



**Commission for Gender Equality**  
A society free from gender oppression and inequality

# PROPOSAL FOR REFORM

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**“COMBATTING DOMESTIC VIOLENCE AGAINST WOMEN AND CHILDREN IN THE WESTERN CAPE BY INCREASING ACCESS TO SHELTERS AND IMPROVING THE QUALITY OF SERVICES”**

**SUBMITTED TO:**

**DEPARTMENT OF SOCIAL DEVELOPMENT FOR THE REPUBLIC OF SOUTH AFRICA,  
DEPARTMENT OF SOCIAL DEVELOPMENT FOR THE WESTERN CAPE, AND  
DEPARTMENT OF TREASURY FOR THE REPUBLIC OF SOUTH AFRICA**

4 December 2013

**Submitted by the Commission for Gender Equality for the Western Cape, in consultation with the following civil society organisations:**

Carehaven  
Community Law Centre  
Heinrich Böll Foundation  
House to Your Destiny  
Place of Hope  
Saartjie Baartman  
Safe House Stellenbosch  
Sisters Incorporated  
Sonke Gender Justice  
St. Anne's Homes  
The Nonceba Centre  
Women's Legal Centre



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## Commission for Gender Equality

A society free from gender oppression and inequality

The Commission for Gender Equality (“CGE”) is an independent state institution whose purpose is to strengthen constitutional democracy by striving to protect, develop and attain gender equality in all spheres of public and private life. The CGE derives its mandate from section 187 of the Constitution of the Republic of South Africa, [Act No. 108 of 1996], by way of the Commission for Gender Equality Act, [Act No. 39 of 1996], both of which grant it the powers necessary to perform its functions which include the authority to “monitor, investigate, research, educate, lobby, advise and report” on matters related to gender equality. All organs of the State have a positive duty to “assist and protect” the CGE in ensuring its integrity and effectiveness.

As an exercise of its power to monitor measures taken by government to enhance the State’s response to gender-based violence, the CGE commenced an initiative in 2013 to investigate the sustainability of shelters assisting abused women and their children in the Western Cape. By engaging in continuous consultation with key stakeholders and civil society organisations, and by performing extensive empirical and academic research, the CGE recognised the significant degree to which shelters are underfunded and the repeated failure by government to act.

In accordance with its oversight powers, the CGE calls on key government actors and organs of the State to fulfill their constitutional duty to assist the CGE in promoting gender equality throughout South Africa by conducting immediate and extensive reforms for shelters assisting abused women and their children.

# **EXECUTIVE SUMMARY**

## **I. INTRODUCTION**

Shelters assisting abused women and their children play a critical role in combating domestic violence, but the Western Cape Department of Social Development has failed to provide them with sufficient funding. As a result, shelters across the province are on the verge of closing down, which has forced many organisations to limit the number of women and children they take in, restrict the length of their stays, and reduce the services provided. The impact of this funding crisis has been severe, not only for hundreds of abused women and children, but also for the State, which has been forced to bear the consequences of not having enough shelters to meet the demand of those who need them.

## **II. STATEMENT OF PURPOSE**

The purpose of this proposal is to advance the concerns of shelters housing abused women and children to the national Department of Social Development (“DSD”), Social Development for the Western Cape (“WCDS”) and Treasury, by describing current funding policies and by demonstrating how providing adequate shelter services reduces the financial and social costs of domestic violence to the State.

## **III. CURRENT FUNDING POLICY FOR SHELTERS IN THE WESTERN CAPE**

In 2011, national DSD released a policy on the funding distributions for civil society organisations (“CSOs”), which covered the financial awards given to shelters. Under this new policy, shelters are required to meet the shortfall in their operational budgets through independent fundraising, which includes acquiring funds from donor organisations, social responsibility programmes and other sources. During the 2011-2012 fiscal year, WCDS allocated R4 million to shelters for abused women and their children, which provided twelve (12) shelters across the province with an average of R333,333 per year. When determining the budgetary allocations, WCDS only aimed to provide 3,091 people with access to shelters even though 5,860 people attempted to access shelters. However, this is not an accurate reflection of the number of people who actually needed shelter, given that 217,987 applications for interim protection orders were filed across the country in 2011, averaging to 24,220 applications being filed in each province that year. The numbers alone are shocking, yet they do not even consider the number of people who did not apply for protection orders even though they were in grave danger. In addition, grant amounts for the 2011-2012 fiscal years were inconsistent, with Sisters Incorporated receiving R28.60 per person per day, St. Anne’s Home receiving R28.33 per person per day, and Saartjie Baartman Centre for Women and Children (“SBC”) receiving a grant which did not provide the unit costs of per person per day. Besides being arbitrarily distributed, the grant amounts were dangerously low estimations of how much shelters spend in meeting the basic needs of each resident.

## **IV. IMPACT OF CURRENT FUNDING POLICY ON THE STATE**

The financial impact of intimate partner violence is extensive and unavoidable. The short-term costs associated with domestic violence may include loss of earnings for time-off from work, moving expenses, school transfers, trips to the police station, accessing court services, childcare costs, doctors’ appointments, hospitalization and psychological support. Long-term costs may involve legal fees, medical and psychological treatment, disability leave from work, ongoing court dates and follow-up

visits to the police station. At each stage, the State incurs expenses in its justice and legal systems, medical and social systems, refuge and support systems, educational institutions and public assistance offices. At each stage, private businesses, social welfare organisations, shelters, school systems, medical facilities and communities, also incur extensive expenses and pecuniary losses as a result of dealing with the consequences of domestic violence. Consequently, the cumulative economic impact of domestic violence on the government, public sector, private sector and society as a whole is enormous and has substantially interfered with South Africa's economic growth and stability.

The social impact of intimate partner violence is also extensive and unavoidable. For women who are turned away from shelters, many are forced to return to their abusive partners. Often times, women face an even greater risk of harm if the abusive partners know the abuse has been reported or if the women have tried to escape. In addition to suffering more physical violence, which may include death, many women also suffer mental and emotional trauma, such as depression, anxiety and post-traumatic stress disorder resulting from prolonged cruelty, constant threat of danger, and continuous hopelessness. The children who are forced to live in these environments are often referred to as the "invisible victims" of domestic violence. Because the family unit is the primary agent of socialization, research has found that children who are exposed to domestic violence are more likely to become perpetrators and/or victims as adults. For the women and children who refuse to return home, many are forced into destitution and homelessness, which not only disrupts the development of the child, but also inflicts severe strain on the women who are responsible for taking care of them. In addition, women and children who are homeless become more vulnerable to all forms of exploitation, including physical, mental, emotional, and sexual abuse, and increases their likelihood of contracting HIV and AIDS and getting involved with drugs, gangsterism, 'survival sex' and other types of crime.

## **V. BENEFIT OF SHELTERS TO THE STATE**

Shelters not only improve the lives of their residents, but also minimize the social and economic consequences of domestic violence on the State. For instance, by providing safe and secure housing, shelters prevent women and children from returning to abusive home environments or becoming destitute and homeless. By providing food, clothing and a warm shower, shelters prevent women and children from having to engage in exploitive or criminal behavior to meet their basic needs. By providing social and psychological support, shelters prevent women and children from engaging in self-destructive behaviors and perpetuating cycles of violence. By providing job skills training, shelters prevent women from remaining financially dependent on their partners and help them to become self-sufficient. By providing childcare, shelters prevent women from having to leave their children unattended, or in the care of someone who they may not trust, or in areas that are not safe. By providing playgroups, play therapy and other activities, shelters allow children to socialise in peaceful environments and connect with children who have been through similar experiences, which afford them the opportunity to recover from abuse. By providing transportation and money to cover school fees, shelters increase children's access to education and instill values of structure, discipline and accountability. By providing assistance with identity documents and birth certificates, shelters assist women and children with obtaining social welfare benefits. By providing transportation and money for hospital fees, shelters increase access to medical care. By providing access to legal services, shelters help educate women and children about their rights, including how to obtain protection orders, maintenance and child support payments. The cumulative effect of these services, (when shelters are able to afford them), has an invaluable impact on the State, its citizens and South African society as a whole.

## VI. STATE'S OBLIGATION TO ENSURE SHELTERS RECEIVE SUFFICIENT FUNDING

The South African government is legally obligated to ensure that shelters are available to abused women and their children under several pieces of legislation, including the Constitution, Domestic Violence Act (“DVA”), Children’s Act and the Promotion of Equality and Elimination of Unfair Discrimination Act (“PEPUDA”). The Constitution provides for the right to freedom and security of the person, which includes the right to be free from public and private sources violence. The Constitutional Court held in *Carmichele v. Minister of Safety and Security* that full realization of this right entails a positive duty on the State to safeguard women against any act of violence, which includes protection from abusive home environments. Furthermore, the DVA requires the State to provide people with “maximum protection from domestic abuse”, which includes, at the very least, access to shelter given that section 2 explicitly requires members of SAPS to assist victims with “find[ing] suitable shelter”, presupposing such shelters exist. In addition, the Children’s Act requires the State to “respect, protect, promote and fulfill” the rights provided for in Section 28 of the Constitution, which includes the rights to “basic nutrition, shelter, basic health care services and social services”, “protection from maltreatment, neglect, abuse or degradation”, and “family care or parental care, or to appropriate alternative care when removed from the family environment”, all of which can be fully realized at a shelter. Finally, PEPUDA prohibits unfair discrimination on the basis of sex and specifically identifies gender-based violence and restricting women’s access to social services and benefits as unfair discrimination. Because the State is obligated not only to protect women and children from domestic violence, but also to provide services that combat the consequences of abuse, the State must ensure that the shelters to which it has outsourced its responsibilities receive enough funding to fulfill these duties on its behalf.

## VII. RECOMMENDATIONS FOR REFORM

In light of the above, the following recommendations should be enacted into reform:

1. **Legislation/Policies:** The State needs to enact legislation to address the gap in the legal framework regarding both the provision and regulation of shelters, which defines the quality and standard of service provision. The legislative process should create a supportive environment for continuous consultation and participation amongst all stakeholders, especially shelters assisting abused women and their children.
2. **Budgeting and Funding:** The State needs to rely on the cost-benefit analysis which estimated the unit cost of running a shelter to be R120 per person per day (in 2013) when determining the grant amounts for shelters. In addition, extensive research into the financial impact of violence to the state needs to be conducted, and gender-responsive budgeting initiatives need to be adopted and reflected in the Estimates of National Expenditure and strategic and annual performance plans of Government departments. This needs to be implemented in the budgeting for the 2014 financial year.
3. **Coordinated Interdepartmental Response:** The State needs to develop an interdepartmental response to providing effective and adequate service delivery which addresses the needs of women and children who have experienced domestic violence. Consultation with the following departments must be conducted as part of the response to this proposal: SAPS, Health, Human Settlements, Education, Community Safety, Economic Development, and Transport.

## THANDI'S STORY\*

*It was not that his drinking had gotten worse, or that the night before he held a 9-millimeter gun to her head and told his sons he was going to shoot their mother. It was that her oldest son had run to the neighbor's house to beg for a knife and said, "Tonight I am going to kill my father." They called the police, but no one showed up, so they hid in the neighbor's car. The dust still had not settled by morning, but he was still passed out, which meant they had a chance.*

*She had not planned where she was going. Or, no. That was not right. She had planned it many times, but could never bring herself to do it. She had always told herself to stay one more night, to give him one more chance. He had just lost his sister and was not coping well with the pain. He had thrown her against the wall because she had gotten in his way while doing the dishes and was stressed about his new job. But last night was different. Last night she realized when she looked into her boys' eyes that if she did not leave, she was going to lose herself, her life and possibly her sons' lives, to him.*

*She only had time to grab a few clothes, some toys, her ID, and the R70 she had put in a shoebox underneath the bed. She wanted to grab the birth certificates, but was scared he would wake up if he heard her open the cabinets so she left them there. Her neighbors gave them a ride to the train station and the name of a shelter that had been posted on the billboard at church. It was close, but not too close, and accepted boys younger than twelve. She just hoped they had enough room for all of them.*

*When they arrived, the lady at the door told them the shelter was full, but called every shelter in the area to see if any had space. All of them were full too, so the lady put their names on the waiting list and suggested they go stay with friends for a few days, but that was not an option. So she and the boys walked to a nearby 7-Eleven and spent the next two nights sleeping on the sidewalk outside because it was well lit and had a lot of people walking by which made them feel safe, especially at night. But, she still did not sleep much – she was too scared he was going to find them.*

*A few days later, she called the shelter from a nearby payphone and the woman on the other end of the line told her that three beds had become available. She and her boys grabbed their things and made the short walk back to the shelter. She was nervous settling into their new room, but the women who worked at the shelter were nice and gave them fresh sets of clothes, food, and warm showers. They had a roof over their heads and their own beds to sleep in. It may not have been home, but it was somewhere she could exhale after a long time of holding her breath and biting her tongue.*

*The other residents did not always talk about their experiences, but when they did, she allowed their sorrow to drip into her heart, and release a little bit of her own. The shelter had counselors who she could talk to about those feelings, people who understood what she had gone through and who did not judge her for staying as long as she had. There were also play therapy sessions for her sons, spaces to help them deal with what had happened at home and ways for them to share their emotions without having to say them out loud. It was hard at first, thinking about all the reasons why she had tried to hold it together for so long, but letting go got easier with time, and eventually she began to feel stronger.*

*Over the next few months, she began to understand that leaving him had given her and her sons a chance to live. With this realization came a new sense of self-worth and a new sense of purpose. And even though she did not know where she was going when she and her sons left the shelter six months later, she knew that they would not be going back to him.*

\*Partially based on the events of a true story.



