structures within PSET institutions, including student affairs, human resources/employee relations, transformation units and legal offices. On their own, each of these structures has limitations. For example, where responses are located in student affairs this may exclude, or be a barrier to assistance to staff and other workers. Both legal offices and employee relations can face conflicts of interest in attending to complaints as they may be oriented to representing their institution's interests, as well as both those of the complainant and often also the perpetrator. Transformation units, like these other structures, may lack institutional authority and their personnel be outranked by the members of staff they may be required to investigate. Where multiple structures form part of an overall response, this may also contribute to fragmentation, competition and a lack of coordination. This can be addressed by either establishing an office whose mandate it is to address GBV on campus, including the coordination of other structures, or by appointing an individual to perform this coordination function. The roles and responsibilities of each structure within this overall response must be clearly delineated. It is crucial that the coordinating

structure or individual, as well as the investigation mechanism, enjoy institutional authority and have direct access to senior management within the university or college.

The process of reporting any case of GBV must be clearly detailed, as must be the roles of all individuals/structures involved in the reporting of matters. To reduce fragmentation, cases should ultimately be reported to one central point, rather than multiple points. While complainants may disclose to anyone they trust, these complaints must be further reported to the designated person/structure. Unless they are the first point of disclosure, teaching staff should not play a significant role in these processes as their work commitments limit the attention they can give to matters. If they are to play any part, then this role should form part of their job description and their time allocated accordingly. Ideally, and especially in relation to rape, it should be possible to report on a 24-hour basis, including at a telephone number designated for this purpose.

4.2.1.c. Third parties

Prevalence data suggests that a significant proportion of the violence and abuse that students experience will be perpetrated by third parties, that is individuals not in the employ, or falling under the direct management of the institution. These third parties may include visitors to the university or college, as well as employees of companies contracted to provide some form of service to the institution. Universities and colleges should communicate their policy to contractors and encourage them to adopt similar policies, or to agree to the institution's code of conduct while working on its premises.

In addition, some students are required to undergo their practical training in workplaces that do not fall under the control of the PSET institutions. These include hospitals and schools. Universities and colleges must enter into memorandums of understanding with these workplaces to ensure that procedures are put in place that enable students to make complaints and that these are investigated.

A third category of third party perpetrators includes intimate partners and other family members; friends, neighbours, acquaintances and other community members; and those unknown to the complainant. While PSET institutions can exercise some degree of control over the other two categories, their influence over this category is minimal. In this instance, the institution's role may chiefly be a supportive one.

4.2.1.d. Informal procedures

Policy must set out both formal and informal procedures for addressing GBV. Informal procedures should only be used in certain cases of sexual harassment. Where informal procedures are followed these typically allow for the exploration of the relationship between the complainant and alleged perpetrator with the aim of resolving complaints in a manner that is satisfactory to the complainant and alleged perpetrator(s). No-one should be pressured into following informal proceedings, including mediation, and nor should such procedures take place where offences are of such a serious nature that such procedures would be inappropriate. The written consent of both the complainant and the alleged perpetrator should thus be obtained before commencing with informal proceedings. Informal approaches may also include approaching the alleged perpetrator with information about what constitutes sexual harassment. Depending on the complainant's wishes, this can be done by either revealing or withholding her/his identity. Such information can be provided directly to the alleged

perpetrator, or through a lecture/discussion with staff or students. Finally, a discussion may also be facilitated with the aim of providing the alleged perpetrator an opportunity to apologise.

4.2.1.e. Formal procedures

Where formal procedures are followed these must be set out, including the timelines for the investigation and disciplinary process. Policy must detail the steps to be followed in conducting an investigation and ensure that regular feedback is provided to the complainant regarding progress. Policy should also encourage disciplinary tribunals to request expert testimony around any of the issues under consideration. Disciplinary bodies are encouraged to think beyond purely adversarial approaches and to explore the use of inquisitorial methods for gathering and hearing evidence.

Complainants need to be prepared for disciplinary proceedings, including their cross-examination. Staff, in particular, need to be made aware of the possibility that the matter may go to the Commission for Conciliation, Mediation and Arbitration (CCMA) in the event of the perpetrator being dismissed. This may entail having to repeat their evidence.

Disciplinary actions, as well as measures intended to assist perpetrators to change their behaviour (where such programmes are indicated) should also be detailed in the policy, along with any appeal processes that may be followed.

