

SOUTH AFRICA

27<sup>th</sup> Session of the Universal Periodic Review United Nations Human Rights Council

April – May 2017

Joint Submission by

Coalition of African Lesbians (CAL)

[www.cal.org.za](http://www.cal.org.za)

In partnership with

People Opposing Women Abuse (POWA)

Sex Worker Education and Advocacy Taskforce (SWEAT)

Sonke Gender Justice

WISH Associates

&



Sexual Rights Initiative

[sexualrightsinitiative.com](http://sexualrightsinitiative.com)

**Key words:** sex work, abortion, comprehensive sexuality education, maternal mortality, sexual violence, domestic violence, persons living with HIV, sexual and reproductive rights, violence and discrimination on the basis of sexual orientation and gender identity.

## **Executive Summary**

1. This report is submitted by The Coalition of African Lesbians (CAL)<sup>1</sup> and the Sexual Rights Initiative<sup>2</sup> in collaboration with People opposing women Abuse (POWA), Sex worker education and advocacy Taskforce (SWEAT), Sonke Gender Justice and the WISH Associates. CAL acknowledges the important role played by international human rights oversight bodies in monitoring the promotion, protection and fulfilment of human rights within national jurisdictions and welcomes the opportunity to support the work of the Human Rights Council through the submission of this report.
2. The report focuses on sexual and reproductive health and justice issues including:
  - i. Reproductive health including adolescent sexuality, comprehensive sexuality education, contraception and abortion.
  - ii. Gender-based violence including on the basis of sexual orientation and gender identity and expression
  - iii. Sex work
  - iv. HIV/AIDS

## **Progress since South Africa's second Universal Periodic Review in 2012**

3. During its second UPR, South Africa received a number of recommendations on the rights of women including recommendations to develop campaigns raising awareness on discrimination of women at all levels of society, implementation of a national strategy and development of legislation aimed at eliminating all forms of discrimination against women

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<sup>1</sup> CAL was formed in 2003 as a regional network of organisations in sub-Saharan Africa committed to advancing freedom, justice and bodily autonomy for all women on the African continent and beyond.

<sup>2</sup> The Sexual Rights Initiative is a coalition including Action Canada for Sexual Health and Rights, Akahatá Equipo de Trabajo en Sexualidades y Generos (Latin America), Coalition of African Lesbians, Creating Resources for Empowerment in Action (India), The Egyptian Initiative for Personal Rights and The Federation for Women and Family Planning (Poland).

and sexual violence perpetrated by different actors, and the development of strategy to protect and promote reproductive health of women and girls. It also received recommendations on the development and implementation of national policies protecting persons from discrimination and violence motivated by sex (including pregnancy and gender), race, ethnicity, health status, sexual orientation and gender identity.

4. South Africa has made little progress with the implementation of these recommendations however, some positive developments include the National Strategic Plan for a Campaign on Accelerated Reduction of Maternal, Child Mortality in Africa adopted in 2013 as well as the South African National Sex Worker and HIV Plan, launched in 2016 by the South African National AIDS Council.<sup>3</sup>
5. This report offers a critical review the state's performance since 2012 concerning sexual and reproductive rights of women and vulnerable communities and offers further recommendations. It was prepared in consultation with various civil society organisations who are committed to the realisation of sexual and reproductive health rights for all women in South Africa. The subsequent references to research offer vital statistics as well as glimpses into the lived realities of women and vulnerable communities.

## **Domestic and Regional Legal Framework**

### **Constitution of South Africa and National legislation**

6. South Africa's Constitution provides a strong framework for the respect, promotion, protection and fulfilment of fundamental human rights and freedoms. Notably, the Constitution establishes the right to human dignity, non-discrimination, including on the grounds of sexual orientation and gender, and justiciable economic, social and cultural rights. The constitutional framework is supported by several acts of parliament and policies which seek to enhance the realisation of human rights. The Constitution also

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<sup>3</sup> <http://sanac.org.za/2016/03/29/south-african-national-sex-worker-hiv-plan-2016-2019/>

establishes an institutional framework for the realisation of rights, including a Constitutional Court, the South African Human Rights Commission<sup>4</sup> and the Commission for Gender Equality.