## I. INTRODUCTION

Women and children in South Africa experience the highest rates of violence in the world.<sup>1</sup> Despite comprehensive legislation to combat violence against women, almost half of all women in the Western Cape suffer some form of gender-based violence.<sup>2</sup> A study conducted by the South African Medical Research Council in 2009 found that more than fifty-six percent (56%) of all murders of women were perpetrated by intimate partners, making intimate femicide the leading cause of death for women and occurring at a rate six (6) times that of the global average.<sup>3</sup> In 2012, Genderlinks research found that the Western Cape was home to the third largest percentage of women who had experienced gender-based violence, with forty-five percent (45%) having endured physical, mental, emotional, economic or sexual abuse at some point in their lives.<sup>4</sup>

Although shelters assisting abused women and children play a critical role in combatting domestic violence by providing safe and secure housing, access to medical treatment, childcare, job skills training, legal support, and assistance with protection orders, the provincial government has failed to ensure these organisations receive adequate funds. As a result, some shelters in the Western Cape are on the verge of closing down or becoming de-registered for non-compliance, leaving hundreds of women and children with no safe place to turn.<sup>5</sup> For the shelters that have managed to stay open, every day is a struggle to survive, forcing them to limit the number of women and children they take in, restrict the length of their residents' stays, and reduce the range of services they provide.<sup>6</sup> According to the Western Cape Women's Shelter Movement, most shelters in the province have only two-to-three months of their operational budget at any given time.<sup>7</sup>

The impact of this funding crisis has been severe, not only for the hundreds of women and children who cannot get help, but also for the State, which has been forced to bear the financial and social consequences of not having enough shelters to meet the demand of those who need them.

## II. STATEMENT OF PURPOSE

The purpose of this proposal is to advance the concerns of shelters housing abused women and children to relevant national and provincial departments by demonstrating the critical role they play in combatting domestic violence and by explaining the State's failure to adequately fund them. Because shelters not only meet the basic needs of residents, but also equip women and children with the skills to

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<sup>1</sup> Legal Resources Centre. (2013). *The Domestic Violence Act: 15 Years Later - A Gap Analysis of the Implementation of the Domestic Violence Act in Cape Town, Series 2*, at 4. Cape Town: Legal Resource Centre. Available at <http://www.lrc.org.za/booklets/2726-2013-05-15-the-domestic-violence-act-15-years-later>

<sup>2</sup> *Id.*

<sup>3</sup> Abrahams, N., Mathews, S., Jewkes, R., Martin, L., and Lombard, C. (2012). *Every eight hours: Intimate femicide in South Africa 10 Years Later*, at 1. South African Medical Research Council, Research Brief.

<sup>4</sup> Genderlinks. (2012). *Peace begins @ home: Findings of the GBV Indicators Research Project in Botswana, Mauritius, Zimbabwe, four provinces in South Africa, and four districts of Zambia*, at 2. Johannesburg: Genderlinks.

<sup>5</sup> Interview with Linda Fugard, Vice Chairperson of Western Cape Women's Shelter Movement. and Manager at Sisters Incorporated.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*



become self-sufficient and productive members of society, it is absolutely critical for the State to conduct extensive legislative, policy, and funding reform regarding these shelters.

In addition to addressing the concerns of shelters, this proposal also seeks to:

- a) summarise the current funding policies for shelters in the Western Cape;
- b) demonstrate the economic and social impact of domestic violence on the State;
- c) describe the benefit of shelters to the State;
- d) explain the State's legal obligations to provide sufficient funding to shelters; and
- e) propose recommendations for legislative, policy and funding reforms.

### III. VIOLENCE AGAINST WOMEN AND CHILDREN IN SOUTH AFRICA

Although it is difficult to assess the extent and prevalence of abuse, empirical evidence suggests that one out of every two women in South Africa experiences some form of gender-based violence during their lifetime.<sup>8</sup> Most of the harm occurs within women's private lives, with forty-four percent (44%) of women in the Western Cape having suffered some form of domestic violence.<sup>9</sup> The United Nations Committee on the Elimination of All Forms of Discrimination against Women ("CEDAW") has described violence against women in South Africa as "socially normalized, legitimized, and accompanied by a culture of silence and impunity."<sup>10</sup> Although the United Nations CEDAW Committee commended South Africa for enacting several programmes to promote gender equality, it expressed "serious concern at the inordinately high prevalence of sexual violence against women and girls" as well as "widespread domestic violence" within the country".<sup>11</sup>

Violence against children is also of crisis proportion.<sup>12</sup> As with women, measuring the prevalence of abuse against children is very difficult because most of the harm occurs behind closed doors, is perpetrated by someone known to the child, and normally goes unreported.<sup>13</sup> Despite the high levels of under-reporting, the South African Police Service ("SAPS") still managed to record a total of fifty-four thousand two hundred twenty-five (54,225) violent crimes against children across the country in the 2010-2011 year, which averaged to six thousand twenty-five (6,025) violent crimes committed against children in each province that year.<sup>14</sup>

In trying to understand why levels of domestic and sexual violence are higher here than in any other country in the world, several studies point to the Apartheid government's brutal system of governance and the ferocity of resistance movements, which support the contention that violence was, and

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<sup>8</sup> Legal Resource Centre, *supra* at 4.

<sup>9</sup> *Id.*

<sup>10</sup> United Nations. (4 February 2011). *Concluding Observations of the Committee on the Elimination of All Forms of Discrimination Against Women: South Africa*, at 6. Available at [http://advocacyaid.com/ecdnewsflash/CEDAW\\_C-ZAF-CO-4\\_closing\\_comments\\_2011.pdf](http://advocacyaid.com/ecdnewsflash/CEDAW_C-ZAF-CO-4_closing_comments_2011.pdf)

<sup>11</sup> *Id.*

<sup>12</sup> UNICEF, Department of Social Development, and Department of Women, Children and People with Disabilities. (2012). *Violence Against Children in South Africa*, at 3. Pretoria: Department of Social Development/ Department of Women, Children and People with Disabilities/UNICEF. Available at <http://www.dgmt-community.co.za/sites/dgmt/files/documents/VAC%20final%20Summary%20low%20res.pdf>

<sup>13</sup> *Id.* at 9.

<sup>14</sup> South African Police Service. (2012). *Crime Report 2010/2011*, at 12. Available at [http://www.issafrica.org/crimehub/uploads/crime\\_situation\\_sa.pdf](http://www.issafrica.org/crimehub/uploads/crime_situation_sa.pdf)

continues to be, a common method of resolving conflict.<sup>15</sup> Perhaps even more significant, yet often overlooked, is the deeply entrenched patriarchal system which devalues women and children and establishes perceptions of masculinity that promote violence.<sup>16</sup>

#### IV. POLICIES AND FUNDING GUIDELINES FOR DOMESTIC VIOLENCE SHELTERS

The current allocation of resources to women and children who have experienced domestic violence, specifically the financial contribution given to shelters, is both inadequate and unreasonable given the prevalence of domestic violence in the Western Cape and its disproportionate impact on the poor.

##### A. VICTIM EMPOWERMENT PROGRAMME

Shelter services fall within the domain of the national Department of Social Development's ("DSD") Victim Empowerment Program ("VEP"), whose goal is to promote a "victim-centred approach to criminal justice" that empowers people who have experienced crimes to deal with the consequences of the wrong that has been committed against them.<sup>17</sup> The National Policy Guidelines for VEP define a "shelter" as follows:

**Shelter:** Refers to a residential facility providing short-term intervention in a crisis situation (two weeks up to approximately six months as the need dictates). This intervention includes meeting basic needs (protection, food, and clothing) as well as support, counseling and skills development (including regarding [sic] victim rights and capacity building). In some communities, it is also possible for victims (usually of domestic violence) to access safe houses, generally located in privately owned homes, which provide temporary emergency accommodation, usually for one to five nights.<sup>18</sup>

While national DSD's primary responsibilities are "policy making, coordinating and monitoring" the activities of VEP, (which includes the provision of shelters for people who have experienced domestic violence), provincial DSD's primary responsibility is to implement the activities of VEP through the direct provision of services or through the outsourcing of such services to social welfare organisations.<sup>19</sup> When provincial DSD decides to outsource services rather than provide them itself, it nonetheless remains liable for ensuring that services are provided to everyone who needs them and are of acceptable quality.<sup>20</sup> The National Policy Guidelines for VEP further require DSD "to assume full responsibility for the development of the policy package" [emphasis added], and to create a system of accountability through effective reporting, monitoring and evaluating of VEP's impact.<sup>21</sup>

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<sup>15</sup> Goldscheid, J. (2011). *Gender Violence and Work in the United States and South Africa: The Parallel Processes of Legal and Cultural Change*, at 927. Washington, DC: American University Journal of Gender, Social Policy & the Law, Vol. 19. Available at [http://www.wcl.american.edu/journal/genderlaw/documents/7\\_19.3.Goldscheid.pdf](http://www.wcl.american.edu/journal/genderlaw/documents/7_19.3.Goldscheid.pdf)

<sup>16</sup> *Id.* at 924-28.

<sup>17</sup> Department of Social Development, *National Policy Guidelines for Victim Empowerment*, at 1. Available at <http://www.info.gov.za/view/DownloadFileAction?id=111693>

<sup>18</sup> *Id.* at 28.

<sup>19</sup> *Id.* at 10.

<sup>20</sup> *Id.*

<sup>21</sup> *National Policy Guidelines for Victim Empowerment*, at 18.

In addition, DSD is also responsible for executing the following with regards to shelters:

- Ensuring that shelters provide short-term interventions for women and children in crises;
- Ensuring that these interventions meet basic needs and provide support, counseling and skills development to women and children who have experienced domestic violence;
- Ensuring that shelters are connected to accredited organisations and registered with DSD;
- Ensuring that shelters are managed by responsible people who are involved in the daily operations of the shelters;
- Ensuring that shelter staff and volunteers complete a training programme which equips them with the necessary skills to meet the minimum standards in service delivery;
- Ensuring successful service delivery by facilitating effective quality assurance modules;
- Ensuring sufficient screening assessments of residents upon admission to shelter; and
- Ensuring the existence of an efficient referral process and procedure manual that provides specific guidelines on how to deal with domestic violence.<sup>22</sup>

## **B. DISTRIBUTIONS FOR VEP-FUNDED SHELTERS ACROSS EACH PROVINCE**

There is currently no uniform funding policy for shelters housing women and children who have experienced domestic violence.<sup>23</sup> As a result, each provincial DSD has received inconsistent distributions from National Treasury to cover services offered under VEP, which includes shelters for women and children who have experienced domestic violence.<sup>24</sup> During the 2011-2012 fiscal year, the following distributions were made to VEP-funded shelters assisting women and children across the country:<sup>25</sup>

<b>PROVINCE</b>	<b>TOTAL AMOUNT GIVEN TO DSD (FOR ALL VEP-FUNDED SHELTERS)</b>	<b>UNIT COST (RATE PER PERSON PER DAY)</b>
Northern Cape	R1,693,633	R185.60
Eastern Cape	R4,045,000	R80.30
KwaZulu-Natal	R6,326,090	R70.50
North West	R1,886,000	R56.80
Free State	R1,300,285	R38.70
Gauteng	R7,276,811	R32.40
Limpopo	R670,000	R30.60
<b>Western Cape</b>	<b>R2,962,200</b>	<b>R26.10</b>
Mpumalanga	R3,748,320	*information regarding total capacity of shelters was not available

Even though some shelters in the Western Cape have received slight increases in their DSD grant allocations since 2011-2012, VEP-funded shelters in this province remain amongst the most poorly funded social welfare organizations in the country, despite the inordinately high levels of violence

<sup>22</sup> Bhana, *supra* at 9-10.

