



## A Symposium on PREVENTING GENDER-BASED VIOLENCE IN SOUTHERN AFRICA

From 29-30 August 2023, Africa Legal Aid (AFLA) and the Centre for the Study of Violence and Reconciliation (CSVR) convened a timely symposium on the theme: *Preventing Gender-based Violence (GBV) in Southern Africa*. The meeting was held at the Swedish Residence in Pretoria, in partnership with the Embassy of Sweden, the Embassy of the Netherlands, UN Women, and with the support of the Ford Foundation.

A recent study by World Population Review reveals that the rate of femicide in South Africa alone is 9.1 out of every 100,000 women,<sup>1</sup> of a female population of just over thirty-one million. Furthermore, Botswana, Lesotho, and South Africa are ranked as the top three countries in the world with the highest rape rates.<sup>2</sup> And this is not the first time Southern African countries have ranked highest in crimes against women and gender-based violence (GBV). As such there was an urgent need to convene key stakeholders to address and seek lasting solutions to the high incidence of GBV in Southern Africa.

This timely symposium brought regional, national, and local actors together with experts and resource persons to connect, deliberate, and devise gender-responsive strategies, with a focus on the prevention of gender-based violence in Botswana, Lesotho, and South Africa. Approximately 80 representatives from civil society, gender groups, human rights organisations, and the justice sector in Southern Africa participated. This regional gathering followed country-specific online workshops in Botswana and Lesotho which provided an opportunity for stakeholders from the targeted countries to connect prior to the symposium.

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<sup>1</sup> <https://worldpopulationreview.com/country-rankings/femicide-rates-by-country>

<sup>2</sup> <https://worldpopulationreview.com/country-rankings/rape-statistics-by-country>

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# Introduction and Opening Session

## About the Convening Organisations

Since its inception in 1995, Africa Legal Aid (AFLA) has consistently worked to promote human rights and international justice in Africa. It plays a key role in espousing a victim-centred and gender-sensitive approach to justice by working with victims and vulnerable groups, whilst also working within national, regional, and international institutions with the aim of building an African continent that is ruled by just principles of law.

AFLA pursues an intersectional feminist agenda and incorporates gender perspectives in all its activities.

The Centre for the Study of Violence and Reconciliation (CSVr) is an independent non-governmental organisation established in South Africa in 1989. It is a multi-disciplinary institute that seeks to understand and prevent violence, heal its effects, and build sustainable peace at the community, national, and regional levels. Through research, advocacy, and psychosocial support work, and in collaboration with communities affected by violence, CSVr seeks to enhance state accountability, promote gender equality and build social cohesion, integration, and active citizenship.

## Opening Session

The opening session was chaired by **Evelyn A. Ankumah**, Executive Director of AFLA.

**Ankumah** welcomed all participants and expressed that AFLA was delighted to collaborate with the CSVr in convening this critical symposium on Preventing Gender-based Violence in Southern Africa. She said the conveners were especially grateful to the Embassy of Sweden for hosting the meeting on their beautiful premises, and for all the other forms of partnership they provided, too many to list here. **Ankumah** conveyed AFLA and CSVr's debt of gratitude to UN Women, the Netherlands Embassy, and the Ford Foundation for their support.

'This symposium is a call to action', **Ankumah** said. 'A call to action to deal with the problem of gender-based violence in Southern Africa, as so well-articulated in the title of **Judge Sanji Monageng's** keynote: *Uniting Against Gender-based Violence: Can the Silence be Broken?*'

**Ankumah** pointed to the statistics and high incidence of GBV in Botswana, Lesotho, and South Africa, and the SADC sub-region as a whole. 'Why, one may ask, is this the case?' she queried. 'Southern Africa is not one of the sub-regions afflicted with armed conflicts or coup d'états.' But there is another conflict taking place in this region: that of countries being at war with their women, she said.

Without further ado, **Ankumah** gave the floor to **Christian Fogelstrom**, of the Embassy of Sweden, who welcomed participants and called attention to Sweden's mandate to prevent gender-based violence.

**H.E. Joanne Doornewaard**, Ambassador of the Embassy of the Kingdom of the Netherlands to South Africa highlighted the need for a holistic approach to addressing gender-based violence.

**Dr Hazel Gooding**, Programme Specialist at UN Women addressed participants noting that the SADC region has the highest rate of GBV, with Botswana, Lesotho and South Africa ranking highest. She observed that more than 80% of Basotho women experience GBV in their lives, highlighting the key elements of GBV and the need to address GBV beyond policing and legislation.

**Annah Moyo**, Executive Director of CSVV presented the theme of the programme as one that aimed to prevent GBV and contribute to eradicating gender-based violence in the region. She noted that the SADC region is not short of policies to deal with GBV while submitting that the prevalence of GBV is due to systematic and patriarchal issues. **Moyo** highlighted that to prevent GBV it is important to bring men and boys to the table to understand what causes them to commit violence against women and girls, adding that we cannot prevent GBV without addressing structural and cultural beliefs.