7. However, there are still many gaps in the realisation of justiciable social and economic rights. There is ongoing evidence of discrimination on the basis of sex, economic ability status, health status, choice of work, ethnic background and sexual orientation and gender identity with regards to the provision of health services. Violence against women is often compounded by gender inequality and economic dependence on men due to South African institutional frameworks facilitating their lack of autonomy over their bodies and lives. There are further challenges in accessing reproductive health care leading to high maternal mortality rates, discrimination based on traditional practices, the inability to access proper health services due to the criminalization of sex work and some ineffectual government practices and policies for persons living with HIV and AIDS. Sex workers and migrant workers also subjected to systemic discrimination due to criminalization and unjust policies culminating in human rights violations perpetrated by the police, including for example, assault, arbitrary and illegal arrests and the denial of appropriate access to justice and health care providers such as denial of healthcare services and harassment by the providers. Similarly, prisoners in South Africa are subjected to inhumane prison conditions which have been found to contribute to escalated levels of HIV and TB infections as well as violence.

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<sup>4</sup> Commission on Gender Equality - SouthAfrica.info. (n.d.). Retrieved from <http://www.southafrica.info/women/cge.htm>

## Promotion and Protection of Human Rights

### Adolescent sexuality

8. In South Africa, 30.2% of the population are younger than 15 years,<sup>5</sup> with 18.5% between the ages of 10-19.<sup>6</sup> A study conducted by the Medical Research Council found that, 12% of students reported age of initiation of sexual activity being under 14 years, 18% reported having become pregnant before 19 years of age and one in seven reported as having contracted HIV/ AIDS in school.<sup>7</sup> There have been various policies targeting youth including the 1998 Population Policy of South Africa recognising the need to promote “responsible and healthy reproductive and sexual behaviour among adolescents and the youth to reduce the incidence of high risk teenage pregnancies, abortion and sexually transmitted diseases, including HIV/AIDS, through the provision of life skills, sexuality and gender sensitivity education, user-friendly health service and opportunities for engaging in social and community life”.<sup>8</sup> However, after almost two decades, adolescent reproductive health rights in South Africa are yet to achieve full realisation.

### Comprehensive Sexuality Education

9. In 1995, the South African Department of Education, in conjunction with the Department of Health and Welfare, began to develop the National Policy on HIV and AIDS Education.<sup>9</sup> The National Adolescent Sexual and Reproductive Health and Rights (ASRH&R) Framework Strategy (2014-2019) prepared by the Ministry of Social development

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<sup>5</sup>Statistics South Africa ‘Mid-year population estimates 2015’ Retrieved at <https://www.statssa.gov.za/publications/P0302/P03022015.pdf>

<sup>6</sup> As above

<sup>7</sup> Medical Research Council ‘youth risk behavior surveillance’ 2011-2012 the study was conducted amongst a sample size of grade 8-11 learners selected from public schools in the 9 provinces

<sup>8</sup>National Adolescent sexual and reproductive health strategy framework 2014-2019 (2015) 2.

<sup>9</sup> Visser, M.J., 2005. Life skills training as HIV/AIDS preventive strategy in secondary schools: evaluation of a large scale implementation process. Journal of Social Aspects of HIV/AIDS, 2(1), pp.203-216

identifies the need to provide comprehensive sexuality education for adolescent and youth<sup>10</sup>.

10. The conceptualization of the curriculum, however, is heteronormative and emphasises the monogamous family. Life Orientation (LO) emphasises abstinence rather than addressing life skills, consent, negotiation, gender equality, healthy practices and empowerment in the context of sexuality. This is not effective when dealing with issues of early pregnancy and sexually transmitted infections including HIV/AIDS.