<sup>23</sup> "Annexure A: VEP Shelters for Abused Women and Children/Victims of Crime and Violence". Available at <http://www.pmg.org.za/report/20130911-eastern-cape-circumcision-deaths-provincial-department-health-hate-crimes-initiatives-for-lgbti-group-department>

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

suffered by women and children across the province.<sup>26</sup> Although national DSD claimed it “developed costing models for all Victim Empowerment Programme services, including shelters” and “developed funding models to ensure uniform funding across service organisations,” during a presentation it made to the Parliamentary Portfolio Committee in April 2013, documentation supporting such efforts have yet to be provided.<sup>27</sup>

### C. CURRENT FUNDING POLICY FOR SHELTERS IN THE WESTERN CAPE

Although the Domestic Violence Act (“DVA”) places an affirmative obligation on members of the South African Police Service (“SAPS”) to refer people who have experienced domestic violence to shelters, the DVA does not specify whose responsibility it is to provide for and finance these services.<sup>28</sup> The Department of Social Development (“DSD”) has repeatedly pointed to this gap in the DVA to support the position that it is not responsible for making sure shelters receive adequate funding even though the *Minimum Standards on Shelters for Abused Women* specifically requires DSD to “facilitate and fast track the provision of shelters for abused women, as well as ensur[e] the availability and accessibility of funding services to women and children.”<sup>29</sup> Broad sweeping statements such as these are often futile when no costed operational plan is in place to give them effect. Moreover, both national DSD and DSD for the Western Cape have capitalized on the same silence in the DVA to pass funding policies which shift the burden of implementing the activities of DSD’s mandate to the very organisations they have outsourced their responsibilities to, *even though* DSD remains liable for ensuring that services are provided to “all who need them” and “are of adequate quality”.<sup>30</sup> Although DSD has described shelters housing women and children who have experienced domestic violence as “an absolutely critical point of crisis intervention,” the State has given these organisations the least amount of funding.<sup>31</sup>

In 2011, the national Department of Social Development released a revised policy on the funding distributions for civil society organisations, which included the financial awards given to shelters.<sup>32</sup> Under the new policy, shelters and other civil society organisations were required to meet the deficit in their finances using independent fundraising efforts, rather than having DSD meet the shortfall in their operational expenditures.<sup>33</sup> This policy also recommended civil society organisations, including shelters, to acquire funds from donor organisations, corporate social responsibility programmes and other sources, such as the National Lottery Distribution Trust Fund.<sup>34</sup> In April 2011, the provincial government for the Western Cape approved the *Funding of NGOs for the Rendering of Social Welfare Services*

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<sup>26</sup> Lopes, C. (2013). *Shelters housing women who have experienced abuse: policy, funding and practice. Policy Brief*, at 5. (Edited 16 October 2013). Cape Town: Heinrich Böll Foundation, Tshwaranang Legal Advocacy Centre and European Union. Available at [http://za.boell.org/downloads/Policybrief\\_reports\\_sheltershousingabusedwomen\\_updatedOct2013.pdf](http://za.boell.org/downloads/Policybrief_reports_sheltershousingabusedwomen_updatedOct2013.pdf)

<sup>27</sup> Department of Social Development. (22 April 2013). PowerPoint Presentation for “Round table Discussion on Gender-Based Violence (GBV), at 7. Cape Town.

<sup>28</sup> Domestic Violence Act, [No. 116 of 1998], at § 2.

<sup>29</sup> National Department of Social Development. (2001). *Minimum Standards on Shelters for Abused Women*. Available at: <http://www.info.gov.za/view/DownloadFileAction?id=70304>

<sup>30</sup> Bhana, K., Lopes, C. and Massawe, D. (2013). *Shelters housing women who have experienced abuse: policy, funding and practice. Profiling three shelters in the Western Cape*, at 10. Cape Town: Heinrich Böll Foundation and Tshwaranang Legal Advocacy Centre.

<sup>31</sup> *Id.* at 11.

<sup>32</sup> *Id.* at 2.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

policy.<sup>35</sup> These guidelines established (1) funding criteria and minimum requirements for the financing of civil society organisations that provide social services, (2) created “an institutionalised consultative mechanism” for DSD and NGOs to communicate with each other about funding matters, and (3) established a set of monitoring and evaluation standards to guide the oversight of social support services by DSD.<sup>36</sup> Patricia de Lille, then MEC for the Western Cape DSD, stated in its Foreword that “successful implementation of the policy is predominantly dependent upon the quality of the partnerships that the Department have and maintains with its service providers.”<sup>37</sup>

For the 2011-2012 fiscal year, DSD for the Western Cape allocated R11,951 million to services under the Victim Empowerment Programme (“VEP”).<sup>38</sup> This amount was *less than one percent (1%) of its total annual budget*, even though these were the only funds directed towards the creation and implementation of an integrated set of programmes designed to “support, care and empower” people who had experienced domestic violence, which included shelters, counselling services and awareness campaigns.<sup>39</sup> Shelters received a mere R4 million, which came to about one third of VEP’s entire budget and was used to finance twelve (12) shelters in the Western Cape, averaging approximately R333,333 per shelter per year.<sup>40</sup>

When determining the budgetary allocation for shelters for the 2011-2012 fiscal year, DSD only aimed to provide three thousand ninety-one (3,091) people with access to VEP-funded shelters.<sup>41</sup> This is in spite of the fact that five thousand eight hundred sixty (5,860) people in the Western Cape attempted to access shelters that year, which is almost twice the amount of people DSD planned for in its original target.<sup>42</sup> It is imperative to note, however, that the number of people who attempted to access shelters is not an accurate reflection of the number of people who actually *needed* shelter. According to the Department of Justice and Constitutional Development, 217,987 applications for interim protection orders were made nationally in 2011, averaging to 18,165 applications being filed every month.<sup>43</sup> When divided amongst the nine provinces, this figure came to about 2,018 applications being filed each month in every province, which averaged to 24,220 applications being filed in each province that year.<sup>44</sup> Alone, this figure is shocking, and yet, it does not even consider the number of people who did not apply for protection orders despite the fact they were in grave danger.

Although the gender breakdown of applicants for protection orders is unavailable for 2011, a study conducted in Gauteng in 2012 found that only eighteen percent (18%) of persons who applied for protection orders were male.<sup>45</sup> While it is important to note the differences between provinces, it is also

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<sup>35</sup> Department of Social Development, Western Cape Province. (2011). *Western Cape Provincial Government Policy on the Funding of Non-Governmental Organisations for the Rendering of Social Welfare Services*, at 1. Available at [http://www.westerncape.gov.za/assets/departments/social-development/western\\_cape\\_funding\\_policy\\_0.pdf](http://www.westerncape.gov.za/assets/departments/social-development/western_cape_funding_policy_0.pdf)

<sup>36</sup> *Id.* at 2.

<sup>37</sup> *Id.* at 9-13.

<sup>38</sup> Bhana, *supra* at 12.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Watson, J. (2012). *Justice for Domestic Violence Victims? Key Findings on the Oversight Interventions by the PC and SC on Women, Children and Persons with Disabilities with respect to the Department of Justice and Constitutional Development*, at 5. Cape Town: Parliamentary Research Unit.

<sup>44</sup> *Id.*

<sup>45</sup> Lopes, C., Massawe, D. and Mangwiro, M. (2013). *Criminal Justice Response to Domestic Violence: Assessing the Implementation of the Domestic Violence Act in Gauteng*, at 52. Johannesburg: Heinrich Böll Foundation, Tshwaranang Legal Advocacy Centre to End Violence Against Women.

important to note that trends relating to domestic violence transcend provincial barriers; therefore, it is logical to conclude that the overwhelming majority of applicants for protection orders are female.<sup>46</sup> As a result, DSD's budget allocation for shelters in the Western Cape covered only twelve-point-seven percent (12.7%) of the people who may have needed shelter, most of whom were women and children.<sup>47</sup>

In addition to planning for a target far below the potential demand, distributions from DSD for the 2011-2012 fiscal year are inconsistent across each shelter.<sup>48</sup> For example, DSD provided Sisters Incorporated with R28.60 per person per day, St. Anne's Homes with R28.33 per person per day, and Saartjie Baartman Centre for Women and Children ("SBC") with a grant that did not provide the unit costs per person per day.<sup>49</sup> These varying amounts covered twenty-two (22%) of Sisters Incorporated's operational expenditure, forty-eight percent (48%) of St. Anne's Homes operational expenditure, and seventy-seven percent (77%) of SBC's operational expenditure.<sup>50</sup> Not only were the distribution amounts inconsistent for each shelter, they were also dangerously low estimations for the costs of providing each resident with three meals a day, a shower, warm bed, and toiletries, as well as expenses for medical treatments, educational fees, social and psychological support, all of which are paid for in full by the shelters.<sup>51</sup>

Although the situation is dire, DSD has responded to the funding concerns raised by two shelters in the Western Cape.<sup>52</sup> For example, in January 2012, provincial DSD provided a once-off contribution of R250,000 to Saartjie Baartman because the shelter only had three months of funding remaining. In addition, DSD gave a substantial increase to Sisters Incorporated for the 2013-2015 financial years, by raising its grant amount from R285,600 to R544,137.50, which increased its unit cost from R28.60 to R39.40 per person per day, and provided additional funding for its staff and administration costs.<sup>53</sup> The new amount from DSD now covers thirty-eight percent (38%) of Sisters Incorporated's total running cost instead of twenty-two percent (22%).<sup>54</sup> Nevertheless, DSD's current allocations still fall considerably short when it comes to covering the total costs of a resident's stay at the shelter.<sup>55</sup>

#### **D. LEGAL CHALLENGES TO FUNDING POLICIES FOR SOCIAL WELFARE ORGANISATIONS**

In 2010, a group of non-profit organisations ("NPOs") from the Free State, comprised of the National Association of Welfare Organisations and Non-Governmental Organisations, NG Social Services Free State and Free State Care in Action, filed suit against the Minister of Social Development, the Executive Council for Social Development for the Free State, and the Head of the Department of Social

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<sup>46</sup> Id.

<sup>47</sup> Id.

<sup>48</sup> Bhana, *supra* at 4-5.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Id.

<sup>54</sup> Id.

<sup>55</sup> Lopes, *supra* at 7. (In 2013, Claudia Lopes, author of the *Shelters housing women who have experienced abuse: policy, funding and practice: Policy Brief*, and Linda Fugard, manager at Sisters Incorporated, conducted a costing exercise and found that it cost the shelter approximately R170.17 per person per day to cover the full expenditures for a family of three's first month stay at the shelter. Expenses in the second month were notably less and conservatively estimated to be R70 per person per day, which did not include the finances needed to cover the staffing, administrative and running costs of the shelter. If these additional costs were included, the estimated cost would be about R120 per person per day.)

Development for the Free State in the High Court of Bloemfontein.<sup>56</sup> The court application was motivated by a long-standing and shared frustration amongst NPOs of having to deal with an inefficient and unpredictable system of funding from DSD which had resulted in a compromised quality of service delivery.<sup>57</sup> The Complainant's court application challenged inconsistencies in provincial DSD's implementation of the funding policy for NPOs, as well as (1) the irregular payment of funds, (2) the lack of information and communication about the timing of grants and the amount of subsidies, and (3) the fact that the contributions given by DSD were not enough to provide the type of service expected by both the government and the people who received social welfare services.<sup>58</sup> The Free State High Court ruled in favor of the NPOs, finding that the funding scheme had violated several laws, including the Children's Act, the Older Persons Act, and the Domestic Violence Act.<sup>59</sup> In addition to imposing a structural interdict, the Court instructed Respondents to pay all outstanding amounts to the NPOs and to revise its funding policy for NPOs.<sup>60</sup>

In March 2013, the High Court ruled on whether the Respondents' second revised funding policies complied with its constitutional obligations.<sup>61</sup> The policy employed by DSD for the Free State was a prioritization model, which allowed DSD to determine the content of each programme and to exclude anything it determined to be "non-essential" from the budget.<sup>62</sup> In support of its revised policy, Respondents argued that a prioritization model is necessary because DSD is trying to spread its budget over too many services, which is leading to a "vicious circle of less and less money for more and more qualifying non-profit organisations."<sup>63</sup> Relying on the decision in *Occupiers of 51 Olivia Road*, which held that "meaningful engagement with civil society is a minimum requirement for formulating social welfare policy", the Court declared the second revised policy unconstitutional on the ground that the funding of an NPO cannot be determined "by a discretion in relation to a budget" and that "the content of the item covered must be clearly and unambiguously spelled out".<sup>64</sup>

Although the Free State judgment is not binding in the Western Cape, the case is likely to affect the funding policies for civil society organisations in all other provinces, which currently have similar policies to that of the Free State.<sup>65</sup> Because the revised policy on the funding distributions for civil society organisations released from national DSD in 2011 explicitly states that "all provinces will follow the same national policy in the future", and because the Free State judgment will be binding on that policy to the extent to which it is implemented in the Free State, the national policy will have to comply with the requirements of the judgment.<sup>66</sup>

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<sup>56</sup> *National Association of Welfare Organisations & NGOs and Others v MEC for Social Development, Free State and Others*, at para 1. (Case No.: 1719/2010). (28 March 2013).

<sup>57</sup> Bhana, *supra* at 14.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> See *National Association of Welfare Organisations*, at 18-19.

<sup>62</sup> *Id.* at 14.

<sup>63</sup> *Id.* at 12.

<sup>64</sup> *Id.* at 18-19.

<sup>65</sup> Bhana, *supra* at 10-12.

<sup>66</sup> *Id.*



## V. IMPACT OF CURRENT FUNDING POLICY ON THE STATE

In September 2013, seven out of ten shelters housing abused women and children in the Cape Town area were filled to capacity.<sup>67</sup> Sisters Incorporated reported having to turn away forty-five (45) women and children because all twenty-eight (28) beds had been filled.<sup>68</sup> St. Anne's Homes reported having to turn away forty-eight (48) women and children because they, too, were filled to capacity.<sup>69</sup> These numbers are of crisis proportions, and yet they represent only a fraction of the number of women and children who are turned away from shelters across the Western Cape each month, let alone each year.