**H.E. Judge Sanji Monageng, Former Judge and First Vice President of the International Criminal Court; High Commissioner of Botswana to South Africa** delivered a keynote entitled '*Uniting Against Gender-based Violence: Can the Silence be Broken?*'.

**Judge Monageng** noted at the onset that the subject of GBV is very difficult terrain, however, the symposium presents opportunities to rethink strategies to see what could be changed. She wondered why despite progress on a gender approach to history, language, and socialisation things are not changing on the ground. While observing that prevention remains a crucial focus of the work of all those partaking in the symposium, she expects that they'll be asking themselves 'What are we not doing?' 'What are we doing wrong'? **Judge Monageng** said she has lived these things as a lawyer, as a judicial officer, and as a judge of the International Criminal Court. She said 'We have discussed GBV at the international level and found no answers. We do not know why men will go into a village and use children and women as weapons of war'.

**Judge Monageng** then highlighted the plight of some vulnerable groups for the symposium to consider throughout the two days. These include the LGBTQ+ community, older people, persons living with disabilities, and migrants.

**Judge Monageng's** inspiring and enlightening keynote was followed by participants' spontaneous singing of a women's struggle song in the Zulu language.

This was followed by a floor discussion on topics around the protection of the elderly, migrant women, using communities to collect data, the situation in Botswana, the importance of collaboration, making artificial intelligence (AI) work for women and vulnerable groups, the role of civil society, the importance of education, centring of the voice of victims, affordability of housing and the position of children of GBV victims.

## **The Situation in Lesotho**

Lesotho paints an alarming picture: at least 47% of women murdered in 2021 were killed by their intimate partner.<sup>3</sup> Violence has become the norm in Lesotho with 86% of women and 40% of men in the country reported to have experienced some form of violence in their lifetime. The majority of the victims did not report the violence to the police, seek medical attention, or legal recourse. An estimated one-third of women in Lesotho suffered sexual or physical violence in their lifetime.

This session was chaired by **Tsholofelo Nakedi**, CSVR Community Advocacy Specialist. After introducing the theme of the panel, she gave the floor to **Adv Joanna Jonas**, Director of Nairasha Legal Support in Maseru, Lesotho.

**Adv Joanna Jonas** spoke on access to justice for victims. She discussed the institutional and legal barriers victims face, stating that many victims of GBV are unaware of their legal rights and this prevents them from seeking justice for themselves. She also highlighted the stigma, cultural norms, and insensitive questioning faced by victims of GBV and the impact this has on reporting. **Jonas** argued that access to justice is not only important to victims, but is a tool of prevention, strengthening the rule of law and threat of legal recourse for perpetrators. **Jonas** informed participants that Nairasha Legal Support undertook consultative research in the four districts in Lesotho with the highest prevalence of GBV. Working with policing units, civil society, community leaders, and survivors, they developed first-hand research on the root causes and barriers to justice within the Lesotho context. Her experience in supporting victims through the judicial process showed how the simplest of barriers, such as the lack of a police car to respond to instances of GBV, discourage survivors from contacting the police. **Jonas** stated that there is a backlog of cases on GBV in Lesotho.

**Thuso Ramabolu**, Human Capital Manager of Tsebo Solutions Group spoke on the effects of GBV on Lesotho's human capital, highlighting the ways in which GBV impacts labour rights. He considered the prevalence of GBV in the workplace in the form of bullying, sexual harassment, unsafe work environment, lack of sanitary provisions, and unjust working hours. **Ramabolu** said in his experience women are not aware of their rights, especially their maternity rights, and many women return to work before their legislated six weeks. **Ramabolu** gave the example of a 2019 agreement between Nien Hsing Textile Co., Ltd. and labour representatives, following an investigation by the Workers' Rights Commission, which resulted in a robust programme to eliminate GBV in the workplace. In **Ramabolu's** view this demonstrated the power of campaigning and collective bargaining in the workplace.

**Manteboheleng Mabetha**, Gender Links Lesotho Manager, presented the report of the country workshop in Lesotho prior to the symposium, addressing the high incidence of GBV in Lesotho. Studies show that eight out of ten women in Lesotho will experience GBV in their lifetime. 62% of those women experience violence within intimate relationships. One in eight women experience GBV before they are eighteen years old and 40% of men have admitted to committing some form of violence against women. **Matheba** said there is a need to keep studies related to GBV updated to reflect and record the key drivers of issues relating to GBV because we can't expect to quote ten-year-old studies to address the reality on the ground. Furthermore, toolkits need to be developed for up-to-date data collection.