### **Contraception**

11. In 2012, the Department of health developed the National Contraception and Fertility Planning Policy and Service Delivery Guidelines 2012. The development of these policies was aimed at combating the high HIV prevalence rate. In reading with the National Policy on HIV and AIDS Education, it identified the need to develop a 'new expanded definition of 'family planning' within the broader context of fertility management, and in so doing, develop a more holistic framework related to contraceptive provision and fertility planning<sup>11</sup>. It also identifies the need to offer more contraceptive options and integrate the training of medical health professionals on different contraceptive methods. It aims to develop a framework that will embrace the continuum of both pregnancy prevention and planning for conception, and address the implications for people living with HIV.

### **Abortion**

12. Abortion upon request up to the first 12 weeks of pregnancy has been legal in South Africa since the enactment of the Choice on Termination of Pregnancy Act of 1996. Abortions are also legally permitted up to the first 20 weeks of gestation if a medical practitioner

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<sup>10</sup> National Adolescent Sexual And Reproductive Health And Rights Framework Strategy 2014 -2019 19 February 2015

[http://www.dsd.gov.za/index2.php?option=com\\_docman&task=doc\\_view&qid=578&Itemid=39](http://www.dsd.gov.za/index2.php?option=com_docman&task=doc_view&qid=578&Itemid=39)

<sup>11</sup> National Adolescent Sexual And Reproductive Health And Rights Framework Strategy 2014 -2019 19 February 2015

[http://www.dsd.gov.za/index2.php?option=com\\_docman&task=doc\\_view&qid=578&Itemid=39](http://www.dsd.gov.za/index2.php?option=com_docman&task=doc_view&qid=578&Itemid=39)

certifies that “the continued pregnancy would significantly affect the social or economic circumstances of the woman”.<sup>12</sup>

13. Despite liberal abortion laws, unsafe abortions injure and kill many women in South Africa every year.<sup>13</sup> Reports indicate that the rate of illegal abortions is increasing, with an estimated 52-58% of abortions in South Africa procured illegally.<sup>14</sup> A 2014 study revealed that women continue to resort to unsafe and illegal ('backstreet') abortions because of limited reproductive healthcare facilities, especially in rural areas, fear of ill-treatment by healthcare workers and lack of confidentiality and social stigmatisation of abortion.<sup>15</sup>
14. Many teenagers, for various reasons such as late testing, only determine they are pregnant after 12 weeks and find it difficult to procure second-trimester abortions. This is because The Act provides that only doctors can terminate a pregnancy after 12 weeks and only under specific circumstances and this procedure requires admission. Teenagers are usually not aware that the consent of the legal guardian or parent is not mandatory.
15. The Act makes provisions for optional counselling before the procurement of an abortion. However, women and especially teenagers, resort to initiating the procedure on their own with misoprostol and after that experience abnormal bleeding requiring immediate medical assistance. Some doctors refused to attend these women, especially if they suspected that the bleeding was the result of unlawful termination of pregnancy as the Health Professions Council of South Africa issued a directive stating that any services provided by a doctor in such circumstances would be viewed as misconduct.<sup>16</sup> This leads

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<sup>12</sup>Choice on Termination of Pregnancy Act of 1996, section 2(1)(b)(iv).

<sup>13</sup>Marie Stopes South Africa 'Avoiding illegal/unsafe abortions: what every woman need to know to stay safe' available at <http://www.mariestopes.org.za/wp-content/uploads/2013/12/MSSA-Illegal-Abortions-Brochure.pdf> (accessed 26 August 2016).

<sup>14</sup> B Capazorio 'Abortion hacks still kill in SA' available at <http://www.timeslive.co.za/thetimes/2014/07/14/abortion-hacks-still-kill-in-sa> (accessed 26 August 2016).

<sup>15</sup>R Jacobs & N Hornsby 'Why aren't women getting safe abortions?' (2014) 104 *South African Medical Journal* 857.

<sup>16</sup>RE Mhlanga 'Abortion: developments and impact in SouthAfrica' (2003) 67 *British Medical Bulletin* 115-126

to high maternal mortality with up to 9.5% of maternal deaths resulting from abortion complications. Many sex workers are forced to procure illegal abortions due to the continued criminalization of sex work. Gender non-conforming and trans persons who become pregnant find it difficult to procure abortions due to late testing or lack of informed and sensitised health care providers who often discriminate against them.