### A. FINANCIAL COSTS OF NON-INTERVENTION ON THE STATE

Violence, particularly violence against women and children, is one of the most expensive public health crises across the globe.<sup>70</sup> The World Health Organisation ("WHO") has started to encourage middle-to-low income countries to calculate the financial costs of violence and to perform assessments on its pecuniary impact as part of their policy-making processes.<sup>71</sup> Because there is limited information regarding the financial cost of violence to the State, it is imperative for South Africa to prioritise the execution of this research in light of the country's inordinately high levels of violence, its status as a developing country, and its substantial need for policy reform regarding gender-based violence.

The economic impact of intimate partner violence is extensive and unavoidable.<sup>72</sup> In 2009-2010, the Department of Justice and Constitutional Development found that the cost of processing protection orders alone was R38 million per year nationwide.<sup>73</sup> This, however, is just the tip of the iceberg.

The short-term costs associated with domestic violence may include loss of earnings for time-off from work, moving expenses, school transfers, trips to the police station, accessing court services, childcare costs, doctors' appointments, and psychological support.<sup>74</sup> Long-term costs may involve legal fees, medical and psychological treatment, disability leave from work, ongoing court dates and follow-up visits to the police station.<sup>75</sup> At each stage, the State incurs expenses in its justice and legal systems, medical and social systems, refuge and support systems, educational institutions and public assistance offices.<sup>76</sup> At each stage, private businesses, social welfare organisations, shelters, school systems, medical facilities and communities also incur extensive expenses and pecuniary losses as a result of dealing with the consequences of domestic violence.<sup>77</sup> Consequently, the cumulative economic impact of domestic violence on the government, public sector, private sector and society as a whole is enormous and has substantially interfered with South Africa's economic growth and stability.

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<sup>67</sup> Interview with Linda Fugard, Vice Chairperson of Western Cape Women's Shelter Movement. and Manager at Sisters Incorporated. (16 October 2013). Kenilworth: Women's Legal Centre.

<sup>68</sup> *Id.*

<sup>69</sup> Interview with Joy Lange, Manager at St. Anne's Homes. (16 October 2013). Cape Town: Women's Legal Centre.

<sup>70</sup> Day, T., McKenna, K., and Bowlus, A. (2005). *The Economic Costs of Violence against Women: An Evaluation of the Literature*, at 11-14. London, Ontario: United Nations and the University of Western Ontario.

<sup>71</sup> *Id.* at 3.

<sup>72</sup> *Id.* at 6.

<sup>73</sup> Watson, *supra* at 9.

<sup>74</sup> Day, *supra* at 6-13.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

## **B. SOCIAL COST OF NON-INTERVENTION ON THE STATE**

What became of the one hundred three (103) women and children who were turned away from Sisters Incorporated and St. Anne's Homes this past September is unknown.<sup>78</sup> Because shelters are usually a last resort, there is a strong chance that going to stay with friends and family was not an option.<sup>79</sup> Perhaps they returned home, back to their abusers and back to the epicenter of their personal stories of violence.<sup>80</sup> Perhaps some of them became destitute and homeless, only increasing their chances of additional exploitation, given their economic peril and lack of physical protection.<sup>81</sup>

### **i. Impact on Women Who are Turned Away from Shelters**

Poverty not only drives, but also informs, a woman's experience of domestic violence.<sup>82</sup> In South Africa, fifty-four (54%) percent of domestic violence cases are withdrawn by the woman because of her economic dependence on the perpetrator.<sup>83</sup> Activists and academics have increasingly recognized the significant role economic dependence plays in a woman's capacity to negotiate safety.<sup>84</sup> For many women, the need for housing, food, medical care and other basic resources may become more important than living without abuse.<sup>85</sup>

#### *a. Women are Murdered by their Abusive Partners*

The murder of a woman by her intimate partner is the most extreme form of domestic violence.<sup>86</sup> In South Africa, more than fifty-six percent (56%) of all murdered women are killed by their husbands or boyfriends.<sup>87</sup> As the leading cause of death in female homicides, intimate femicide in South Africa occurs six (6) times more frequently than that of the global average.<sup>88</sup> Although the overall number of homicides has declined in the past ten years, the number of gender-based homicides remains high, with an intimate femicide rate of 8.8/100,000 and an intimate femicide suicide rate of 1.7/100,000 for women aged fourteen (14) years and older.<sup>89</sup> It is important to note, however, that both rates are likely to be under-estimates of the actual figures given that no perpetrator is identified in more than twenty percent (20%) of all murders.<sup>90</sup>

Results from the 1999 study revealed that a woman was killed by her husband or boyfriend every six hours.<sup>91</sup> The 2009 study revealed that a woman was killed by her husband or boyfriend every eight

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<sup>78</sup> Interview with L. Fugard. (16 October 2013)

<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> Id.

<sup>82</sup> Goldscheid, *supra* at 928.

<sup>83</sup> The Parliamentary Monitoring Group. (2012). *Domestic Violence Act implementation: Department of Justice Briefing*.

Available at <http://www.pmg.org.za/report/20120215-department-justice-constitutional-development-implementation-domestic>

<sup>84</sup> Goldscheid, *supra* at 931.

<sup>85</sup> Id. at 928.

<sup>86</sup> Abrahams, *supra* at 1.

<sup>87</sup> Id. at 3.

<sup>88</sup> Interview with Devi Sankaree Govender. (2012). *Intimate Femicide in South Africa*. Carte Blanche. Available at <http://beta.mnet.co.za/carteblanche/Article.aspx?id=4496&ShowId=1>.

<sup>89</sup> Abrahams, *supra* at 2.

<sup>90</sup> Id. at 3.

<sup>91</sup> Id. at 2.

hours.<sup>92</sup> Despite this decline, which is consistent with a general decline in homicides across South Africa, it is important to note that the decrease was significantly less among intimate femicides.<sup>93</sup> Most importantly, there was no change in the number of cases that involved a prior history of domestic violence simply because the South African Police Service (“SAPS”) omitted this information from its investigation.<sup>94</sup> The failure to record such basic information from these reports is evidence of a systemic ignorance of the gender-based motives for murder.<sup>95</sup>

#### ii. *Women are Forced to Return to Abusive Partners*

For women who are turned away from shelters, many are forced to return to their abusive partners.<sup>96</sup> Often times, women face an even greater risk of harm if the abusive partners know the abuse has been reported or if the women have tried to escape.<sup>97</sup> In addition to suffering more physical violence, many women suffer mental and emotional trauma, such as depression, anxiety and post-traumatic stress disorder resulting from prolonged cruelty, constant threat of danger, and continuous hopelessness.<sup>98</sup> In some cases, the abusive partner may use the children to coerce the women into staying or into submitting to further abuse by threatening to (1) harm or kill the children, (2) report her to the police, or (3) gain custody of the children.<sup>99</sup>

"And these men talk about feeling betrayed when a woman says she wants to leave, that they don't want her to leave. And, in many ways, they feel she is their possession and, therefore, the act of killing is about getting back control." – Dr. Mathews<sup>100</sup>

"This man never beat me up before but now lately he hits me. He speaks to me once or twice and then starts a fight and hits me. When that happens I run away and sleep in other people's houses. When he hears where I am sleeping then he goes there and swears at them ... He does not care if those are old people... And then he swears at me too and says 'You can leave you b\*tch, eh what' ... So those things make me feel bad." - Respondent, Methodist Church<sup>101</sup>

#### iii. *Women are Forced into Destitution and Homelessness*

Although it is difficult to ascertain the exact number of people who live in poverty, studies suggest that more than fifty percent (50%) of South Africans live below the poverty line, with women and children comprising an estimated seventy percent (70%) of this population.<sup>102</sup> When shelters are unable to provide accommodation, women who refuse to return home may be forced into destitution and

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 3.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 4.

<sup>96</sup> *Id.*

<sup>97</sup> Jewkes, *supra* at 5.

<sup>98</sup> Loring, M. and Smith, R. (1994). *Healthcare Barriers and Interventions for Battered Women*, at 331. *Public Health Reports (1974-)*, Vol. 109, No. 3.

<sup>99</sup> *Id.*

<sup>100</sup> Interview with Devi Sankaree Govender. (2012)

<sup>101</sup> Dladla, J., Hargreaves, S., Greenberg, S., and Vetten, L. (2004). *That place is “kwaMnyamandawo”*. Cape Town: Centre for the Study of Violence and Reconciliation Research Report.

<sup>102</sup> Bentley, K. (2004). *Women’s Human Rights & the Feminisation of Poverty in South Africa*, at 257. *Review of African Political Economy*, Vol. 31, No. 100.

homelessness.<sup>103</sup> Not only does this place women and children in severe economic peril, it also increases their vulnerability to further danger and violence because they no longer have the physical protection of a home.<sup>104</sup> Even if the streets provide a temporary escape from an abusive home environment, women and children who are homeless become even more vulnerable to physical and sexual violence.<sup>105</sup>

“[RN] lives on the pavement of Umgeni Road, outside the Durban train station ... At night, she barely sleeps because she is afraid that local thugs, known as tsotsis, will come and steal from her or attack her in her makeshift bed and rape her... Women reportedly take turns sleeping at the end of the bench outside the station because they know that the woman at the end is likely to get raped... The site of the two portable toilets on the other side of the settlement is another particularly dangerous area.”<sup>106</sup>

#### iv. *Women are Forced to Engage in ‘Survival Sex’*

When women and children are turned away from shelters, they often perform sexual acts in order to survive, a practice commonly referred to as ‘survival sex’.<sup>107</sup> It is important to distinguish ‘survival sex’ from commercial sex in that the women and children who engage in survival sex do not identify themselves as commercial sex workers because their actions are non-commercial in nature and performed for the purpose of survival.<sup>108</sup> It has been reported that women and children will perform sexual acts themselves in exchange for “meagre hand-outs” such as food, shelter and small amounts of cash, when they are unable to obtain these basic needs from other sources, such as shelters.<sup>109</sup> In fact, a 2013 study conducted in South Africa found that teenage girls who receive child support grants are less likely to contract HIV because they are less likely to have sex with older men.<sup>110</sup>

“I walked around looking for piece jobs and a room and ended up starting an affair with a man here. This man took me and built a shack for me here.” – Respondent, Methodist Church<sup>111</sup>

#### v. *Women are More Likely to Contract HIV and AIDS*

In a country like South Africa, where almost twenty-five percent (25%) of adults are living with HIV, domestic violence dramatically increases a woman’s chances of contracting HIV and AIDS.<sup>112</sup> In 2000, a study conducted by the University of Cape Town, RAPCAN, Rape Crisis, PATCH and Simelela, found that intimate partner violence, which often includes rape and other forms of sexual assault, significantly increases a woman’s risk of contracting HIV because of the type of injuries sustained and the violent

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<sup>103</sup> Bentley, *supra* at 158.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 152.

<sup>106</sup> Equality Now. (1994). *South Africa: Rape and Violence against Women at the Durban Train Station*. Available at [http://www.equalitynow.org/take\\_action/rape\\_action61](http://www.equalitynow.org/take_action/rape_action61)

<sup>107</sup> Wojcicki, J. (2002). ‘*She Drank His Money’: Survival Sex and the Problem of Violence in Taverns in Gauteng Province, South Africa*, at 272. Johannesburg: Medical Anthropology Quarterly, New Series, Vol. 16, No. 3.

<sup>108</sup> *Id.* at 268.

<sup>109</sup> The South African Television Authority. (9 August 2012). *Special Assignment: Survival Sex*. Available at [http://www.tvsa.co.za/special\\_assignment\\_episodes/article20192.asp](http://www.tvsa.co.za/special_assignment_episodes/article20192.asp).

<sup>110</sup> Green, A. (18 June 2013). *Social grants decrease teenage girls’ risk of contracting HIV*. Johannesburg: The Mail and Guardian Online. Available at <http://mg.co.za/article/2013-06-18-social-grants-decrease-teenage-girls-risk-of-contracting-hiv>

<sup>111</sup> Dladla, *supra* at § 5.2.1.

<sup>112</sup> Maman, Campbell, Sweat and Gielen, (2000), at pp. 461 – 466. Cited in *Monitoring the Sexual Offences Act: A Qualitative Perspective of the Implementation of SOA (2011) by UCT, RAPCAN, Rape Crisis, PATCH and Simelela (2011)*.

nature in which rape and other forms of sexual assault is committed.<sup>113</sup> In addition, a 2009 study conducted in South Africa on the relationship between men's use of violence and the interface of rape and HIV, found that men who had committed rape and other forms of sexual assault, were more likely to have perpetrated acts of intimate partner violence.<sup>114</sup> As a consequence, the HIV infection rates were higher amongst men who had committed acts of domestic violence than those who had not.<sup>115</sup>

vi. *Women Living in Rural Areas Have Less Access to Shelters*

The lack of shelters in the Western Cape has a particularly devastating effect on women who live in rural areas.<sup>116</sup> A woman's geographical isolation severely limits her ability to access critical support services, such as shelters, which are sporadically located throughout the countryside.<sup>117</sup> Unlike their urban counterparts, rural areas have virtually no public transportation systems and are often marked with unpaved roads, which make travelling to and from shelters difficult and extremely expensive.<sup>118</sup> Shelters located in these areas blame physical isolation, minimal transportation services, and inadequate communication resources as the primary reasons why rural women's access to shelters is so limited.<sup>119</sup>

In addition to having limited access to shelters, women living in rural areas also face social and economic factors that increase their vulnerability to domestic abuse.<sup>120</sup> For many women, cultural traditions and practices forbid them from owning homes, which makes it virtually impossible to evict abusive partners from property where they have no rights of ownership.<sup>121</sup> In addition, traditional courts are more common in rural areas and frequently treat domestic violence as a private matter, which minimizes the precarious nature of their situation and provides no safe housing alternatives.<sup>122</sup>

“According to our culture, women are not permitted to be given sites from land owned by chiefs, only a man can put an enquiry to be given land. In this place the land that we live on belongs to the chief's and not to the state. Women do not have the right to be allocated land which results in us becoming homeless after abuse. We need shelters and centers where we can go to with our children to save our lives from violence and abuse.”— Anonymous rural woman<sup>123</sup>

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<sup>113</sup> *Id.*

<sup>114</sup> Jewkes, R., Sikweyiya, Y., Morrell, R., and Dunkle, K. (2009). *Understanding Men's Health and Use of Violence: Interface of Rape and HIV in South Africa*.