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<sup>3</sup> Afrobarometer, AD546: In Lesotho, Gender-Based Violence Tops the List of Women's-Rights Issues To Be Addressed, 2022. <https://www.afrobarometer.org/publication/ad546-in-lesotho-gender-based-violence-tops-the-list-of-womens-rights-issues-to-be-addressed/>

Significantly, GBV is seen as a key driver of new HIV infections in Lesotho, demonstrating how GBV is linked to wider societal issues including a \$130 million annual cost to the Lesotho economy. **Mabetha** shared the learnings from partnerships that have developed a GBV app and an anti-gender-based violence forum. But fundamentally, **Mabetha** recognised the impact of GBV on victims who do not feel safe in their own homes.

**Otilia Anna Maunganidze**, Head of Special Projects, Office of the Executive Director of the Institute for Security Studies (ISS) discussed the three presentations. **Maunganidze** questioned why, despite having the procedures in place, is Lesotho unable to tackle social and cultural norms that are contributing to the high incidence and low reporting of GBV in Lesotho. She noted that even with the best policies, if the core of why these crimes manifest is not addressed, GBV cannot be prevented.

She said the law won't heal victims. We need a human-centred approach in the fight against GBV where mental health issues are taken into consideration. Society re-traumatises victims by making them the challengers of the status quo, the ones who have to change norms and structures, and those who have to seek forgiveness for not healing. Mental health for practitioners and support for victims remains very important.

Additionally, she observed that it is not just a question of access but a question of justice. What kind of justice is the goal and who is deciding that? With a conviction rate in Lesotho below 15% and a rate of 47% of women in Lesotho murdered by their partners, this question of justice remains crucial.

During the floor discussion, participants shared their experience of research and working in Lesotho on preventing gender-based violence. Questions and comments were raised about what is considered gender-based violence in rural communities, the level of education on GBV, the role of teachers in recognising signs of GBV, community-based legal support, and interactions across the region.

## **Session with the National Director of Public Prosecutions (NDPP) of South Africa**

This session was chaired by the Chair of the Governing Council of AFLA, **Attorney Moray Hathorn**, who introduced the theme of the session and the mandate of the well-regarded NDPP, **Adv Shamila Batohi**, who is also recognised for her independence.

**Adv Shamila Batohi** delivered a keynote entitled *'From Victims to Survivors: The National Prosecuting Authority's Initiatives to Assist Victims of GBV'* setting out the stark reality of the region's high rate of violence against women and girls. She observed that female genital mutilation (FGM), teenage pregnancies, and child marriage are common forms of GBV.

The culture of 'war against women' occurs despite a strong legal framework and a 'trailblazing constitution' **Batohi** said, highlighting the National Gender-based Violence and Femicide Strategic Plan (2020). While the National Prosecuting Authority (NPA) has a 92% conviction rate of femicide for intimate partner femicide, **Batohi** underlined that we cannot prosecute ourselves out of the GBV crisis. A strategic and whole-of-society approach is required to challenge unequal power relations and patriarchy in order to prevent GBV in the first place. She observed how comparing the 92% conviction rate with the number of reported cases shows

that it actually dwindles down to under 10% of reported cases that actually result in convictions. Thus, this is a serious problem that needs to be addressed. She was hopeful that an established DNA project could aid in closing the gap.

**Batohi** used the example of the Thuthuzela Care Centre (TCC) Model, as managed by the NPA's SOCA Unit as an example of the innovation being used to expand support for victims of GBV. The TCC Model allows victims to become survivors who can tell their story in court and ensure conviction. The Centres aim to reduce secondary victimisation, increase the conviction rate by building a case ready for successful prosecution, and reduce the case cycle time from reporting to finalisation. The TCC Model seeks to enhance service provision and accessibility for persons with disabilities. This work is in addition to community prosecution initiatives, training for court preparation officers, and fast-tracking of forensic work to progress and priority to sexual offences cases. **Batohi** asserted that the TCC Model is successful because of its victim-centred, court-directed, and a multidisciplinary approach.

However, **Batohi** noted that the focus has often been on gender-based crimes, and rarely on inequitable gender norms that enable women's subordination and oppression. She said limited attention is paid to social and cultural practices that promote the treatment of women as objects of violence and abuse, or as lesser or inferior beings in many societies, pointing out that 'these are areas where a lot more work has to happen in order for the NPA to really make an impact, because the criminal justice system is not perfect. Far from it.'

Concluding her remarks, **Batohi** said she has a quote from President Nelson Mandela on her wall which reminds her every day why they're fighting the good fight: "It always seems impossible until it's done."

**NDPP Adv Shamila Batohi** was joined by **Adv Bonnie Currie-Gamwo**, Special Director of Public Prosecutions: Sexual Offences and Community Affairs Unit, who shared her experiences. She challenged the view that they cannot prosecute themselves out of the GBV crises, believing that if the justice system demonstrated excellence, more people will want to use the court and that this in and of itself would provide a solution. She noted, however, that this can't be done alone and there is a need for a holistic approach.

**Batohi** added that they are aware of the need for greater targeting of rural areas, the need to avoid stigmatising, and the demand for a broader mobile clinic that offers a range of services with the TCC Model embedded in it.

The presentations were followed by a Q & A with participants.