16. There is only one state that has medical guidelines for abortions in South Africa and only 40% of abortion facilities are operational in South Africa. This is due in large part to the lack of trained medical workers able to provide safe abortions. 70% of abortions are performed by nurses, and 17% of second-trimester abortions are initially started as backstreet abortions.

## **Gender Based Violence / Violence against Women**

### **Sexual violence**

17. Although South Africa had made significant advancement in the protection and promotion of the rights of women, there are still large gaps that need to be addressed. The forms of violence suffered by women in South Africa are often brutal, particularly due to the multiple and intersecting forms of discrimination faced by women and feminised people in highly patriarchal African families and societies. The government has ratified the Convention on Violence against women. In 2007 it also adopted a 365 national action plan to end gender violence and instituted a National Council against Gender Based Violence (NCGBV) to coordinate and manage various gender-based violence initiatives. It instituted Thuthuzela care centres (TCCs) to facilitate the counselling and medical care of rape victims as well as the ability to lodge cases with the police.
18. Despite the above mentioned governmental interventions, the scale of gender-based violence in South Africa is massive and unacceptable. The rate of homicide of women by



intimate partners in South Africa is six times the global average.<sup>17</sup> Even with widespread under-reporting, more than 53,000 sexual offences were reported to the police in 2015.<sup>18</sup> Research indicates that due to under-reporting of incidents, the actual number could be up to 9 times higher.<sup>19</sup>

19. Although there is no reliable national data on the prevalence of intimate partner violence in South Africa as of yet, it is estimated that more than 40% of men disclose having been physically violent to a partner and 40-50% of women have also reported experiencing such violence, while 39% of girls report having undergone some form of sexual abuse such as unwanted touching, forced sex, or being exploited by much older men, before they were 18 years old.<sup>20</sup> The prevalence of the epidemic of violence in South Africa is so high that KPMG estimates that it costs the country over R28 billion per annum, amounting to 1% of the GDP.

20. The National Council Against Gender-Based Violence (NCGBV) has been widely ineffective. Since its inception in 2012, it has been destabilised by political changes and lack of funding to execute its mandate. There has been no word on its status since 2014 when Minister Susan Shabangu was appointed as Minister of Women, and the Ministry failed to reconstitute the Council and provide an update on its status.

21. There has also been some concern that Thuthuzela Care Centres (TCC's) are focused primarily on rape victims, giving less attention to victims of domestic violence.<sup>21</sup> The emphasis lies with medical examinations and the administration of PEP, while

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<sup>17</sup> Seedat, M., Van Niekerk, A., Jewkes, R., et al. (2009). Violence and injuries in South Africa: prioritising an agenda for prevention. *The Lancet*, 374, pp. 1011-1022.

<sup>18</sup> Crime Stats SA, 2015.

<sup>19</sup> Jewkes, R. and Abrahams, N. (2002). The epidemiology of rape and sexual coercion in South Africa: an overview. *Social Science and Medicine*, 55, pp. 153-166.

<sup>20</sup> Seedat, M., Van Niekerk, A., Jewkes, R., et al. (2009). Violence and injuries in South Africa: prioritising an agenda for prevention. *The Lancet*, 374, pp. 1011-1022.

<sup>21</sup> Ellsberg, M. et al. (2015). Prevention of violence against women and girls: what does the evidence say? *The Lancet*, 385, pp. 1555–1566.

psychological counselling may be left to the wayside. They also suffer from severe lack of funding further inhibiting their activities.

### **Sexual orientation and gender identity and expression**

22. Although the constitution of South Africa protects the rights of all persons to bodily integrity and equal protection of the law, many lesbians and bisexual women experience physical, sexual and social violence and discrimination in multiple spaces, including schools, churches, workplaces and other public and private spaces. Lesbians and bisexual women are routinely threatened, harassed, beaten, subjected to sexual violence and murdered. Even though the prevalence of high levels of violence against lesbians and bisexual women is well known to government and law enforcement officials, perpetrators of such crimes are rarely brought to justice, with very low levels of prosecutions and convictions. Widespread social prejudice against lesbians, including among the police, healthcare personnel and other government employees, results in secondary victimisation and ultimately leads to low levels of crime reporting and healthcare seeking behaviour.