<sup>115</sup> *Id.*

<sup>116</sup> Nyathi, N. (2012). *Factors that Conduce Towards Domestic Violence against Rural Women: A Case Study of Sisonke District Municipality in KwaZulu Natal*, at 26. University of Fort Hare.

<sup>117</sup> Curran, E., and Bonthuys, E. (2004). *Customary Law and Domestic Violence in Rural South African Communities*, at 3. Centre for the Study of Violence and Reconciliation.

<sup>118</sup> *Id.*

<sup>119</sup> United Nations. (2008). *Rural Women in A Changing World: Opportunities and Challenges*, at 37. Division for the Advancement of Women. Available at <http://www.un.org/womenwatch/daw/public/Women%202000%20-%20Rural%20Women%20web%20English.pdf>

<sup>120</sup> Curran, *supra* at 3.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 2.

<sup>123</sup> *Id.* at 66.

## **b. Impact on Children Who are Turned Away from Shelters**

Children are often described as the “invisible victims” of domestic violence.<sup>124</sup> Although there is little information regarding the number of children who have experienced domestic violence, MOSAIC Training, Service and Healing Centre for Women in the Western Cape report that there are at least twice as many children who have experienced domestic violence as there are adults.<sup>125</sup> During the 2008-2009 reporting period, MOSAIC referred twenty-six thousand four-hundred fifty (26,450) children to counseling services, and identified twenty-four thousand five-hundred twenty-five (24,525) children at the courts and another one thousand eight hundred sixty-five (1,865) children in the field, who were affected by domestic violence.<sup>126</sup>

### *i. Children are Forced to Return to Abusive Home Environments*

For children who are turned away from shelters, many are forced to return to abusive home environments.<sup>127</sup> If the abusive parent or guardian knows the the children have tried to escape with their mothers, they suffer a greater risk of harm.<sup>128</sup> In addition to enduring more physical violence, many children suffer mental and emotional trauma, such as depression, anxiety and post-traumatic stress disorder resulting from constant cruelty and continuous threats of danger.<sup>129</sup> In some cases, the abusive parent or guardian may threaten to harm or kill the children, report them to the police, or take them away from the home.<sup>130</sup> When the suffering of abuse or the witnessing of abuse is coupled with other harmful experiences, such as harsh disciplinary measures, lack of affection or support, and poor supervision, the emotional and social functioning of a child is often significantly disrupted.<sup>131</sup>

In 2011, the Sexual Violence Research Initiative (“SVRI”) gave a presentation titled “Child Witnesses of Domestic Violence: the overlooked victims” at a conference in Cape Town.<sup>132</sup> In addition to noting that seventy (70) to eighty (80) percent of children who witness domestic violence experience extreme fluctuations in mood and behavior, the presentation also described the results of research conducted by SVRI on children and their mothers who were living at a domestic violence shelter in Gauteng.<sup>133</sup> The study focused on the effectiveness of a three-month therapy treatment for mothers and children aged six to thirteen (6-13) who lived in the shelter.<sup>134</sup> The type of treatment used in the study was called “Trauma Focused Cognitive Behavioral Therapy”, which is regarded as one of the most effective treatments for trauma because it intervenes in the cognitive processing of false beliefs and distortions about trauma and assists with the development of healthy coping skills.<sup>135</sup> According to the study,

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<sup>124</sup> UNICEF, “Behind Closed Doors: The Impact of Domestic Violence on Children,” at 3. *Child Protection Section*, (2006).

Available at <http://www.unicef.org/protection/files/BehindClosedDoors.pdf>.

<sup>125</sup> MOSAIC Training, Service and Healing Centre for Women. (2010). *Annual Report 2008-2009*, at 23. Wynberg: MOSAIC.

<sup>126</sup> *Id.*

<sup>127</sup> Interview with Linda Fugard. (16 October 2013).

<sup>128</sup> Hidden Hurt, Domestic Abuse Information. (2012). *Domestic Violence and Children*. Available at [http://www.hiddenhurt.co.uk/domestic\\_violence\\_and\\_children.html](http://www.hiddenhurt.co.uk/domestic_violence_and_children.html)

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> Woollett, N. (2011). Powerpoint Presentation Child Witnesses of Domestic Violence: the overlooked victims, at 13. Cape Town: Sexual Violence Research Initiative. Available at <http://www.svri.org/forum2011/Childwitnesses.pdf>

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 7.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 9.

almost ninety (90) percent of children met the criteria for post-traumatic stress disorder and almost seventy (70) percent met the criteria for depression *before* the therapy began.<sup>136</sup>

Some of the issues faced by children who participated in the study included the following:

- Each child had been uprooted from their “normal lives” by coming to the shelter, which included being forced to leave their homes, friends, schools, pets, family and communities;
- Some children felt responsible for their families being in the shelter because several women had left abusive partners in an effort to protect their children;
- Many mothers were not emotionally available to their children, especially to their male children, which caused many of the children to internalize their emotions and withdraw from others;
- None of the children had fathers who were available to them, which had a significant impact on all the children, but a disproportionate impact on the male children; and
- Some children suffered high degrees of shame, both self-inflicted and community-inflicted.<sup>137</sup>

#### ii. *Children Suffer from Post-Traumatic Stress Disorder*

Children who suffer violence or who are exposed to violence, including both death and the immediate threat of death, often suffer from post-traumatic stress disorder (“PTSD”).<sup>138</sup> PTSD is a psychological condition that often arises after a person has suffered a traumatic experience, either directly or indirectly, and may manifest itself in various ways.<sup>139</sup> Although the nature and extent of the impact depends largely on the individual child and circumstances of the violence, patterns have been documented in children who have experienced domestic violence from the infantile stage through adolescence, and have revealed a distinct and consistent set of behaviors.<sup>140</sup>

- Among infants, toddlers and young children, some of the common effects of being exposed to domestic violence include low birth weight, exaggerated startle response, physical disruptions (such as stomach aches, headaches, etc.), regression in toilet training or language development, sleep disturbances, hyper-vigilance, separation anxiety and/or eating disorders;<sup>141</sup>
- Among children of school age, the effects of witnessing domestic violence may be internalized or externalized, or any combination of both. Children who internalize may appear sad, depressed, fearful, skittish, and ashamed, which may lead them to withdraw from human interaction or social settings. Children who externalize may tell lies, behave aggressively, initiate fights, speak rudely, and experience frequent nightmares and/or insomnia. In addition, the school work of these children often deteriorates, and many of them develop inequitable attitudes about gender and begin to treat their male and female peers accordingly;<sup>142</sup> and
- Among adolescents and early adolescents, the effect of living in a home where domestic violence occurs often affects boys and girls differently. In addition, individuals in this age group are more likely to become sexually active and search for love and attention<sup>143</sup>, as well as

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<sup>136</sup> *Id.* at 13.

<sup>137</sup> *Id.* at 14.

<sup>138</sup> *Id.* at 7.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 8.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> Contribution from Angela Dewar, Social Worker at Sisters Incorporated. (1 November 2013). Cape Town: Women’s Legal Centre.



develop dependence on drugs or alcohol or other destructive means in order to cope with a violent home environment.<sup>144</sup>

iii. *Children Become More Likely to Perpetrate or Tolerate Violence as Adults*

The family unit is the primary agent of socialization for a child, as it shapes the individual's identity, behavior, values and beliefs.<sup>145</sup> The process of socialization develops through direct engagement with the parents and siblings, and lessons are conveyed indirectly, where children learn to replicate the behavior they are exposed to and which they observe. In cases where family is the site of violence, and its members the perpetrators, families may become the primary agents through which violence and aggression are taught.<sup>146</sup>

Although there is a danger in generalising any set of responses, it is important to note the differences between how girls and boys respond to violence within the home.<sup>147</sup> For example, because women are more likely to experience domestic violence than men, some girl children and adolescents may be more likely believe that intimate partner violence is an inevitable part of any relationship and grow to tolerate levels of violence in their own relationships.<sup>148</sup> On the other hand, because men are most often perpetrators, some boy children and adolescents may be more likely to condone violence to assert power or control in relationships and therefore use violence in their own relationships.<sup>149</sup> In fact, research has shown that young boys who witness abuse against their mothers has been identified as the most consistent risk factor for engaging in domestic violence later on in life.<sup>150</sup> As evidence suggests, there is an urgent need to help both boy and girl children who have been exposed to violence to 'reframe their ideas regarding the acceptability of the use of violence' and to equip them with the skills for 'handling conflict, anger and aggression'.<sup>151</sup>

iv. *Children are Forced into Destitution and Homelessness*

For the children who refuse to return home, many are forced into destitution and homelessness.<sup>152</sup> Not only does this cause a significant disruption in the development of children, in addition to prolonged absences from school and a lack of basic structure, it also inflicts severe strain on the women who are responsible for taking care of them.<sup>153</sup> Because of their increased economic peril, children who are homeless become more vulnerable to all forms of exploitation, including physical, mental, emotional, and sexual abuse given their desperation and lack of physical protection.<sup>154</sup> Boy children, in particular, are more likely to get involved with drugs and gangsterism for survival and security.<sup>155</sup> Girl children, in particular, are more likely to engage in 'survival sex' in exchange for food, shelter and small amounts of

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<sup>144</sup> Id.

<sup>145</sup> Medical Research Council, Gender & Health Research Unit. (2010). *Desk Review: The co-victimisation of the mother and child in relationship to Domestic Violence*, at 5-7. Available at <http://www.mrc.ac.za/gender/ServicesResponses.pdf>.

<sup>146</sup> Id.

<sup>147</sup> Id.

<sup>148</sup> Id.

<sup>149</sup> Id.

<sup>150</sup> Jewkes, *supra* at 13.

<sup>151</sup> Id.

<sup>152</sup> Consultations with Linda Fugard and Joy Lange. (April 2013 to October 2013). *Western Cape Women's Shelter Movement*.

Cape Town: Women's Legal Centre, Commission for Gender Equality, et al.

<sup>153</sup> Id.

<sup>154</sup> Olufemi, O. (2008). *Homelessness and HIV/AIDS in Johannesburg*, at 63-71. Johannesburg: Open House International.

<sup>155</sup> Id.

money.<sup>156</sup> As noted before, survival sex is distinct from transactional sex in that the sexual acts are non-commercial in nature and performed for purposes of survival.<sup>157</sup> The combination of these factors make children who are destitute and homeless more likely to commit crimes and more vulnerable to contracting HIV and AIDS.<sup>158</sup>

## VI. BENEFIT OF SHELTERS TO THE STATE

Shelters housing abused women and children not only improve the lives of their residents, but also minimize the social and economic consequences of domestic violence on the State.<sup>159</sup>

By providing safe and secure housing, shelters prevent women and children from returning to abusive home environments or turning to the streets, where they face risk of further violence.<sup>160</sup> In fact, a recent study found that less than ten percent (10%) of women return to the marital home after staying at shelters.<sup>161</sup> By providing food, clothing and a warm shower, shelters prevent women and children from having to engage in ‘survival sex’ or to commit petty crimes in order to meet their basic needs.<sup>162</sup> By providing social and psychological support, shelters prevent women and children from blaming themselves, engaging in self-destructive behaviors, and perpetuating cycles of violence.<sup>163</sup> By providing job skills training, shelters prevent women from remaining economically dependent on their partners and equip them with the skills they need to become self-sufficient and productive members of society.<sup>164</sup> By providing access to the Internet, newspapers, telephone, printing services, and transport, shelters allow women to search for jobs, communicate with prospective employers, and prepare materials for interviews.<sup>165</sup>

By providing childcare, shelters prevent women from having to leave their children unattended, or in the care of someone who they may not trust, or in areas that are unsafe.<sup>166</sup> By providing playgroups, play therapy and other activities, shelters allow children to socialise in peaceful environments and connect with children who have been through similar experiences, which afford them the opportunity to heal.<sup>167</sup> In fact, studies have shown that early intervention programs, such as the ones offered at shelters, are the most cost-efficient and effective way of preventing the intergenerational transmission of violence.<sup>168</sup>

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<sup>156</sup> Bentley, *supra* at 263.

<sup>157</sup> *Id.*

<sup>158</sup> Olufemi, *supra* at 67.