Questions and feedback from participants commented on the difference between prosecution and prevention, the definition of gender, how much resources are focused on prosecution in comparison to care and support, the gap between relationships with police and the NPA, the use of trains to access rural areas, and a lack of stakeholder engagement.

**Batohi** responded that the Rome Statute's definition of gender failed to protect gender minorities. The panelists further highlighted the importance of citizens in feeling confident and protected in order to improve reporting, the success rate of by-passing police stations through TCCs, experiences with training state services to be gender-sensitive, and the progression of hate crime legislation.

Participants engaged more, raising the difficulties that the 63 TCCs are facing on the ground, the need to make GBV an everyday issue, and the prosecution success rates in crimes with single witnesses.

**Judge Monageng** added that what she had heard in the discussion matched the gaps she has seen in Botswana, the failures in the police and prosecution system in Botswana despite a strong reputation for the police, and her experiences of murderers fleeing Botswana to hide in South Africa to avoid justice in Botswana.

The panelists responded that there is a need for much more TCCs across South Africa, answered questions on benchmarking, the issue of extradition from South Africa to Botswana, and of witness credibility in proving marital rape.

## The Situation in Botswana

The second day of the symposium began with an engaging discussion on the situation in Botswana. The Botswana National Relationship Study conducted in 2018<sup>4</sup> revealed that 67% of women have experienced some form of gender-based violence (GBV) in their lifetime, perpetrated in the course of both intimate partner and platonic relationships. During a mandatory COVID-19 lockdown imposed by the government of Botswana, seven cases of rape involving girl children between 2-15 years old were reported within the first two weeks. Yet, there are only two entities providing shelter to survivors of GBV in the whole country namely, Women Against Rape (WAR) in Maun, and the Botswana Gender-based Violence Prevention and Support Centre (BGBVPSC) in Gaborone, which is NGO driven.

**Dr Pinkie Mekgwe**, Chief Operating Officer of the Africa Health Research Institute, chaired this session. Reflecting on the previous day's discussion, **Dr Mekgwe** gave a harrowing account of GBV she had seen with her own eyes and the failure of the court system to respond. She paid homage to the contributions made by the panelists in the campaign against GBV and the importance of facing the human element of GBV.

**Chigedze Virginia Chinyepi**, a gender activist, an entrepreneurial consultant, and the founder and executive director of the Botswana Chapter of African Women Entrepreneurship Programme (AWEP), gave a presentation on the *Impact of GBV on an Entrepreneur: Perspectives from Botswana*.

She expressed the view that Botswana's high rate of GBV cases stands in contrast to the international, regional, and national instruments that Botswana has enacted to improve gender equality, including the Domestic Violence Act 2008. Giving an overview of the power dynamics of GBV, **Chinyepi** highlighted online GBV as an emerging trend. A multi-country research report commissioned by the Meta Public Policy Department for South Africa called attention to the fact that there was no reporting mechanism in their chosen research countries in Southern Africa, no systematic intervention, and that online GBV takes many forms.

She noted that poverty not only makes women vulnerable to GBV but also results in women staying in abusive relationships because they are financially dependent on their abuser. Failure

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<sup>4</sup> Gender Links, SADC Gender Protocol 2018 Barometer, Gender-Based Violence, Articles 20-25, <https://genderlinks.org.za/wp-content/uploads/2018/08/Chap5-Baro-2018-GBVfin.pdf>



of government programmes to focus on the economic empowerment of women and girls was exacerbated by Covid-19, poverty gaps, and job losses. AWEP aims to give survivors economic empowerment by giving them training to break the cycle of going back to their abuser because of financial dependence. **Chinyepi's** presentation emphasized prevention, economic empowerment, sustainable interventions, capacity building, enforcement of laws, and gender-disaggregated data.

**Valencia Diba Mogegeh**, the Managing Director and the Gender and Development Consultant at Gender Perspectives Ltd spoke on *Gender-based Violence: Key Drivers, Consequences, Prevention and Mitigating Strategies*. She observed that there is a traceable history of government focus on the topic along with policies and strategies that re-affirmed this, including during Covid-19. But what are the results? Implementation remains low. Structures remain weak. Coordination remains problematic. **Mogegeh** calls this the contradiction between written commitments and real work on the ground. What is seen instead is an insignificant demonstration of commitment, weak accountability structures, and the experience of survivors continues to be undermined.

**Mogegeh** observed that challenges in the fight against GBV include: a lack of facilities and personnel, a lack of coordination, the perpetrator's escaping jurisdiction, the physical structures that may limit reporting, the intimidation of victims, that marital rape can be dismissed as a private issue, the lack of protection for rape victims interviewed, and familial intervention on child issues.

She expressed the view that in some cases, police officers even sexually assault women who go to report GBV, demonstrating how dire the situation is in Botswana. Psychological aspects also play a role in the lack of reporting. Key drivers were shown to include harmful gender norms, poverty, cultural factors, legal factors, economic factors, and political factors while the consequences include disability, poor nutrition, exacerbation of chronic illness, chronic pain, gastrointestinal problems, and organ damage.