### **Sex work**

23. Sex work continues to be criminalised in South Africa under the Sexual Offences Act of 1957 while section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 also criminalises clients of sex workers. Many municipal bylaws also criminalise activities such as loitering and solicitation, which are mainly used to arrest sex workers.<sup>22, 23</sup> Criminalisation makes it difficult for sex workers to access essential services such as healthcare and police protection from violence. This has led to a disproportionate increase in HIV infection rates among sex workers and other forms of violence.

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<sup>22</sup>Sex Workers Education and Advocacy Taskforce (SWEAT) 'Sex workers experiences and sex workers ability to access services and justice' (2015) 5-6;

<sup>23</sup> Women's Legal Centre (WLC) 'Police abuse of sex workers: Data from cases reported to the Women's Legal Centre between 2011 and 2015' (2016) 10-11

24. Sex workers are routinely subjected to harassment, abuse and violence by clients, the police, the public, their intimate partners, and healthcare providers. Nearly 700 human rights violations against sex workers were reported to the hotline operated by the Sex Workers Education and Advocacy Taskforce (SWEAT), South Africa's leading sex workers' rights organisation, and the Women's Legal Centre in 2014 alone. These include '25 incidents of rape, 39 murders, 150 assaults by sex workers' clients or partners, 65 assaults by members of the South Africa Police Service (the police), 5 incidents of theft by the police, 23 incidents of harassment by clients' or partners and 329 incidents of harassment by the police<sup>24</sup>.
25. In some instances, the police arrest sex workers solely for possessing condoms in order to extort money and sexually exploit them, making some sex workers afraid to carry condoms for fear of harassment. This increases the risk of HIV and other STIs among sex workers and their clients as well as unwanted pregnancies.<sup>25</sup> Police are also known to directly deter sex workers from accessing healthcare by following sex workers to mobile clinics and arresting them, and, in some instances, taking arrested sex workers to clinics to humiliate them and endanger their lives and safety by exposing them as sex workers to the public.<sup>26</sup>
26. Sex workers who are arrested and detained are kept in dirty cells without food, water, adequate toilet facilities and blankets and are denied the right to receive visitors and make phone calls.<sup>27</sup> Most sex workers are reluctant to report rights violations, especially when the perpetrators are police officers who may subject victims who report violations to further victimisation.

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<sup>24</sup>SWEAT (n... above) 7.

<sup>25</sup>As above, 10. See also Open Society Foundations 'Criminalizing condoms: how policing practices put sex workers and HIV services at risk in Kenya, Namibia, Russia, South Africa, the United States and Zimbabwe' (2012).

<sup>26</sup>SWEAT (as above) 11.

<sup>27</sup>WCL (n... above) 18.

27. There is also a high social stigma attached to sex work, which needs to be addressed through sensitization of the general public. Criminalisation further increases stigmatisation, which negatively impacts on access to healthcare by sex workers who are subjected to discriminatory attitudes by health care workers.
28. Sex workers face the additional risk of having their children taken away by social workers because they engage in a criminalised activity. Sex workers who are arrested are not given the opportunity to call relatives or friends to temporarily take care of their children, which may sometimes lead to a charge of child neglect and a basis for social services to take their children from them. The stigmatisation of sex workers also leads to discrimination against children of sex workers.
29. The Commission for Gender Equality of South Africa recommended the decriminalisation of sex work in 2013 to enable sex workers to enjoy their constitutional rights to dignity, freedom and security of the person as well as to freedom of trade, occupation and profession guaranteed in the South African Constitution.<sup>28</sup> There are also efforts toward implementing the National Sex Worker Sector Plan of the South African National Aids Council, which indicates some commitment on the part of the government to work towards the decriminalisation of sex work in South Africa.
30. There is a difference between sex work – which involves consensual sex between adults – and sex trafficking, which is a major abuse of human rights. Anti-trafficking rhetoric, combined with the erroneous conflation of trafficking with all sex work, often leads to generalised police crackdowns on sex workers resulting in human rights abuses. Sex