<sup>159</sup> Consultations with Linda Fugard and Joy Lange. (April 2013 to October 2013). *Western Cape Women’s Shelter Movement*. Cape Town: Women’s Legal Centre, Commission for Gender Equality, et al.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* (In 2011 and 2012, Heinrich Böll Foundation together with Tshwaranang Legal Advocacy Centre and the European Union profiled three shelters in the Western Cape and five shelters in Gauteng providing housing to women and children who had experienced domestic violence. Although information regarding where the women went after leaving the shelter was only available for one hundred twenty-six (126) of the women, the study found that only twelve (12) of these women returned to the marital home.)

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

By providing transportation and money to cover school fees, uniforms, stationary and books, shelters increase children’s access to education and instill values of structure, discipline and accountability.<sup>169</sup>

By providing assistance with identity documents and birth certificates, shelters assist women and children with obtaining social welfare benefits.<sup>170</sup> By providing transportation and money for hospital fees, shelters increase women and children’s access to medical care and educate them on the importance of maintaining their health and well-being.<sup>171</sup> By providing access to legal services, shelters help educate women and children about their rights, including how to obtain protection orders, maintenance and child support payments, and how to use the law as a tool of protection.<sup>172</sup>

As one can see, the cumulative effect of these services, (when shelters are able to afford them), has an invaluable impact on the State, its citizens and South African society as a whole.

## VII. STATE OBLIGATION TO PROVIDE SHELTERS

Although the actions of national DSD and DSD for the Western Cape suggest the contrary, the government is legally obligated to ensure that shelters and other forms of temporary housing are available to people who have experienced domestic violence. The State is obligated not only under its own set of national laws and judicial decisions, but also under multiple regional instruments and international treaties, which further obligate it to provide shelters or alternative forms of adequate housing to women and children who have experienced domestic violence.

### A. NATIONAL LEGAL INSTRUMENTS

#### i. Constitution of the Republic of South Africa

The Constitution of the Republic of South Africa binds the legislative, executive and judicial branches of the government to “respect, protect, promote and fulfill” the obligations set forth in the Bill of Rights.<sup>173</sup> The failure of the State to ensure that shelters are adequately funded implicates several constitutionally-protected rights, including the right to equality, human dignity, life, freedom of movement and residence, adequate housing, and the right to freedom and security of the person.<sup>174</sup> It is imperative to understand that the right to equality does not only mean the right to equal treatment before the law, but also means that “legislative and other measures designed to protect or advance persons” may be used to advance the rights of people who have been disadvantaged by unfair discrimination.<sup>175</sup> Because women are a category of people who have been disadvantaged throughout history by prejudicial values and ideals, the State is constitutionally obligated to take substantial measures to enhance their rights.<sup>176</sup>

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<sup>169</sup> Id.

<sup>170</sup> Id.

<sup>171</sup> Id.

<sup>172</sup> Id.

<sup>173</sup> Constitution of the Republic of South Africa, [No. 108 of 1996], §§ 7, 8(1), and 39(2).

<sup>174</sup> Id. at §§ 9, 10, 11, 12, 21, and 26.

<sup>175</sup> Id. at § 9.

<sup>176</sup> Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (“Maputu Protocol”), at art. 4. CAB/LEG/66.6 (Sept. 13, 2000); *reprinted in* 1 Afr. Hum. Rts. L.J. 40, *entered into force* Nov. 25, 2005. Available at <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf>

In addition, the constitutional right to freedom and security of the person includes the right to be free from both public and private sources violence.<sup>177</sup> In 1999, the Constitutional Court held in *S. v Baloyi and Others* that the State has a “duty under international law to prohibit all gender-based discrimination that has the effect or purpose of impairing the enjoyment by women of fundamental rights and freedoms.”<sup>178</sup> Relying on the *Baloyi* reasoning, the Constitutional Court ruled in *Carmichele v. Minister of Safety and Security* in 2002, that the State has a legal obligation to protect women against sexual violence because it threatens the dignity, freedom and security of the person.<sup>179</sup> Therefore, the Constitutional Court’s recognition of a positive duty upon the State to provide women with protection from violence establishes a positive duty on DSD to provide, in the very least, emergency shelter, or in the alternative, to provide enough money to shelters to put them in a position to deliver such relief.<sup>180</sup>

Moreover, because the State is “under a series of constitutional mandates which include the obligation to deal with domestic violence,” and because this duty includes “rights of everyone to enjoy freedom and security of the person and to bodily and psychological integrity, and the right to have their dignity respected and protected,” it is not only required to provide criminal justice services, it is also required to confront the tangential consequences of domestic violence.<sup>181</sup> Since access to safe housing, mental health services, and legal counseling are integral parts of a person’s recovery from domestic violence, and because shelters housing abused women and children often provide such services, the State has a constitutional obligation to ensure that shelters receive enough funding to cover the costs of providing these additional services, given that the State is not providing these services itself.<sup>182</sup> Although there is an explicit caveat in the Constitution requiring the State to act “within its available resources” with respect to the right to property<sup>183</sup>, housing<sup>184</sup>, and healthcare, food, water and social security<sup>185</sup>, DSD’s allocation of less than 1% of its annual budget is nonsensical and unreasonable given the prevalence of gender-based violence in the Western Cape.

## ii. Domestic Violence Act

In addition to breaching several constitutional duties, the government has also breached its statutory duty under the Domestic Violence Act. The purpose of the DVA is to provide people who have experienced domestic violence the “maximum protection from domestic abuse the law can provide” and to implement procedures that “seek to ensure that the relevant organs of state give full effect to [its] provisions.”<sup>186</sup> Even though the DVA does not identify the party responsible for funding shelters for abused women and their children, the government’s duty to protect against gender-based violence extends beyond the mere prosecution of perpetrators.<sup>187</sup> Because section 2 of the DVA requires members of SAPS to assist or make arrangements for the complainant in a domestic violence dispute to

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<sup>177</sup> See Constitution at § 12.

<sup>178</sup> *S. v Baloyi and Others*, at para 11. (CCT29/99) [1999] ZACC 19; 2000 (1) BCLR 86; 2000 (2) SA 425 (CC) (3 December 1999). <http://www.saflii.org/za/cases/ZACC/1999/19.pdf>

<sup>179</sup> *Carmichele v. Minister of Safety and Security*, at para 62. (CCT 48/00 [2001] ZACC 22; 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC) (16 August 2001) at 33. <http://www.saflii.org/za/cases/ZASCA/2000/61.pdf>.

<sup>180</sup> *Id.*

<sup>181</sup> See *Baloyi* at para 11.

<sup>182</sup> *Id.*

<sup>183</sup> See Constitution at § 25.

<sup>184</sup> *Id.* at § 26.

<sup>185</sup> *Id.* at § 27.

<sup>186</sup> Domestic Violence Act, [No. 116 of 1998], at Preamble.

<sup>187</sup> *Id.*

“find suitable shelter” and “obtain medical treatment”<sup>188</sup>, the DVA *presupposes that these services already exist*. Therefore, the DVA imposes an implicit statutory duty on the government to ensure that such shelters are available to people who have experienced domestic violence either through the direct provision of services or through the funding of organisations which offer those services. Because the government has not provided these services directly, organisations like Sisters Incorporated and St. Anne’s Homes have been forced to fill in the gap of these statutorily protected services.<sup>189</sup> If these organisations were to close due to a lack of funding, not only would the government be liable for breaching its statutory duty to ensure that these services are available to abused women and children, it would also be responsible for preventing police officers from fulfilling their statutory duties under section 2 of the DVA.

### iii. Children’s Act

The Children’s Act binds the South African government to “respect, protect, promote and fulfill” the rights of children provided for in Section 28 of the Constitution<sup>190</sup>, and obliges the State to implement a system “conducive to conciliation and problem-solving” in any matter concerning children.<sup>191</sup> Several provisions of the Children’s Act deal with “temporary safe care”, which is defined as “the care of a child in an approved child and youth care centre, *shelter*, or private home or any other place, where the child can safely be accommodated pending a decision or court order concerning the placement of the child, but excludes care of a child in a prison or police cell,” [emphasis added].<sup>192</sup> Subsequent sections oblige the Minister to consult with interested parties as well as the Ministers of Education, Finance, Health and Local Government, before developing national norms and standards for these places of “temporary safe care”, and require the norms to include considerations for therapy, education, skills training, family unity, and temporary safe care.<sup>193</sup>

Sections 193 and 195 of the Children’s Act provide the most compelling evidence of a governmental duty to fund shelters, as they concern the provision of child and youth care centres.<sup>194</sup> Under the Children’s Act, a youth care centre is defined as “a facility for the provision of residential care to more than six children outside the child’s family environment in accordance with a residential care programme suited for the children in the facility, but excludes a partial care facility, a drop-in centre, a boarding school, a school hostel or other residential facility attached to a school, a prison”.<sup>195</sup> Although children may stay with their mothers and siblings at a shelter, it is usually nothing like the child’s normal family environment. Therefore, if some shelters constitute as “youth care centres” under the Children’s Act, section 195 explicitly requires the MEC for the Department of Social Development to “establish *and* operate” these centres in the Western Cape with money from the provincial legislature.<sup>196</sup>

To ensure the sufficient provision and funding of “youth care centres” in the Western Cape, section 192 requires the Minister to include a “comprehensive national strategy” that ensures “an appropriate spread of child and youth care centres throughout the Republic” as part of its departmental strategy.<sup>197</sup>

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<sup>188</sup> *Id.* at § 2.

<sup>189</sup> *National Policy Guidelines for Victim Empowerment*, at 28.

<sup>190</sup> Children’s Act, [No. 38 of 2005], at Preamble.

<sup>191</sup> *Id.* at § 6(4)(a).

<sup>192</sup> *Id.* at § 1.

<sup>193</sup> *Id.* at §§ 147(1),(2).

<sup>194</sup> *Id.* at §§ 193, 195.

<sup>195</sup> *Id.* at § 193.

<sup>196</sup> *Id.* at § 195.

<sup>197</sup> *Id.* at § 192.

Furthermore, subsection (2) requires the provincial strategy to be directed towards building “properly resourced, coordinated and managed child and youth care centres” which provide a wide range of residential care programmes, while subsection (4) requires the provincial head of social development to maintain a record of all centres and programmes in the Western Cape.<sup>198</sup>

#### **iv. Promotion of Equality and Prevention of Unfair Discrimination Act**

In 2000, the South African Government enacted the Promotion of Equality and Prevention of Unfair Discrimination Act (“PEPUDA”) for purposes of giving effect to Section 9 of the Constitution, which protects an individual’s right to equality.<sup>199</sup> PEPUDA prohibits unfair discrimination against any person on certain grounds, including gender, committed by the State or by a private individual.<sup>200</sup> Section 8 of PEPUDA explicitly identifies gender-based violence and limiting a woman’s access to social services and benefits as unfair discrimination.<sup>201</sup> Because the funding crisis is the result of State action, and because the crisis has limited women’s access to critical resources, such as safe and secure housing, healthcare, and legal assistance, the State is liable for unfair discrimination under section 8 of PEPUDA. Such omissions by the State clearly establish its neglect to “promote and achieve equality”<sup>202</sup>, “take measures to develop and implement programmes”<sup>203</sup>, and “provide assistance, advice and training on issues of equality”<sup>204</sup>, and substantiate the claim that it is in violation of sections 8, 24 and 25 of PEPUDA.

#### **v. National Development Agency Act**

The government established the National Development Agency Act (“NDA”) in 1998 to create “an appropriate and sustainable partnership between the government and civil society organisations to eradicate poverty and its causes.”<sup>205</sup> Under the NDA, the Agency is required “to act as a key conduit for funding from the Government of the Republic, foreign governments and other national and international donors for development work to be carried out by civil society organisations”<sup>206</sup> and “to contribute towards *building the capacity* of civil society organisations to enable them to carry out development work effectively,”<sup>207</sup> [emphasis added]. In addition, the Agency may allocate money from its fund to finance “any civil society organisation for any project or programme the organisation intends to undertake”<sup>208</sup> or any other venture that is “necessary to achieve” the objectives of the Act.<sup>209</sup>

The NDA currently provides funding to sixteen civil society organisations in Western Cape, none of which provide support services to women and children who have experienced domestic violence.<sup>210</sup> Because the NDA’s priorities are poverty eradication, its funding decisions have focused primarily on cooperative

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<sup>198</sup> Id. at §§ 192(2),(4).

<sup>199</sup> Promotion of Equality and Prevention of Unfair Discrimination Act, [No. 4 of 2000], at Preamble.

<sup>200</sup> Id. at § 5.

<sup>201</sup> Id. at § 8(a),(g).

<sup>202</sup> Id. at § 24.

<sup>203</sup> Id. at § 25.

<sup>204</sup> Id. at §§ 24, 25.

<sup>205</sup> National Development Agency Act, [No. 108 of 1998], at Preamble.

<sup>206</sup> Id. at § (4)(1)(a).

<sup>207</sup> Id. at § (4)(1)(c).

<sup>208</sup> Id. at § (4)(2)(a)(ii).

<sup>209</sup> Id. at § (4)(2)(d).

<sup>210</sup> National Development Agency, Western Cape Funded Projects.