**Peggie Ramaphane**, Executive Director of Women Against Rape (WAR), presented the report of the country workshop in Botswana prior to the symposium, highlighting research on the lived realities of victims and survivors of rape and intimate partner violence in Botswana. **Ramaphane** played a video testimony of a survivor of intimate familial violence. She observed that the health consequences include unplanned pregnancies, STI and AIDS, economic instability or poverty, as well as alcohol and drug abuse.

She emphasised that key drivers of GBV include poverty and economic instability, alcohol and drug abuse, and the lack of knowledge on GBV issues. She said GBV is a part of communities' and families' everyday reality and that there is a need to understand the reality on the ground before policymaking.

Recommendations included the need for integrated support, including legal and psychosocial support in a one-stop unit.

In discussing the three presentations, **Tebogo Sethibe**, a legal practitioner and councilor at the Law Society of Botswana stated at the outset that law and justice are not related. She shared her experiences as a practitioner in trying to get police orders, trying to protect victims of GBV, and the struggle involved. **Sethibe** went through the legal frameworks and challenges facing those addressing GBV: the financial barriers, legal barriers, and absence of service provision

centres. She said as a legal practitioner, she lacks capacity to provide the emotional and social care needs of her clients.

‘How do you collect evidence in the face of threat and intimidation?’ **Sethibe** queried. ‘In public courts, where GBV victims stand in public view, how do you protect victims?’ she continued. She noted the lack of access to courts in remote and rural areas, costly legal processes, and limited resources for NGOs and legal aid systems.

She highlighted some of the efforts being made in the legal sphere to address GBV such as the establishment of legal aid, declaring all Magistrate Courts as Family Courts, passing legislation on GBV making them urgent matters, civil society psychosocial support and holistic centres, and a new legal practitioners’ act requiring pro bono work.

The chair, **Dr Pinkie Mekgwe** then opened the floor for discussion.

Participants spoke on the need to repackage strategies already in place to get funding from the government to help NGOs deliver, asked what the priority issues to address GBV are in Botswana, how can we treat GBV like a public health emergency similar to Covid-19, holistic reform of structures, and challenges at government level.

Panelists then answered by discussing quick wins on improving collaboration and coordination as well as agreeing on common areas of work and priorities, the need to share resources including with state agencies, mainstreaming of GBV, the need for centralised service models, prevention through education, and economic empowerment of women.

## **The Situation in South Africa**

The last country-specific panel focused on the GBV situation in South Africa. Women in South Africa still struggle for equality and security of person. They lack de facto freedom and the full enjoyment of rights. South Africa has particularly high levels of GBV and high murder rates making this a particularly violent country. Of the 17,805 reported cases of people killed between March 2014 to February 2015, 2,234 were women, a rate which was five times higher than the global average. Between 2019 and 2020, reported rape cases increased by an average of 146 incidents.<sup>5</sup> It is important to note that many cases go unreported.

The session was chaired by **Kaajal Ramjathan Keogh**, the Director of the Africa Regional Office of the International Commission of Jurists (ICJ).

**Lindsay Henson**, Executive Director of Lawyers against Abuse (LvA), spoke on *Shifting Standards for Legal “Consent” in Sexual Violence Criminal Cases and its Implications for Victims in South Africa*. She introduced the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 2007, under which consensual activity is voluntary or uncoerced agreement. Consent is legally invalid when under force or intimidation, there is an abuse of power or authority, given under false pretences, or if the victim is unable to appreciate the nature of a sexual act.

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<sup>5</sup> Human Rights Watch, The Killing Doesn’t Stop During South Africa’s Women’s Month, 2021 <https://www.hrw.org/news/2021/08/30/killing-doesnt-stop-during-south-africas-womens-month>

Under the 2007 Act, rape is defined as “Any person (A) who unlawfully and intentionally commits an act of sexual penetration with a complainant, without the consent of (B), is guilty of the offence of rape.” The actus reus, the guilty act, is that an unlawful act was committed by the accused. The mens rea, the second component, is that the accused committed that unlawful act knowing that the act was unlawful, so that there was an intent to commit the crime. To establish the mens rea, the unlawful conduct must have been committed intentionally, in the sense that the accused committed the sexual penetration knowing, or at a minimum recklessly disregarding the risk that there was no consent. In South Africa, that is based on a subjective test. And, because the standard of proof is beyond a reasonable doubt for both components, if the accused mistakenly believed that consent was present based on whatever rationale, and even if that belief is unreasonable based on the facts if it is at all possibly true that the accused could have genuinely believed that, then by law, the accused cannot be convicted and must be acquitted. If compared to an objective test for the mens rea component, or what is referred to as a reasonableness standard test, according to it the accused’s subjective belief at the time of the act is actually irrelevant. Instead, the test employs a so-called reasonable person: What would have been the understanding of a reasonable person in that circumstance?