4.2.1.f. Criminal matters

As was previously noted, rape is always a crime while some forms of sexual harassment also fall within the ambit of criminal law. This entitles complainants to pursue the harms done to them via institutional complaints structures, in parallel with the criminal justice system. Complainants should thus be informed of these dual channels of complaint by reporting structures. In turn, reporting structures may not refuse to investigate, or otherwise pursue, complaints solely on the basis that criminal charges have been laid. Acts such as rape, assault with intent to cause grievous bodily harm, as well as some forms of sexual harassment can constitute forms of gross misconduct and must be dealt with as such, irrespective of the status or outcome of criminal proceedings.

Disciplinary tribunals constituted to hear such matters must be reminded that decisions in disciplinary matters are made on a balance of probabilities, rather than by utilising the criminal court standard of proof beyond reasonable doubt. Further, because disciplinary tribunals are not criminal courts, they are not entitled to evidence gathered through the police investigation (such as the medico-legal evidence).

4.2.1.g. Safety of parties

To protect complainants' safety, universities and colleges must develop, if these do not already exist, orders prohibiting contact between the complainant and alleged perpetrator. These should include transferring alleged perpetrators to different classes or residences.

Institutions must not only provide protection from the alleged perpetrator but must also prevent retaliation and victimisation by others, including secondary victimisation. Where information about a case is circulating in the campus community more broadly, it is important that institutions provide clear, factual communications about processes and their outcomes. This should be done in a way that

does not compromise the confidentiality of the affected parties. Steps should be taken to address any polarisation or conflict emerging from individual reports.

4.2.1.h. Training

Policies must stipulate that any person investigating or prosecuting a complaint, or supporting or hearing a matter receive comprehensive training prior to their involvement in any GBV matter. This includes security personnel, regardless of whether or not their services are outsourced. Institutions must therefore also commit funds to such training.

4.2.1.1. Protocol guiding responses to rape, attempted rape and assault with intent to cause grievous bodily harm

All reports of rape and attempted rape must be treated as confidential and all complainants and victims treated with respect and dignity. The same principles apply to complainants physically injured by their intimate partners, or any person assaulted on the basis of their gender expression. Institutions' responses to complaints should not be dependent on the initiation or outcome of criminal proceedings and complainants are not required to pursue a public prosecution or disciplinary process solely on the basis that they have reported an incident of rape to SAPS or the institution.

Comprehensive protocols guiding support to this particular group of complainants should include access to:

- advice and assistance;
- supportive measures, including crisis counselling; assistance with access to SAPS where requested; assistance in access to emergency medical care; and, if relevant, para-legal advice and other services;
- protective measures to mitigate the impact of the attack or the reporting thereof upon the complainant. These may include change of student residence, where requested; change of academic classes and academic relief, where appropriate; and/or special leave (staff) or leave of absence (students), where appropriate.
- Measures to protect the complainant from the perpetrator when not arrested or on bail including exclusion of the accused from campus, no contact orders, or (depending on the circumstances) protection orders in terms of the DVA or Protection from Harassment Act.

As part of this response, the institutional structure appointed to deal with GBV must establish links with both the local police station, as well as the local health facility to which SAPS take victims who report rape. This is one designated to conduct rape examinations and provide medical care after rape for prevention of HIV and pregnancy.

PSET institutions must also develop a protocol both for campus security and wardens of residences around responding to rape and other assaults in their immediate aftermath. This should enable such first responders to:

- establish contact with the complainant;
- ensure that s/he has been referred to crisis counselling;
- ascertain whether s/he has made a complaint to SAPS and if not, encourage and assist her/him to do so;
- ensure that s/he has received medical attention if s/he does not want to report to SAPS;

- provide information on the availability of longer term support and ensure that a follow up is made within 24 hours;
- in the follow up to the initial report, provide an appropriate environment for the complainant to make her/his statement to the institution if such statement is necessary (i.e. when the perpetrator is part of the institution), and offer assistance in making the statement;
- provide information on the criminal justice process and explain the support role that can be provided by the institution;
- inform the complainant about the differences between the criminal justice process and the institution's disciplinary process (where relevant);
- inform the complainant of the supportive and protective measures available to him/her;
- provide a referral for the complainant to receive medium term support or counselling.

4.2.2. Objective 2: To provide for comprehensive specialised support, and other assistance to complainants of GBV.

There are at least three distinct elements to an effective response to GBV:

- Psychological support
- Case management and investigation
- Awareness raising and education

These roles cannot be effectively fulfilled by one person, and while the counselling/support role is important in assisting complainants prepare for disciplinary proceedings, it should not be played by the same person undertaking the investigation and/or prosecution of the matter. Some of those approaching designated individuals or structures may also be wanting counselling only, and not wishing to pursue complaints.