[http://www.nda.org.za/index.php?option=3&id=1&com\\_id=258&parent\\_id=158&com\\_task=1](http://www.nda.org.za/index.php?option=3&id=1&com_id=258&parent_id=158&com_task=1)

and trade organisations, such as Women on Farms.<sup>211</sup> Although the NDA does not have an explicit duty to fund civil society organisations, it does have the duty to “contribute to building the capacity” of civil society organisations.<sup>212</sup> Given that shelters require funding to build capacity, the NDA has both the duty and the ability to provide such funding to these critical service organisations.

Although poverty eradication is not the central goal of shelters for people who have experienced domestic violence, there is a direct correlation between a woman’s economic dependency on her abusive partner and her inability to leave an abusive home.<sup>213</sup> Even though women at all socio-economic levels experience domestic violence, poor women are more likely than others to access support from organisations like Sisters Incorporated and St. Anne’s Homes to remove themselves and their families from abusive living situations.<sup>214</sup> Because the focus of NDA poverty eradication interventions is strengthening civil society organisations, providing additional funding to service organisations is in accordance with the NDA’s strategic goals for 2012-2017.

#### vi. National Housing Code

The National Housing Code was enacted in 2000 to establish ground rules guiding the general approach to housing in South Africa.<sup>215</sup> While the Housing Act of 1997 explains the responsibilities of the three branches of government with respect to housing programmes, the Housing Code deals specifically with access to housing.<sup>216</sup> The Minister of Human Settlements is responsible for the Code’s content, but is not required to consult with interested parties before determining national housing policy.<sup>217</sup> Housing policy, which is binding on both the provincial and local spheres of government, must promote fairness and equity amongst all South Africans.<sup>218</sup> Having recognized the need to support women in the housing delivery process, the government has stated that it must work to achieve their equal and equitable access in both opportunities and services.<sup>219</sup>

Although there is no express mention of women who have experienced domestic violence, the Housing Code’s principles are general enough to incorporate some of their needs.<sup>220</sup> For example, the Code refers to the need to provide subsidy assistance to help disadvantaged households gain access to housing.<sup>221</sup> Chapter 12 deals with “Housing Assistance in Emergency Situations”, which provides assistance for people who “for reasons beyond their control, find themselves in an emergency housing situation such as the fact that ... *their prevailing situation poses an immediate threat to their life, health and safety*, or they have been evicted or face the threat of imminent eviction,” [emphasis added].<sup>222</sup> However, as Heléne Combrinck mentions in her report, the emergency housing assistance contemplated

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<sup>211</sup> National Development Agency, *Strategic Plan 2012-2017: Beyond 10 Years of Unlocking Potential*, at 10.

<http://www.nda.org.za/docs/NDA%20Final%20Strategic%20Plan%202012-2017%2012.04.2012.pdf>

<sup>212</sup> *Id.*

<sup>213</sup> See *Domestic Violence Act implementation: Department of Justice Briefing*, at 27.

<sup>214</sup> Interview with Linda Fugard. (16 October 2013).

<sup>215</sup> Combrinck, H. (2009). *Living in security, peace and dignity: The right to have access to housing of women who are victims of gender-based violence*, at 20. University of the Western Cape: Socio-Economic Rights Project, Community Law Centre.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* at 22.

<sup>218</sup> *Id.* at 20.

<sup>219</sup> *Id.* at 22.

<sup>220</sup> *Id.* at 23.

<sup>221</sup> *Id.*

<sup>222</sup> National Housing Code. (2009). *Incremental Interventions: Emergency Housing Programme*, at 9. Available at

<http://www.nwpg.gov.za/HumanSettlements/documents/2%20Volume%204%20Emergency%20Housing%20Programme.pdf>



in chapter 12 does not include funding for pre-existing shelters, but rather the use of shacks or tents on municipal land, which is not always suitable for abused women and their children.<sup>223</sup>

Some of national housing programmes, such as the Housing Subsidy Scheme, may be used to develop women's shelters but will not be able to cover operational costs or ongoing maintenance expenses.<sup>224</sup> As expected, these programmes are not without restrictions, for most intend to accommodate the needs of households rather than individuals, and require beneficiaries to comply with several requirements.<sup>225</sup> Because several shelters serve the needs of diverse groups of women, these limitations are likely to frustrate the purpose of the shelters by excluding access to a larger number of women. Perhaps the biggest hurdle to streamlining adequate funds to shelters is due to the fact that the Department of Housing has no policy dedicated to shelters.<sup>226</sup> Given the fragmented structure of the Housing Code and the endemic nature of domestic violence in South Africa, the Department of Social Development needs to establish a clear and comprehensive national housing policy.

## **B. REGIONAL LEGAL INSTRUMENTS**

Legal instruments that are specific to African countries and have been ratified by South Africa are of particular significance because they further obligate the State to adhere to its commitment to gender equality and human rights, as enshrined in the Constitution Act of the African Union.<sup>227</sup>

### **i. Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa**

The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa ("Maputu Protocol") came into force in November 2005 after being adopted by fifteen countries in the African Union, including South Africa in December 2004.<sup>228</sup> The Maputu Protocol provides comprehensive rights to women, including the right to political participation, to share the same social and political equality as men, to control decisions relating to their reproductive health, and to respect for her life, integrity and security of her person.<sup>229</sup> As a party to the Maputu Protocol, South Africa is required to implement substantive measures to confront all forms of violence against women.<sup>230</sup>

The funding crisis affecting women's shelters in the Western Cape implicates several articles of the Maputo Protocol. Article 3 guarantees the right to dignity, which requires state parties to adopt appropriate methods to ensure every women's right to respect and protection from all forms of violence, particularly sexual and verbal violence.<sup>231</sup> Article 16 entitles women to have equal access to housing, acceptable living conditions in a healthy environment, irrespective of a woman's marital status,<sup>232</sup> which the former United Nations Special Rapporteur on Adequate Housing described as an

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<sup>223</sup> Combrinck, *supra* at 24.

<sup>224</sup> *Id.* at 24-25.

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> African Commission on Human and Peoples' Rights. (2004). *Declaration on Gender Equality in Africa*. Available at <http://www.achpr.org/instruments/declaration-on-gender-equality-in-africa/>

<sup>228</sup> United Nations Press Release. (7 February 2006). "UNICEF: towards ending female genital mutilation." <http://www.scoop.co.nz/stories/WO0602/S00099.htm>

<sup>229</sup> See Maputu Protocol at art. 4(d).

<sup>230</sup> Combrinck, *supra* at 48.

<sup>231</sup> See Maputu Protocol at art. 3.

<sup>232</sup> *Id.* at art. 16.

ideal model for the “regional recognition of women’s equal rights to housing.”<sup>233</sup> Article 6 states that parties to the Maputu Protocol must make sure that married women enjoy the same rights as their husbands, by safeguarding their right to purchase property and administer it without restrictions.<sup>234</sup> Combrinck argues that this provision should be read with Article 7, which requires legislation to ensure that women and men enjoy the same legal protections in cases of separation, divorce or annulment of marriage, specifically with respect to the right to an equitable sharing of the joint property.<sup>235</sup>

A central mandate of the Maputu Protocol requires State parties to put the advancement of women at the forefront of their decision-making processes.<sup>236</sup> Although the government’s minimal level of funding to women’s shelters may not be gender-driven, the Maputu Protocol demonstrates how the funding crisis has a discriminatory impact on women. Therefore, the State’s blatant disregard for the disproportionate impact of the funding crisis on women, based largely in part of their historically-rooted subordinate position in society, not only violates the principles of the Maputu Protocol, but highly offends its objectives in advancing women. Because the government refuses to fulfill its obligations under the Maputu Protocol, indirect gender discrimination in its funding allocation creates fertile ground for domestic and gender-based violence to ravage the women in this country.

## ii. Southern African Development Community Protocol on Gender and Development

As of August 2011, South Africa had signed and ratified the Southern African Development Community (“SADC”) Protocol on Gender and Development, along with several other African nations including Namibia, Mozambique, Tanzania and Zimbabwe.<sup>237</sup> Recognizing gender equity as an integral part of democracy and development, the SADC established specific goals and time frames for achieving equality as well as procedures for monitoring and evaluating the progress of each Member State.<sup>238</sup> Because South Africa is legally bound by its terms, the SADC is an effective framework for evaluating whether its clauses are being incorporated into national legislation and if existing legislation upholds the SADC’s objectives.<sup>239</sup> In addition, it is also useful when comparing South Africa’s progress with that of other Member States.<sup>240</sup>

There are several articles in the SADC that deal specifically with gender-based violence, and call for the implementation of strategies to combat its various forms, including the enactment of legislative measures, provision of support services and training of service providers.<sup>241</sup> There are also specific provisions requiring the delivery of extensive treatment and support services for people who have experienced domestic violence, even though shelters are not expressly listed amongst these support services.<sup>242</sup> Furthermore, the SADC requires State parties to review all laws and policies by 2015 relating to “women’s access to, control of and benefit from productive resources in order to ensure that women

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<sup>233</sup> Combrinck, *supra* at 47-48.

<sup>234</sup> See Maputu Protocol at art. 6(j).

<sup>235</sup> Combrinck, *supra* at 48.

<sup>236</sup> *Id.*

<sup>237</sup> United Nations Women. (2011). *Using the SADC Protocol on Gender and Development as an Advocacy Tool*, at 2.

<http://www.ipsnews.net/publications/Using%20the%20SADC%20Protocol%20on%20Gender.pdf>

<sup>238</sup> *Id.* at 1.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.* at 1-2.

<sup>242</sup> Combrinck, *supra* at 49-50.

have access and rights to credit, capital, mortgages, security and training equal to those of men.”<sup>243</sup> Therefore, the absence of legislation relating to shelters in general is evidence of South Africa’s failure to fulfill its obligation to put gender equality at the forefront of its political agenda.

### C. INTERNATIONAL LEGAL INSTRUMENTS

International law is critical to consider in the context of the funding crisis for three important reasons.<sup>244</sup> First, South Africa is legally bound by the terms of the international legal instruments to which it has ratified.<sup>245</sup> Second, section 39 of the Constitution imposes an affirmative duty on courts to consider international law principles when interpreting the Bill of Rights.<sup>246</sup> Third, section 233 of the Constitution states, “When interpreting legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law *over any alternative interpretation that is inconsistent with international law,*” [emphasis added].<sup>247</sup> Therefore, it is critical to understand the international norms and standards related to housing when discussing South Africa’s obligations under international law to provide these services to women.

#### i. Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) is the most prominent international legal instrument regarding women’s rights.<sup>248</sup> South Africa ratified CEDAW in December 1995 and the Optional Protocol in March 2005 without reservation.<sup>249</sup> Since its ratification, South African courts have referred to provisions of CEDAW in their judgments regarding the government’s various duties to address violence against women.<sup>250</sup>

As a signatory to CEDAW, South Africa is legally obligated to “respect, protect and fulfill” women’s rights.<sup>251</sup> “To respect” the State must refrain from any conduct or activity that violates women’s human rights.<sup>252</sup> “To protect”, the State must stop infractions committed by private actors, including individuals, groups, institutions and corporations.<sup>253</sup> “To fulfill”, the State must take any necessary measure to achieve the full realization of women’s human rights.<sup>254</sup> Moreover, State parties are legally obligated to (1) incorporate gender equality into the fabric of their national legislation, (2) revoke all discriminatory provisions and laws, (3) adopt new legislation to protect against both direct and indirect discrimination against women,<sup>255</sup> (4) establish institutions that safeguard women against discrimination, and (5) make efforts to eradicate all types of discrimination perpetrated by groups or private individuals.<sup>256</sup>

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<sup>243</sup> Id.

<sup>244</sup> Id. at 32.

<sup>245</sup> Id.

<sup>246</sup> Id.

<sup>247</sup> See Constitution at § 233.

<sup>248</sup> Combrinck, *supra* at 35.

<sup>249</sup> Id. at 39.

<sup>250</sup> Id.

<sup>251</sup> Inter-Agency Network on Women and Gender Equality. (2013). *Convention on the Elimination of all Forms of Discrimination against Women (“CEDAW”): About the Convention*. Available at [http://www.unifem.org/cedaw30/about\\_cedaw/index.html](http://www.unifem.org/cedaw30/about_cedaw/index.html).

<sup>252</sup> Id.

<sup>253</sup> Id.

<sup>254</sup> Id.

<sup>255</sup> Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), at art. 4. (1979). Available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

<sup>256</sup> Id. at art. 2(e).