This often creates an insurmountable or very high burden for the prosecution, particularly in cases between two adults where the complainant knew their attacker - which we know happens in a high number of cases - where the victim did not physically resist or fight back, or where the victim consented to some but not other intimate acts, or where consent was initially given but later withdrawn. And the same standard applies to other sexual offences in the Act that are defined by a lack of consent such as sexual assaults, compelled sexual assaults, sexual compelled rape, and a number of others.

**Henson** expressed the view that the standard employed reinforces rape myths and stereotypes. How do you demonstrate a lack of consent? Then, the notion that one consents to one type of sexual act, and then there’s implied consent to other sexual acts. And what this means is that in law any form of foreplay could be construed to imply consent. Secondly, closely related, it reinforces patriarchal notions of male sexual entitlement. This is the “no” means “yes”. It also blatantly discounts known responses to trauma, what we know to be true about physiological responses to trauma. Freezing is a biological and physiological response to trauma but applying this standard completely discounts that. And it places the victim on trial.

**Henson** highlighted two recent cases (*Coko v S*; *S v Amos*) which she said demonstrated the failures of this subjective standard. The second case is now the basis of a constitutional challenge on the basis that the subjective test is a violation of the victims’ rights to equality, dignity, privacy, bodily and psychological integrity, and freedom and security of person.

**Henson** stressed that consent should be given voluntarily and can be withdrawn at any time and that the law plays a role in signaling acceptable behaviour to communities. It is the constitutional duty of the state to respect, promote, and fulfill the victims’ right to privacy, bodily autonomy, and psychological autonomy and to ensure that any infringement of these rights is punished. There is a need to shift the message from telling girls to not get raped to telling boys to not rape.

The next speaker was **Tshenolo Tshoedi**, Executive Director of the Community Advice Offices South Africa (CAOSA). Her presentation was on *After-hours Justice Services as a Mechanism of Early Detection and Prevention of GBVF*.

**Tshoedi** detailed the role of community-based paralegals and their work in community-based advice (CAO) offices. She said there are 210 CAOs with a total staff count of 1,451. The Community Advice Officer South Africa (CAOSO) is the national coordination and membership structure of COAs providing regulation, advocacy, and development initiatives. CAOSO aims to ensure that the advice offices and community-based paralegal practitioners receive the necessary formative, developmental, and advanced support to be able to respond to the communities they service.

Their first objective was to establish project deliverables that could be measured, resourced, and provided oversight on. Their second objective was to measure the number of clients, case types, and the number of after-hour services taking place within CAOs. The outcomes of their approach were designed to show the imbalance between how victims and offenders access justice in relation to GBV. Their monthly reports collated from their regional CAOs showed that 93% of incidents involved female victims aged 11 to 75 years old and the collated report included 27 case studies.

The outcomes of these studies showed the extent to which responding to a victim's needs is heavily reliant on the ability to build local networks of local services. Their findings led CAOSA to launch the campaign 'A Place to Run' highlighting the need for after-hour justice services for victims of GBV, the need to empower rural and low-income communities, and the widespread publication of the core messages of the campaign.

**Anivuyina Bebeza**, a psychosocial professional with CSVr, discussed the role of mental health and psychological support for victims of GBV. Mental health for GBV victims is rooted in trauma. **Bebeza** gave an overview of CSVr's work to support, educate, and raise the capacity of victims and the community at large to respond to GBV. CSVr provides psychoeducation to survivors of GBV and their families so that they are better equipped to deal with the mental health challenges that survivors face due to the trauma they have experienced. They also conduct research on emerging trends, reporting rates, potential immediate interventions, and the backlog of cases.

**Adv Bonnie Currie-Gamwo** then concluded the panel by discussing how prosecutions struggle with consent. It could be because the victim is a child that can't verbalise. Or an adult that is traumatised.

**Currie-Gamwo** then welcomed comments and questions from the floor.

On the topic of consent, participants gave harrowing testimonies of the experience of victims of GBV and the reality of how victims aren't able to verbalise during the incident. Another participant gave the example of a victim that knew her words were not enough to stop a rape so she asked for a condom to be used and whether that would be considered consent. The role of the media and the need for education on correct language when reporting on rape and the media as a critical player in the fight against GBV were also raised.

Regarding CAOs, questions were raised about how linked CAOS are to civil society and community prosecution, work on capacity building on psychosocial aspects for frontline staff, the range of functions which community paralegals have to perform, the need for greater collaboration, and navigating the bureaucracy of protection orders for elderly and remote people.

The panelists responded to the various comments emphasising the need to support community-based paralegals and for them to be legislated for in their own right, as well as the need to tackle the two-tier justice system in rural communities. With that **Currie-Gamwo** summarised the discussion and closed the panel.

## **Leveraging the SADC Protocol on Gender and Development**

The final panel discussion focused on the opportunities in the region to utilise the Southern African Development Community (SADC) Protocol on Gender and Development. The 2008 Protocol establishes a set of standards for the member states in the region to meet regarding the empowerment of women, the elimination of discrimination, and the achievement of gender equality by encouraging and harmonising the development of gender-responsive legislation, policies, programmes, and projects.