Psycho-social support is an important component of a comprehensive response to GBV and institutions must ensure that both staff and students have free access to such services. The widespread nature of GBV, as noted previously, guarantees that some staff and students may have experienced violence prior to, or concurrent with their attendance at, or employment by, a PSET institution. Even though PSET institutions may not have jurisdiction over the latter two scenarios a supportive response to staff and students remains important. Familiarity with the criminal justice system, as well as civil remedies against intimate partner violence and harassment becomes particularly important under these circumstances.

At TVET colleges this role will largely be played by student support services (SSS). They will require further assistance from DHET to do so, in fulfilment of the objective of strengthening such services in terms of the 2013 White Paper. As with staff managing reporting and investigation procedures, counselling/support personnel must receive comprehensive training around GBV.

NGOs or other bodies specialised in GBV can also provide counselling and support to complainants where no services are available on campus. Students or staff may also provide peer support to complainants and PSET institutions may also consider allowing them to provide such support during the process of testifying.

- 4.2.3. Objective 3: To promote the safety of all students and staff by putting in place comprehensive prevention programmes intended to raise awareness of policies and services addressing GBV, as well as other measures aimed at preventing incidents of GBV in the PSET sector.

Developing a written policy is only the first step in addressing GBV on campuses and PSET institutions must take a range of additional steps to create awareness of the policy and to support its use. At a minimum, these should include:

1. Display of the policy (or relevant posters) at strategic points on campuses and residences. This includes making the policy available online.
2. Raising awareness of policies during residence programmes and staff orientation and development. Attention to GBV should be a feature of orientation activities for first year students who may be particularly vulnerable to exploitative and abusive behaviour.²⁷ week, Workshops should also be conducted with student bodies, including the Students Representative Council.
3. Emailing copies of policies to all staff and students, as well as to third parties, at least once per year.
4. Providing comprehensive training around GBV to all personnel involved in the implementation of the policy, from campus security, to investigators/reporting officers. Training must be ongoing.
5. Ongoing awareness-raising of the policy's existence and universities and colleges' condemnation of all forms of GBV. Faculties and departments should ensure that their class schedules allow for at least one discussion of the policy. This should be unannounced to ensure that it is not made an occasion for skipping class
6. Policies must detail measures to increase awareness and knowledge of the policies. These measures should not only be addressed to academic staff but must include service workers, unions and campus security, as well as contractors.

One of the objectives of South Africa's post-school system is to contribute to a fair, equitable, non-racial, non-sexist and democratic South Africa. The adoption of policies and procedures to address GBV on campus is one means of accomplishing this. However, these are limited if not accompanied by various interventions intended to reduce the incidence of GBV and transform gendered social relations. These interventions should not be treated as once-off events but should comprise multiple and ongoing activities that address the range of different staff and student groupings on campus and which take a variety of forms, including education, awareness, campaigning and other forms of activism. More specifically, such activities may include:

- safety audits aimed at identifying either those situational contexts, or parts of campus, where students and staff feel unsafe, or where abuse could easily occur. Where environmental design provides opportunities for abuse, or security is inadequate, institutions must take steps to address these deficiencies. Such measures may include providing adequate lighting at night, help lines and staff and students accompaniment by security personnel to residences, offices

²⁷ Clowes L, Shefer, T, Fouten, E, Vergnani T. and Jacobs, J. (2009). 'Coercive sexual practices and gender-based violence on a university campus' *Agenda* 80: 22-32.

or other places. Situational contexts, which often arise in residences, may be addressed by the adoption of new rules and procedures, or through workshops.

- Limiting the extent to which lecturers can demand sex for marks by ensuring that papers are marked by multiple examiners or are subjected to moderation processes.
- Universities and colleges must provide for campus-wide workshops and discussions (including in residences) that allow for critical exploration of gender and heteronormativity, sex, intimacy and ethical conduct. These should aim to address the norms, behaviours, attitudes and practices that condone GBV. These initiatives should also allow for and encourage the implementation of other programming demonstrating efficacy in the prevention of GBV, such as bystander interventions²⁸ and self-defence training.²⁹ PSET institutions should document and evaluate these and any other programmes they develop to enable broader sharing of effective interventions with other campuses.³⁰
- Discussions and interventions should also attend to the relationship between campus drinking cultures and GBV. While alcohol, per se, does not cause violence, it can facilitate and excuse its expression, as local university-based studies and reports suggest.³¹ In the case of residential universities or colleges PSET institutions are encouraged to approach liquor outlets to ensure the responsible sale of alcohol, amongst other measures.