The right to be free from discrimination is covered in several areas related to housing, which include land, property, inheritance, ownership, loans, credit and the disposition of property.<sup>257</sup> While there are no provisions explicitly referring to violence against women, the CEDAW Committee has formulated guidelines to explain how gender-based violence fits within certain provisions of CEDAW.<sup>258</sup> Specifically, General Recommendation 19 declares that gender-based violence falls within the meaning of discrimination under Article 1 of CEDAW because it interferes with a women’s enjoyment of her fundamental rights and freedoms.<sup>259</sup> In addition, Recommendation 19 explains how gender-based violence fits within the protections of specific articles of CEDAW and clarifies the State’s obligations to address domestic violence, which includes providing legal assistance, preventative strategies, and protective measures to abused women and children, such as refuge, counseling, rehabilitation, and support services.<sup>260</sup> Furthermore, the Committee makes it clear that discrimination under CEDAW is not restricted to action by the government and that States may be found liable for failing to act with due diligence to prevent, investigate, or punish private acts of violence.<sup>261</sup>

## ii. Observations of the UN Committee to South Africa’s CEDAW Report in 2011

On 4 February 2011, the United Nations Committee on the Elimination of Discrimination Against Women submitted its comments to South Africa’s combined second, third, and fourth periodic report on the country’s progress in fulfilling its obligations under CEDAW.<sup>262</sup> The Committee called on South Africa to improve its national machinery by “strengthening linkages between the national, regional and local levels in relation to gender equality activities”, which included “gender sensitization” and “gender mainstreaming” by governmental departments.<sup>263</sup>

In addition, the CEDAW Committee discussed the dichotomy between the country’s “multi-sectoral approach” to combating gender-based violence and its failure to measure the impact or assess the effectiveness of its efforts.<sup>264</sup> Despite extensive programming at the operational levels of policy, legislation, administration, and victim empowerment, the Committee declared that “social support services, *including shelters*, are inadequate due to inappropriate budgetary allocations,” [emphasis added].<sup>265</sup> The CEDAW Committee called upon South Africa to review its current scheme of combating gender-based violence and to “expeditiously adopt comprehensive measures to better address such violence.”<sup>266</sup> Some of these measures include (1) raising public awareness through media and education programmes of the fact that all forms of violence against women constitute discrimination; (2) creating mechanisms of accountability to ensure that all provisions of the Domestic Violence Act and Sexual Offences Act are being enforced; and (3) allocating adequate budgets to ensure the availability of sufficient funds for programmes and services to abused women.<sup>267</sup>

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<sup>257</sup> Combrinck, *supra* at 35-36.

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Id.* at 37.

<sup>262</sup> See *Concluding observations of the Committee on the Elimination of Discrimination against Women: South Africa*, at 1.

<sup>263</sup> *Id.* at 4.

<sup>264</sup> *Id.* at 5.

<sup>265</sup> *Id.* at 6.

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

### iii. Optional Protocol to CEDAW

The Optional Protocol to CEDAW came into effect in 1999 and was ratified by South Africa without reservation in 2005.<sup>268</sup> The Optional Protocol includes two additional actions: the communications procedure and the inquiry procedure.<sup>269</sup> The Communications Procedure gives individuals and groups the right to contact the CEDAW Committee directly to report violations of CEDAW either by petition or by formal complaint.<sup>270</sup> The Inquiry Procedure allows the Committee to appoint experts to conduct investigations into systematic abuses by State parties and confront a wide range of issues regarding women in a particular country.<sup>271</sup>

In 2005, the Committee issued its first decision in *A.T. v. Hungary*, a matter that had been brought under the Optional Protocol to CEDAW.<sup>272</sup> In this case, the Complainant's husband had violently attacked the woman on more than one occasion, and threatened to kill her and rape both of her children.<sup>273</sup> She did not go to a shelter because none of them could accommodate the needs of her severely disabled child.<sup>274</sup> At the time of the events, Hungarian law had no protections for women who had experienced domestic violence, such as restraining orders.<sup>275</sup> After some time, her husband moved out but would frequently stop by the house, usually in an intoxicated state, to scream and shout and beat the Complainant.<sup>276</sup> On one particular occasion, the Complainant's husband broke into the house after discovering that the locks had been changed and beat her so severely that she had to be hospitalized.<sup>277</sup> The Complainant initiated proceedings against him, but the court ruled against her on grounds of (1) insufficient evidence documenting the abuse, and (2) unlawful restriction of his access to the family home.<sup>278</sup> She contended that her physical, mental and emotional integrity were at risk and that she lived in constant fear of her husband.<sup>279</sup> In support of her claim, the Complainant argued that her rights had been violated under articles 2(a), (b) and (e), 5(a) and 16 of CEDAW, and was entitled to damages resulting from Hungary's "passive neglect" of its obligations to protect her from the violent attacks by her husband.<sup>280</sup>

CEDAW ruled in the Complainant's favor, finding that "women's human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy."<sup>281</sup> The Committee's recommendations to Hungary were to (1) take urgent measures to ensure that AT and her family were physically and mentally sound, (2) make sure that AT was given a safe home to live with her children, (3) ensure her children receive sufficient support services and legal assistance, and (4) see that she receives damages proportionate to the physical and mental harm she endured, as

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<sup>268</sup> Connors, J. (2008). *Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women*, at 1. New York: Office of the United Nations High Commission for Human Rights. Available at <http://untreaty.un.org/cod/avl/ha/opceafdw/opceafdw.html>.

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> Combrinck, *supra* at 37.

<sup>273</sup> *A.T. v Hungary*, at para 2.1. Comm. No 2/2003. (2005). Available at [http://www.bayefsky.com/pdf/hungary\\_t5\\_cedaw\\_2\\_2003.pdf](http://www.bayefsky.com/pdf/hungary_t5_cedaw_2_2003.pdf)

<sup>274</sup> *Id.* at para 9.4.

<sup>275</sup> *Id.* at para 2.1

<sup>276</sup> *Id.* at para 2.2.

<sup>277</sup> *Id.* at para 2.3.

<sup>278</sup> *Id.* at para 2.4.

<sup>279</sup> *Id.* at para 6.3.

<sup>280</sup> *Id.* at para 9.2.

<sup>281</sup> *Id.* at para 9.3.

well as for the enormous violations of her rights.<sup>282</sup> To Hungary, in general, the Committee recommended that it implement a law that prohibits domestic violence and provides for support services, specifically shelters, which are capable of housing the severely disabled.<sup>283</sup>

#### iv. United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (“UNCRC”) is an international treaty that declares the civil, political, economic, social, health and cultural rights of children across the globe.<sup>284</sup> The treaty was adopted by the United Nations General Assembly in 1959 and has been signed and ratified by one hundred and ninety three nations, including South Africa in 1995.<sup>285</sup> Because South Africa ratified without reservation, it is legally bound to execute all terms of the UNCRC.<sup>286</sup>

The basic premise of the UNCRC is that children require special protections because their physical and mental immaturity renders them incapable of providing themselves with their basic needs and protecting their fundamental interests.<sup>287</sup> In itemizing their rights, which includes an adequate standard of living,<sup>288</sup> health and healthcare services,<sup>289</sup> social security,<sup>290</sup> and state assistance,<sup>291</sup> the UNCRC obliges State parties to promote the physical, psychological and social well-being of children.<sup>292</sup> Furthermore, the UNCRC explicitly obliges the South African government to use available resources to execute these duties.<sup>293</sup>

Although the UNCRC does not specifically relate to the rights of women, its terms obligate the South African government to adequately fund shelters housing women and their children. Because children are entitled to an adequate standard of living, which presupposes the existence of safe and secure housing *as well as* sufficient food and clothing, and because some shelters providing these services to children are at risk of closure, provisions of the UNCRC oblige the government to increase its funding to shelters across South Africa.

## VIII. CONCLUSION AND RECOMMENDATIONS FOR REFORM

Because women and children have the right to be free from violence, the State is constitutionally obligated to “fulfill” this right either by providing shelter itself, or by providing shelters with enough funding for them to execute these services on behalf of the State. Although DSD has described shelters assisting women and children who have experienced domestic violence as “an absolutely critical point of

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<sup>282</sup> *Id.* at paras I(a),(b).

<sup>283</sup> *Id.* at paras II(a)-(h).

<sup>284</sup> United Nations Covenant on the Rights of the Child (“UNCRC”), 20 Nov. 1989, 28 I.L.M. 1454 at Preamble. Available at <http://www.un.org/cyberschoolbus/humanrights/resources/child.asp>

<sup>285</sup> *Id.*

<sup>286</sup> South African Department of International Relations and Cooperation. (27 August 2005). *International Agreements and/or Conferences Signed by South Africa in Relation to the Youth, Children and People with Disabilities, Particularly in Regard to the United Nations and African Union*. Available at [http://www.dfa.gov.za/docs/2005pg/pg2\\_455.htm](http://www.dfa.gov.za/docs/2005pg/pg2_455.htm)

<sup>287</sup> See UNCRC at Preamble.

<sup>288</sup> *Id.* at art. 27.

<sup>289</sup> *Id.* at art. 24.

<sup>290</sup> *Id.* at art. 26.

<sup>291</sup> *Id.* at art. 18.

<sup>292</sup> *Id.* at art. 4.

<sup>293</sup> *Id.* at art. 34.

crisis intervention,” the sincerity of this statement is questionable given that shelters receive the least amount of funding from the State. Research into the financial status of shelters in the Western Cape and its consequential impact on abused women and children supports the contention that insufficient funding severely limits the ability of a shelter to provide critical and quality services to women and children, which has serious economic and social consequences for the State. Although a number of shelters have managed to survive in spite of severe economic difficulty, meeting the basic needs of residents is a daily struggle, and hundreds of women and children are turned away from their services because of limited funding and an insufficient number of shelters. Because shelters are deeply involved in both the prevention of and intervention in domestic violence, it is absolutely critical for the government to conduct extensive reforms regarding shelters housing abused women and children as part of enhancing its response to gender-based violence.

In light of the above, we respectfully request that the following recommendations be made for reform:

**1. Legislation/Policies:**

While the Domestic Violence Act (Act No 116 of 1998) makes provision for a member of SAPS to assist women and children who have experienced domestic violence in finding suitable shelter, it does not define the role of the state in providing shelters and their services. Therefore, there is a gap in the legislative framework in terms of both the provision and regulation of shelters. It is proposed that legislation is enacted to address this gap. The legislation should define the quality and standard of service provision in this regard and ensure that this is uniform across all the provinces. The process for developing such legislation should create and enhance a supportive environment for increased consultation and participation amongst all related stakeholders in efforts to address violence against women and their children, especially organisations working at community levels.

**2. Budgeting and Funding:**

The state currently only provides a small percentage, (in most instances less than a third) of the cost per head per day of each woman and her children at a shelter. When determining the grant amounts for shelters, the State needs to use the cost-benefit analysis conducted by Heinrich Böll Foundation and Sisters Incorporated when determining the grant amounts given to shelters, which estimated the unit cost of running a shelter to be R120 per person per day (in 2013). In addition, extensive research into the financial impact of domestic violence to the State needs to be conducted to ensure that adequate resources are appropriated for infrastructure, facilities, human resources with appropriate skills and training, the creation of supportive contexts and structures and all forms of practical support provided to abused women and children in the form of counseling, access to healthcare, etc. Currently, the appropriation of resources to victim support, specifically the support provided by shelters, is generally inadequate and serious intervention is required if Government is committed to addressing gender-based violence. To this end, there is a need to factor the different aspects of shelter-related costs into the budget votes of different Government departments. Gender responsive budgeting initiatives need to therefore be adopted and institutionalized. One way of doing this is for the National Treasury to find ways of incorporating and making visible budgeting pertaining to both preventing and addressing gender-based violence into the planning and allocation of all votes. This should be reflected in the Estimates of National Expenditure as well as in the strategic and annual performance plans of Government departments. This needs to be implemented in the budgeting for the 2014 financial year.



### **3. Coordinated Interdepartmental Response:**

In order to ensure that service delivery addresses the needs of women and children who have experienced gender-based violence, there is a need to synergise and bring together different players in the criminal justice system as there is much room for improvement in ensuring improved collaboration and information-sharing between the different players. DSD should take the lead in developing a coordinated response between departments, such as SAPS, Health, Human Settlements, Education, Community Safety, Economic Development, Transport, and Treasury, as well as other agencies, to enhance the delivery of shelter services to women and children who have experienced domestic violence. The coordinated response must include the development and implementation of effective multisectoral national policies, strategies and programmes, which include measures for support services and responses; data collection; research; monitoring and evaluation and clear timeframes and national benchmarks for results to be achieved. In addition, Government departments need to be held accountable in instances of non-performance in terms of providing this support.

## **IX. DUTY TO RESPOND: 1 FEBRUARY 2014**

In accordance with its mandate to “promote respect for gender equality and the protection, development and attainment of gender equality,” the Commission for Gender Equality calls upon (1) the Department of Social Development for the Republic of South Africa, (2) the Department of Social Development of the Western Cape, and (3) the Department of Treasury for the Republic of South Africa to fulfill their constitutional obligations to assist in the development of gender equality by adopting the recommendations set forth in this proposal. The response must include a thorough explanation of the specific measures to be taken by government to ensure effective implementation of these reforms for the 2014 financial year. In addition, consultations with the following Departments must be involved:

- (1) SOUTH AFRICAN POLICE SERVICE
- (2) DEPARTMENT OF COMMUNITY SAFETY FOR THE WESTERN CAPE
- (3) DEPARTMENT OF ECONOMIC DEVELOPMENT FOR THE WESTERN CAPE
- (4) DEPARTMENT OF EDUCATION FOR THE WESTERN CAPE
- (5) DEPARTMENT OF HEALTH FOR THE WESTERN CAPE
- (6) DEPARTMENT OF HUMAN SETTLEMENTS FOR THE WESTERN CAPE
- (7) DEPARTMENT OF TRANSPORT FOR THE WESTERN CAPE

The Commission for Gender Equality respectfully requests that the response to the proposal be submitted no later than 1 February 2014.