**Prof Cheryl Hendricks**, Executive Director of the Institute for Justice and Reconciliation (IJR), introduced the comprehensive nature of the Protocol, noting Articles 20 through to 25 which speak directly to GBV. She further drew attention to the SADC Gender Protocol Alliance, the Gender Development Monitoring Group, and the work towards getting a commitment from the leaders of SADC member states to promote gender equality and prevent GBV.

**Prof Hendricks** questioned the evolution of language and the important role it plays in structuring our thinking, our responses, and whether GBV itself is a dehumanising term. ‘How do we restore dignity, well-being, and our inter-connectedness?’, she asked. ‘How do we move towards enforcement, responsibility, and accountability? And what is the role of the SADC Protocol on Gender and Development in the struggle against GBV?’

Next, **Shueni Kurasha**, Programme Manager for Democracy and Governance at the SADC Parliamentary Forum shared his insights. He gave an overview of the SADC model law on GBV and reflected on the opportunities and challenges for its domestication and implementation. He informed participants that the SADC Parliamentary Forum has begun the process of public hearings to allow for open engagements for all stakeholders with the SADC’s standing committees. He noted however that unless domesticated, the GBV model law risks adding to the growing pile of rhetoric and reports with no positive impact for victims of GBV.

**Kurasha** observed that the adoption of the GBV model law by the SADC PF Plenary Assembly in 2021 represented a collaborative parliamentary effort aimed at addressing the existing shortcomings of GBV legislation. He said the model law attempts to address gaps between policies and practices across the SADC region and sets a gold standard to be achieved. It is a gender-sensitive and human rights-based approach through the achievement of substantive justice for all victims of GBV and appropriate punishment of perpetrators of violence.

**Kurasha** added that this work reflects lessons learned by SADC while working in Malawi including that collaboration and partnerships are crucial to preventing GBV, that local stakeholders should decide the priority areas to be addressed, the effectiveness of early intervention mechanisms, a need to broaden the definition of GBV as well as a transboundary

approach, the need for mainstreaming, capacity-building and awareness, and finally oversight and monitoring mechanisms.

**Muluti Phiri** from the International Organization for Migration focused on the experiences of migrants with GBV. She noted that migrants are not a homogeneous group with some being documented and others undocumented, some are asylum seekers while others are economic migrants, and some are displaced persons. **Phiri** highlighted the strong definition of GBV within the SADC Gender and Development Protocol as a foundation for understanding the experiences of migrant victims of GBV across borders.

**Phiri** drew attention to the challenges faced by migrants and asylum seekers, particularly migrant women who are vulnerable because their cases are too often dealt with in partnership or tied with their male partner, adding to the significant barriers to accessing justice already faced by migrant women.

Migrant women are exposed to GBV in communities they settle in due to the normalisation of violence in these communities. **Phiri** highlighted that crimes such as sexual assault, harassment, and xenophobia are common in these vulnerable communities. Migrant women are at a further disadvantage by not having access to documentation, a mistrust of institutions, and economic exclusion. This lack of financial empowerment increases the rates of exploitative transactional sex for financial stability amongst migrants, further increasing their risk of GBV.

**Nyeleti Baloyi**, an Advocacy Officer with the Consortium for Refugees and Migrants in South Africa (CRMSA) shared her perspectives. She gave an overview of the advocacy, network building, and capacity resources CRMSA offers to community organisations and institutions, including CSVr.

**Baloyi** added to the realities faced by migrant women, refugees, and asylum seekers. She contended that migrant women are one of the most vulnerable groups in society because they arrive in host countries with nothing and often depend on their husbands. Even the process of seeking migration can include GBV as women may need to exchange sex for safe passage. The claim of women asylum seekers often goes unheard as men lead all conversations through the process, creating a dependency for women on men for the right to stay in their country of shelter. Only recently have the South African courts ruled that the country should recognise Muslim marriages, yet another instance of the vulnerabilities faced by migrant women. Migrant men themselves may carry trauma from the torture they have experienced and this can lead to them inciting violence against their intimate partner. This explanation is not an excuse but a root cause of GBV and one of the reasons why men must be part of the conversations on preventing GBV.

**Liezelle Kumalo**, a Gender Specialist with CSVr addressed the underdevelopment, poverty, repression, political tyranny, and corruption in the SADC region creating a culture where GBV is rife. She pointed out that the financial and human cost of GBV is significant in the region and demands action.

**Kumalo** shared that women are not the same and face different lived realities and that this needs to be factored in when addressing GBV. While the SADC Protocol on Gender and Development is a positive development for the region, it uses terminology that is disconnected from the crimes faced by victims. It has a heavy focus on government action which misses the potential for civil society and community-based organisations to offer frontline support and

preventative measures. The scarcity of legal assistance and psychosocial support needs to be addressed.