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<sup>28</sup>Commission for Gender Equality 'Decriminalizing sex work in South Africa: The official position of the Commission for Gender Equality (2013). Decriminalization of sex work is supported by World Health Organisation, UNAIDS, UNFPA, UNDP, Amnesty International, Global Network of Sex Work Projects (NSWP) and local NGOs including Sex Workers Education and Advocacy Task force (SWEAT), SISONKE (movement for sex workers by sex workers), Women's Legal Centre and Sonke Gender Justice as well as the Women's League of the governing African National Congress.

workers are more likely than social workers or the police to become aware of trafficking, adults or children being forced into selling sex other coercive practices, have a strong interest in preventing these practices, and are often highly effective in doing so.

## HIV and AIDS

31. With 6 million people living with HIV in 2015,<sup>29</sup> South Africa remains the epicentre of the HIV and AIDS epidemic. The global HIV and AIDS fight cannot be won without a decisive victory in South Africa.<sup>30</sup> South Africa has the largest antiretroviral treatment programme in the world, with an estimated 2.6 million people on anti-retroviral drugs (ARVs) in 2014 and 92% of HIV-positive pregnant women receiving ARVs, reducing mother-to-child transmission to less than 3%.<sup>31</sup> Despite this encouraging trend, the scourge of the HIV epidemic is far from over, with more than 3 million persons living with HIV/AIDS having no access to ARVs. Additionally, prevention interventions have not been successful, with between 350,000 – 500,000 new infections occurring annually.<sup>32</sup>
  
32. HIV has been identified as the leading cause of death among women of reproductive age<sup>33</sup> and 32% of all maternal deaths are attributed to HIV related causes<sup>34</sup>. Although the South African Policy Guidelines for HIV Counselling and Testing (2010) provide for voluntary testing, women are often coerced into being tested for HIV because they are pregnant. Other women have been subjected to 'routine testing' where the lack of consent resulted in denial of access to other medical services. During counselling, the information is

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<sup>29</sup>Statistics South Africa 'Mid-year population estimates 2015 (2016) 1.

<sup>30</sup>PS Navario et al 'Special report on the state of HIV/AIDS in South Africa: The country's leading experts weigh in on the status, of treatment, prevention and resourcing at the epicentre of the epidemic' 2. Available at [http://www.cssr.uct.ac.za/sites/cssr.uct.ac.za/files/pubs/South\\_Africa\\_HIV\\_strategy\\_GHMag.pdf](http://www.cssr.uct.ac.za/sites/cssr.uct.ac.za/files/pubs/South_Africa_HIV_strategy_GHMag.pdf) (accessed 26 August 2016).

<sup>31</sup> SSA Karim 'The HIV epidemic: Progress & challenges' (2014) 13 available at [http://www.sahivsoc.org/Files/Fri\\_Salim\\_Karim-the-HIV-Epidemic-Progress-and-challenges.pdf](http://www.sahivsoc.org/Files/Fri_Salim_Karim-the-HIV-Epidemic-Progress-and-challenges.pdf) (accessed 26 August 2016).

<sup>32</sup>Navario (n 16 above)

<sup>33</sup> Women and HIV/AIDS retrieved at <http://www.avert.org/professionals/hiv-social-issues/key-affected-populations/women>

<sup>34</sup> [http://apps.who.int/iris/bitstream/10665/194254/1/9789241565141\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/194254/1/9789241565141_eng.pdf)

disproportionately focussed on the benefits of HIV testing for the fetus, rather than the woman. There is pressure put on women to disclose their HIV status to their partners or family members leading to stigmatisation. Testing is often targeted mostly at women due to reproductive health considerations, and there is much stigma attached to unplanned pregnancy and testing positive for HIV. This is more prevalent in rural areas where women often feel as though they are unable to negotiate or relate with their healthcare providers effectively.<sup>35</sup> It has also been noted that the indicators have changed on the cause of maternal death and morbidity, with the number of fatalities being collated without disaggregated data on how many deaths result from HIV and AIDS related complications.