PSET institutions should also encourage and support staff and student activism on GBV issues. Campaigns against GBV, which are already routine on some campuses, need to be extended to all university and college campuses.

Finally, PSET institutions should also seek community involvement and engagement in their various prevention and other activities.

Educating for social justice

The 1997 Education White Paper 3, *A Programme for the Transformation of Higher Education* states that supporting a democratic ethos and a culture of human rights through education programmes and practices conducive to critical discourse and creative thinking, cultural tolerance and a commitment to a humane, non-racist and non-sexist social order is an element of the education system's

²⁸ Coker AL, Cook-Craig PG, Williams CM, Fisher BS, Clear ER, Garcia LS, and Hegge LM. (2011). 'Evaluation of Green Dot: An Active Bystander Intervention to Reduce Sexual Violence on College Campuses' *Violence Against Women*, 17(6): 777–796.

²⁹ Senn CY, Eliasziw M, Barata PC, Thurston WE, Newby-Clark IR, Radtke HL, and Hobden KL. (2015). 'Efficacy of a Sexual Assault Resistance Program for University Women' *New England Journal of Medicine* 372(24): 2326–2335.

³⁰ Examples of such interventions are described in De Lange, N. and Mitchell, C. and Moletsane, R. (2015). 'Girl-led strategies to address campus safety: Creating action briefs for dialogue with policy makers' *Agenda*, 29(3): 118-127; and Singh, S, Mudaly, R. and Singh-Pillay, A. (2015). 'The what, who and where of female students' fear of sexual assault on a South African University campus', *Agenda*, 29(3): 97-105.

³¹ Sexual Violence Task Team. (2016). *"We will not be silenced": A three-pronged justice approach to sexual offences and rape culture at Rhodes University/UCKAR*. Report prepared by Critical Studies in Sexualities and Reproduction, Rhodes University; Collins, A. Loots, L. and Meyiwa, T. and Mistrey, D. (2011). 'Nobody's business: Proposals for reducing gender-based violence at a South African university', *Agenda*, 23(80): 33-41; Dastile, N.P. (2008). 'Sexual victimisation of female students at a South African tertiary institution: The victim's perception of the perpetrator' *Acta Criminologica* 21(2): 189-206; Clowes L, Shefer, T, Fouten, E, Vergnani T. and Jacobs, J. (2009). 'Coercive sexual practices and gender-based violence on a university campus' *Agenda* 80: 22-32.

transformation. The contribution of education to social justice is also recognised in the 2013 White Paper. Educators should bear this in mind when designing courses and ensure that these encourage students to think critically about GBV in relation to social justice. This outcome may be fostered through the selection of study topics and materials, as well as teaching methods. Student and staff organising in the interests of these goals must be encouraged.

Universities and colleges must also consider how their research and teaching programmes could further the aim of transforming inequitable social relations. Students could be encouraged, as part of their post-graduate degrees, to research different aspects of GBV on a particular campus, to monitor the climate with respect to GBV, as well as collaborating with different universities and colleges to research questions. Where feasible, campuses with some experience of addressing the problem of GBV could support institutions to introduce their policy. This could also extend to sharing research resources. Further, both USAF and SACPO must create opportunities for structures tasked with addressing GBV on campuses to meet at least annually in order to share programmes, progress and lessons learnt.

Finally, universities and colleges should also prepare students to address GBV in their working lives. Students being trained to work in health-related fields should receive knowledge equipping them to address GBV in their patients' lives, for example, while all students should receive information about addressing sexual harassment in the workplace.

4.2.4. Objective 4: to ensure the effective implementation of policy and programmes through attention to budgeting; monitoring and evaluation; and the creation of a system of accountability.

Campuses have been enjoined to attend to sexual harassment and rape as an aspect of institutional culture since 1997 and the issuing of White Paper 3. Two decades later, it has become necessary to establish accountability structures and procedures to ensure this goal is realised. These must operate at the level of both individual institutions, as well as the state. Clear allocation of responsibilities for implementation and advocacy of the GBV policy must be stipulated within each institution. Assessment of senior managers' implementation of the policy should also form part of their annual performance appraisal.