**Kumalo** observed that there is a severe lack of justice and accountability when dealing with GBV. The role of men and boys as leaders within the system is also ignored. Therefore, the Protocol must in execution recognise that change happens within communities and demands a multi-stakeholder approach.

**Jasmine Opperman**, a security consultant specialising in extremism and political violence began her presentation by stating that to tackle gender-based violence, we must address gender-based culture. We must understand the role of women within society before we can address GBV within the community.

Instead of the state protecting women in the SADC region and beyond, we see instances where soldiers are significant perpetrators of violence and sexually abused women. Extremist ideologies place women within very strict but socially acceptable confines. Extremist groups have proven an ability to express a simple message and win, in certain instances, the battle of hearts and minds. **Opperman** warned that women and children abandoned after conflict or traumatic experiences are fertile grounds for extremist ideologies and these women cannot be abandoned.

**Prof Hendricks** opened the conversation up to participants who asked panelists to identify the biggest root causes of GBV in the region, the interaction of GBV with gang violence and culture, the political situation of the Western Cape, the Cape Flats, and systemic violence.

The panelists responded that root causes evolve and adjust to the context of reality, ingroups and outgroups are the significant contributors to root causes, the principle of 'nothing about us with us' is a crucial perspective to ensure the inclusion of communities from every region, services need to make themselves accessible to migrants by going directly to them, and the opportunity presented by the symposium to strategise on collaborations to prevent gender-based violence.

## Concluding Remarks

**Evelyn A Ankumah** executive director of AFLA chaired the concluding session of the two-day symposium. She called on **Jo Bluen**, PhD candidate at the London School of Economics (LSE) and Lecturer of International Relations Theory at the University of London to present a summary of the key points of the symposium.

'Where do we go from here'? **Jo Bluen** asked on behalf of all participants.

First, she reflected on the importance of the gathering of stakeholders, advocates, and decision-makers as facilitated by AFLA and CSV. **Bluen** noted eight recurring issues, successes, and challenges that arise across the different countries, fields, and sectors.

- Gender-based violence takes place within a broader architecture of violence. Repeatedly it was commented how societal norms create a language for this violence which is deeply rooted.
- Second, apartheid and colonialism represented foundational gendered crimes against humanity and therefore sustain today a culture of violence. Similarly, the history of the migrant labour system in Southern Africa and the impact of colonial borders were relevant too.
- The existence of excellent policies, laws, and institutions is in discord with astounding levels of brutalisation and gender-based violence.
- To evaluate success adequate convictions, reporting, and service provision are not sufficient. There is a need to challenge the law-and-order framework and instead shift towards mechanisms to address secondary traumatisation and revictimisation. It is important to calibrate parameters of success based on the needs of survivors and victims of GBV.
- Law is not the answer, and law and justice should not be conflated. Therefore, we need an integrated approach. If we didn't have to make a practical policy recommendation, if we didn't have prisons and courts, what would we have to undo and change about our society to prevent GBV?
- The recognition of holistic approaches with ongoing medical, trauma-informed, psychosocial support. Someone who has received more adequate social and medical care is better prepared to be a witness in a case, but that should not be the sole reason to do so. Empathy must be a motivating factor.
- The importance of paying attention to LGBTI+ peoples' relationship with GBV and the need to tackle Western interventions in anti-LGBTI+ policies. This relates back to questions of culture and the need to avoid risks of essentialisation.
- The role and norm-setting played by social media and traditional media. What norms have we challenged over the course of this symposium? What realms of possibility are we imagining?

**Bluen** then added that it's important to ask where do we, and our organisations, sit within the architecture of the current system. How does gathering together shake that order up? The states and international order have failed victims and survivors in many ways but how do we together have the potential to remedy that?

**Evelyn Ankumah** gave the floor to participants for any further observations. Participants expressed their gratitude to the women who gave their testimony and shared their work, queried the media's framing of coups in Africa, reiterated the value of micro-level actions to change ideology and mindsets, emphasised the ability of every individual to make different decisions to tackle GBV, the importance of addressing root causes such as the insecurity of men, regret at the lack of resources to deliver on collaboration, calls for more advanced knowledge sharing, and the highlighting of the value of intergenerational dialogue.



**Evelyn Ankumah** then gave the final word to co-convenor **Annah Moyo**, executive director of CSV. **Moyo** thanked all for their deliberations, the sharing of experiences, and the creation of a community in the daunting task of preventing gender-based violence. She observed that laws must be tailored to the reality and context of the community and must respond to the lived realities of society.

She said from a legal perspective, from a civil society perspective, and from a survivor and victim perspective, all participants have gained insights into the progress being made on the ground noting that the stories that were shared are important as we seek to prevent GBV in Southern Africa.

**Moyo** thanked AFLA for convening them, bringing together this gathering to address the urgent need to prevent GBV in Southern Africa.

With that **Evelyn Ankumah** declared the symposium closed.