33. Sex workers are well-informed about their sexual health but due to violence from clients and other risks, they are routinely exposed to sexually transmitted disease and at risk of contracting HIV and AIDS. Requests for Pre-Exposure Prophylaxis (PrEP) is often frowned upon as it is seen as proof of sex work. It is difficult for sex workers to get ARV's, with only one-quarter of HIV-positive sex workers having access to ARV's and HIV treatment due to the stigma and criminalization of sex work.<sup>36</sup> Furthermore, sex workers who are arrested or detained are often denied continuous access to ARVs. The South Africa National Aids Council (SANAC) will launch a comprehensive plan targeting HIV transmission and protection of persons who undertake sex work in 2017 in attempts to alleviate the situation.

34. There are 48 documented cases of HIV positive women subjected to forced sterilisation between 1986 and 2015. Some of these women were coerced to undertaking sterilisation in their third trimester or while in labour. The Sterilization Act expressly provides for informed consent after the proper information has been given. In many cases, the

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<sup>35</sup> J Kehler et.al 'Where are the human rights for pregnant women: Scale-up of provider-initiated HIV testing and counselling of pregnant women: The South African experience' (2010) Aids Legal Network. Retrieved at <http://www.childlinesa.org.za/wp-content/uploads/hiv-testing-in-pregnancy.pdf>

<sup>36</sup> B Ngcaweni & F Abdullah 'Op-Ed: Coming to the aid of sex workers' (March 3 2016) retrieved at <http://www.dailymaverick.co.za/article/2016-03-13-op-ed-coming-to-the-aid-of-sex-workers/#.V94hJSS524k>

healthcare practitioner did not provide all the information. Women are coerced through fear that the children will be orphaned by the woman's death or are stigmatised for wanting to have a child while living with HIV and AIDS.<sup>37</sup>

35. In 2000, the Department of Correctional Services developed an HIV/AIDS policy and strategy covering prisoners and prison staff. It provided that condoms should be available to prisoners at all times. Prisoners living with HIV and AIDS were not to be discriminated against because of their health status and all detainees should receive counselling on how to prevent transmission upon release.<sup>38</sup> The transmission of HIV is high in prisons due to overcrowding, shortages, corruption, and the presence of juveniles alongside adult prisoners and inadequate nutrition and health services. The stigma attached to homosexuality and men who have sex with men in prison also exacerbates the issue. The prisons do not provide ARV's and other treatment or condoms routinely to prisoners.<sup>39</sup>

## **Recommendations**

### **Adolescent sexuality**

36. The South African department of Education should implement a comprehensive sexuality and reproductive health education framework as part of the school curriculum for youth and sensitise them on their sexual and reproductive health rights, prevention of sexual and intimate partner violence, gender equality, human rights, non discrimination on the basis of sexual orientation or gender identity, prevention of STIs including HIV as well as the use of contraceptives to prevent unwanted and unplanned pregnancies.
37. National Adolescent Sexual and Reproductive Health and Rights Framework Strategy should be implemented through measured policy frameworks that deal with the particular issues affecting adolescents' sexual activity and sensitise and train healthcare

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<sup>37</sup> Joan Koka(not her real name) in 'Forced' sterilisation of HIV women violates rights (19 Mar 2015) Bhekisisa Centre for health journalism retrieved at <http://bhekisisa.org/article/2015-03-19-forced-sterilisation-of-hiv-women-violates-rights>

<sup>38</sup> Chapter 15: The rights of Prisonerse retrieved at <http://section27.org.za/wp-content/uploads/2010/04/15Manual.pdf>

<sup>39</sup> Health system trusts 'The challenge of HIV in Prisons' Retrieved at <http://www.hst.org.za/news/challenge-hiv-prisons>

providers to cater to the sexual and reproductive health needs of adolescents, including in rural areas.

38. The Department of Health and Welfare should increase provisions for youth friendly service delivery on sexual and reproductive health rights of all adolescents and young persons, in both urban and rural areas, in their education curricula as well through the healthcare practitioners in the schools and provide specific access to contraception.