3.2.4a. University councils

The Higher Education Act, 101 of 1997, establishes Councils as the highest decision-making bodies of institutions. It is their responsibility to review their particular institution's report to the DHET and include an addendum setting out the steps they propose undertaking to address any shortcomings identified by the report. Any progress made in attending to gaps identified by reports from previous years must also be reported on.

3.2.4b. Institutional Forums

The Higher Education Act also mandates the setting up of Institutional Forums. Among other things, their role includes advising Council around race and gender equity policies, and fostering an institutional culture which promotes tolerance and respect for fundamental human rights and creates an environment for teaching, research and learning. Reporting on the status of policies addressing GBV clearly forms part of their mandate and their composition must include officials responsible for gender-based violence. Where these Forums have not functioned as effectively as they should, universities must take steps to support their functioning. Alternatively, a gender panel or committee may be constituted in terms of these provisions with the specific aim of carrying out these roles. The

Forum or panel must have a direct reporting relationship with Council which should not be mediated by executive structures.

3.2.4c. The DHET

The SOA requires the DHET to account for its implementation of various provisions of the legislation and the NPF. These include the development of policy, standards and guidelines; training and support of staff attending to sexual offences matters; and monitoring and evaluation of these activities. Quarterly and annual reports documenting progress are to be submitted to the Directors-General Intersectoral Committee for tabling in Parliament.

To fulfil these requirements the DHET must ensure that colleges and universities submit a yearly report recording the following:

- the number of cases dealt with, distinguishing between those perpetrated on-campus and those off-campus
- how cases were settled
- training provided to staff responsible for implementing the policy
- The nature and extent of efforts made to provide information about the various policies to staff and students
- any programmes or other interventions undertaken to improve safety and reduce incidents of GBV
- budget and expenditure on addressing GBV
- time taken to resolve the cases
- actions taken to mitigate obstacles to resolution of cases.

Before submitting these to the DHET, individual universities and colleges must discuss their particular institution's report at the highest level.

3.2.4d. The Inter-Sectoral Committee for the Management of Sexual Offences

This structure is mandated by section 63 of the SOA. The Committee is to consist of the Director-General of Justice and Constitutional Development (who is also designated the chairperson of the Committee); the National Commissioner of the South African Police Service; the National Commissioner of Correctional Services; the Director-General of Social Development; the Director-General of Health; and the National Director of Public Prosecutions. The Committee should meet at least twice a year and report, in writing, to the Minister on every meeting within one month of the meeting.

The Committee, through the Minister of Justice and Constitutional Development, must submit reports annually to Parliament, by each Department or institution, on the implementation of this Act.

Section 65 sets out the responsibilities, functions and duties of the Committee:

65. (1) The Committee shall be responsible for developing and compiling a draft national policy framework, as contemplated in section 62(1), which must include guidelines for—

- (a) the implementation of the priorities and strategies contained in the national policy framework;
- (b) measuring progress on the achievement of the national policy framework objectives;

(c) ensuring that the different organs of state comply with the primary and supporting roles and responsibilities allocated to them in terms of the national policy framework and this Act; and

(d) monitoring the implementation of the national policy framework and of this Act.

The DHET is included in this structure by the NPF.

3.2.4e. The Commission on Gender Equality (CGE)

The purpose of the CGE is to advance, promote and protect gender equality. Its functions include monitoring and evaluating the policies and practices of government, the private sector and other organisations to ensure that they promote and protect gender equality; public education and information; reviewing existing and upcoming legislation from a gender perspective; investigating inequality; commissioning research and making recommendations to Parliament or other authorities; investigating any gender-related complaints; and monitoring/reporting on compliance with international conventions.

This scope of activity grants the CGE a role in ensuring that PSET institutions develop and implement policies and programmes addressing GBV. Specifically, universities and colleges are required to send copies of the annual report on their institutional response to GBV to the CGE. The CGE will peruse these reports and may request institutions to provide further information about any aspect of these. The CGE may also issue recommendations to individual institutions, as well as DHET, USAF and SACPO arising from these reports.

3.2.5 Objective 5: To allow for the establishment of national structures and mechanisms intended to enable PSET institutions' implementation of their institutions' policies.