### **Gender based violence**

39. The State should effectively implement appropriate national education and advocacy programmes measures to ensure that all the legislation and policies relating to gender-based violence are enacted –including against individuals and groups with non-normative sexualities and gender expression – especially rape and other forms of violence against lesbians as a form of gender-based violence that is prohibited by law, in order to encourage attitudinal change
40. The Independent Police Investigative Directorate should present oversight of policing practices to ensure sufficient and efficient police response to individuals and within communities to prevent abuse of institutional power by working with the public through either the establishment of a civilian police oversight board or a system of independent monitoring and evaluation annually on the police performance.
41. The state should enact policies that require law enforcement agencies, the National Prosecuting Authority and judicial officers to receive adequate training on how to diligently investigate and prosecute all cases of gender-based violence, including those on the grounds of real or perceived sexual orientation and gender identity and expression, in a timely manner to serve as a deterrent to other potential offenders.
42. The South African Police Service (SAPS) should provide statistics on gender-based violence that are disaggregated according to the nature of the crime, the motivation of the perpetrator, the ages of the victims and the increased incidence of a particular crime in an area. These statistics should be published every six months or quarterly and should be collated with the statistics from the Department of Health, the Department of Justice and



other relevant departments. The SAPS should avoid underreporting to meet indicators of social crime prevention. The increased number of gender-based violent crimes is not an indication of more crime, but rather it is a sign of more reporting of these types of crimes which is a positive indicator.

43. The Judiciary should allocate specialised courts and report mechanisms for survivors of gender-based violence perpetrated by the organs such as the police as well as offer court appointed psychosocial counsellors for victims of these types of crimes. This would effectively standardise the reporting of these offences to the police and ensure safe and unbiased service provision.

### **Sex work**

44. The state should repeal the Sexual Offences Act of 1957 and section 11 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, which criminalise sex work and the clients of sex workers, respectively, as well as relevant provisions of municipal bylaws and city ordinances which make it impossible or difficult for sex workers to work.
45. The state should decriminalise all aspects of sex work and recognise it as a legitimate form of work
46. The South Africa Police Service should take all appropriate measures to protect sex workers against violence and other forms of human rights violations.
47. Government bodies, namely the Department of Justice and Correctional Services, the South African Police Services and the National Prosecuting Authority should collect and disaggregate data including number of sex workers, clients and brothel owners arrested/charged/prosecuted.
48. Recognise the vulnerability of sex workers to violence and allocate a senior police officer in every district to investigate crimes against sex workers.
49. The Independent Police Investigative Directorate should take immediate action against any police officer implicated in corruption or violence against sex workers including

removal of name tags; taking or offering bribes; the violence of any kind against sex workers.

50. Sensitisation with Independent Police Investigative Directorate on the importance of forming partnerships with the relevant bodies representing sex workers so as to reduce the prevalence of abduction and trafficking
51. The Department of Health in collaboration with SWEAT and Sisonke National Sex Worker Movement of South Africa should train healthcare workers on the rights of sex workers to ensure that sex workers have access to healthcare services without discrimination.

### **Persons living with HIV and AIDS**

52. Ministry of Health should increase sensitization efforts on HIV/AIDS prevention, especially among young women, and on changing social attitudes on stigmatisation of persons living with HIV/AIDS.
53. Ministry of Health should ensure voluntary and confidential counselling and testing facilities are available in all public hospitals, clinics and primary healthcare facilities throughout the country, especially in rural areas.
54. Ministry of Health should expand the anti-retroviral treatment programme to ensure that all persons living with HIV have access to antiretroviral drugs.

### **Abortion**

55. Ministry of Health should increase sensitization on the dangers of unsafe abortions, tackle the stigma associated with abortion and empower women and girls by informing them of their right to seek and receive reproductive healthcare services, including abortion, through nationwide public advocacy and education programmes.
56. Relevant medical bodies and medical professions should ensure that safe abortion services are available in all government hospitals, clinics and primary healthcare facilities in both urban and rural areas.
57. Ministry of Health should train healthcare workers on their obligation to treat women who seek abortion with dignity and to treat their information and identity as confidential.