A knowledge and practice base in relation to sexual violence on campus has been developed over the decades. However, have these developments have been uneven across institutions and there has been little opportunity for lessons and advances to be shared across the PSET sector. The DHET will facilitate the establishment of a national structure (or structures) and mechanisms intended to address this unevenness both by building individual institutions' capacity to address GBV, as well as by creating a supportive network of practitioners in this field. Such initiatives may include:

- the establishment of a national data base that will contain the following resources: training bodies with established experience in training around GBV; information and education materials around GBV; institutions' policies and protocols; and programmes shown to be effective in addressing GBV, including its prevention.
- An oversight body made up of university and college staff knowledgeable in the field of GBV. This committee should also allow for student representation, with nomination and selection based on a history of involvement in efforts to address GBV on campus. This committee should meet at least annually to review institutions' reports on their efforts to address GBV on campus and, where indicated, make recommendations regarding the improvement of their responses. The committee must issue its recommendations to DHET, as well as USAF and SACPO for written responses.
- A fund to which PSET institutions may apply to enable training of those required to apply informal and formal procedures, as well as to implement prevention, information and educations programmes and campaigns on campuses.

- The hosting of an annual meeting enabling PSET institutions to share their initiatives and lessons learnt.

4.3. Funding

Under-resourcing, both human and material, is persistently identified as a factor hampering effective responses to GBV on campus. Where complaints structures are under-resourced this may result in investigations that are drawn-out and even deficient, delays in instituting proceedings, and little follow-up with complainants regarding the progress of their matters. This contributes to perceptions that structures are reluctant to assist complainants and do not take the issue seriously.

Both TVET institutions and DHET must contribute to a budget enabling the execution of GBV policies. Universities may apply for capacity development grants in this regard, while TVET colleges may apply to the National Skills Fund. There are however, very significant disparities in the resources available to different PSET institutions. The DHET must focus particular support on those universities and TVET colleges with the fewest resources.

Specific objective 3 of the NPF mandated by the SOA attends to the provision of resources for the effective implementation of the SOA and the NPF. Its provisions state:

- Government departments and institutions must allocate specific budgets for the implementation of the NPF and the Act in every financial year. The expenditure statement of this budget must form part of the departmental quarterly and annual reports, which must be submitted to the DG ISC, via the secretariat office, for submission to Parliament, in compliance with the Act.
- The allocation of resources must be appropriate and equitable to ensure the equitable access to and provision of quality services.
- Resources allocated must be consistently monitored to ensure collective accountability.
- Resources allocated must establish and/or improve victim-centred services.
- The efficient use of resources must enable the delivery of coordinated, sensitized, specialized, professional, integrated and multi-disciplinary services.
- Donor funding for the management of sexual offences must be identified, sourced and sustainable.

In relation to DHET and PSET institutions these funds should be allocated towards the training of all personnel involved in implementing any aspect of the policy, including informal or formal complaints procedures; support and assistance to complainants; and awareness programmes around the policy, as well as programmes intended to reduce the occurrence of GBV.

APPENDIX A: STANDARDS AND STRATEGIES FOR DEVELOPING AND IMPLEMENTING POLICY

This section of the policy sets out a draft implementation plan intended to address GBV in universities and colleges. (This needs to be consulted around.)

- 1. Revise existing policies in line with the framework. Alternatively, develop policies if none exist. At a minimum, policies must contain the following:**
 - Scope of the policy
 - Definitions of terms
 - Reporting of a complaint
 - Counselling and other support to complainants
 - Investigation processes and procedures
 - Relevant structures, their roles and responsibilities
 - Education and information strategies to popularise the policies and associated procedures
 - Programmes and teaching strategies to address and prevent GBV
 - Monitoring and evaluation of the policies
- 2. Develop and implement training programmes for all those tasked with receiving, assessing and investigating complaints, mediating and/or prosecuting complaints, as well as those sitting on disciplinary tribunals.**
- 3. Develop and implement strategies for familiarising staff and students with the policies and protocols.**
- 4. Develop and implement curriculum development strategies as well as programmes aimed at responding to and preventing GBV.**

APPENDIX B: ROLES AND RESPONSIBILITIES

This table is to be completed and possibly expanded as part of the consultations.

Department of Higher Education	
USAF	
SACPO	
National co-ordinating structure(s) and mechanisms	
Council	Review and sign off annual report
Senate	
Institutional Forum/gender panel	Compile annual report; advise Council on the development and implementation of GBV policies; provide support to specialised individual/structure responsible for implementing GBV policies
Specialist structure	
Student structures	
Commission for Gender Equality	Receive and attend to complaints; review universities and colleges' annual reports; issue recommendations based on reports;
Community-based organisations/NGOs	