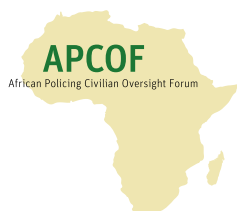




Utilising Relational Feminism to Engender the Police Response to Gender- based Violence

Dr Tarryn Bannister





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Abbreviations and acronyms

CPD	continuous professional development
CSPS	Civilian Secretariat for Police Service
DVA	Domestic Violence Act
GBV	gender-based violence
GBVF	gender-based violence and femicide
IPID	Independent Police Investigative Directorate
NGO	non-governmental organisation
NSP	National Strategic Plan (on Gender-based Violence and Femicide)
SAHRC	South African Human Rights Commission
SAMRC	South African Medical Research Council
SAPS	South African Police Service
SOA	Criminal Law (Sexual Offences and Related Matters) Amendment Act
VFR	victim-friendly room

Introduction:

The need for a transformative response to gender-based violence

Keywords

gender equality; policing; gender-based violence; accountability

While gender inequality permeates all aspects of society, gender-based violence (GBV) is the most extreme manifestation of this inequality. In South Africa, particularly, GBV has reached deeply concerning levels, prompting leaders to refer to it as an ongoing ‘war on women.’¹ The COVID-19 pandemic effectively exposed the structural discrimination experienced by women and girls, with the lockdown resulting in a spike in GBV and femicide.² The pandemic also caused extensive socio-economic suffering, which exacerbated the feminisation of poverty and contributed to the heightened levels of GBV.³ The failure to provide gender-sensitive COVID-19 response plans served only to amplify this disadvantage.⁴ For example, in the first week of the government-ordered lockdown, the South African Police Service (SAPS) reported receiving over 2 300 calls for help related to GBV.⁵ In spite of this, government-aided support services, such as shelters, were not initially factored into the design and implementation of measures introduced to control the spread of the virus.

Given the extreme levels of GBV, the devastation wrought by the pandemic, and the heightened powers assigned to state security forces during the pandemic, this research report utilises a relational feminist lens to review existing police response systems, as well as the judicial developments pertaining to police accountability for GBV. In doing so, the research report aims to identify gaps, and, ultimately, to distinguish potential solutions for fostering a transformative approach to police accountability, within the context of GBV.

Gendered accountability

Accountability is a fluid concept that is inevitably shaped by the relevant social and political context. Within the context of policing GBV, it entails clearly defining the powers and responsibilities of police officers, while monitoring and evaluating police conduct on a continuous basis. It also requires the SAPS to explain and justify its conduct to an external mechanism (such as Parliament),⁶ while allowing for sanctions or remedies when the police fail to comply with their duties in terms of the law. There are, furthermore, different forms of vertical- and horizontal-accountability mechanisms. With regard to vertical-accountability mechanisms,⁷ the primary relationship is between the state and nationals, with accountability exercised through elections. With regard to horizontal-accountability mechanisms,⁸ the primary relationship is between government agencies and bodies that specifically answer to each other.

As argued below, relational feminism's articulation of relational autonomy introduces a much-needed focus on organisational culture and the broader social norms and patterns of relating that enable police inefficiency and sexist conduct. This is important, as research has revealed the constitutive power of private relations, such as those within the family unit, in playing a political and socio-psychological role in establishing identity and entrenching inequalities.⁹ Jennifer Nedelsky has further pointed out that this relational influence extends throughout our entire lives, through all levels of social interaction. A relational feminist perspective accordingly recognises the significance of various relationships that shape our choices as well as our capacity to access resources and exercise rights. These private dynamics inevitably intersect with broader social patterns, shaping rights so as to offer varying levels of privilege to differently situated groups. Rights are not, therefore, stable givens. Rather, rights shift as relationships and relationship dynamics change.¹⁰ A relational feminist conception of accountability is therefore utilised in this research report to call for holding police institutions accountable for their role in constructing and perpetuating dysfunctional, gendered patterns of relating.

Section 1 of the Constitution of the Republic of South Africa, 1996 (the Constitution), states that South Africa is founded, *inter alia*, on the values of accountability and responsiveness. However, as pointed out by Stu Woolman, constitutional principles, such as the principles of accountability and equality, must translate into concrete measures that form part of the daily lived reality of everyday South Africans and public officials.¹¹

In terms of utilising a gendered notion of accountability, Lisa Vetten has identified the subthemes of legal, political, fiscal and administrative accountability. Legal accountability examines how the police enforce the law and the gender stereotypes evident in their decision-making and actions; political accountability may be assessed by the government's commitment to giving effect to gender equality and the extent to which women are able to participate in the formulation, implementation and evaluation of law and policy; fiscal accountability is determined by analysing patterns of expenditure on programmes and

legislation promoting gender equality; and administrative accountability may be evaluated through the nature and type of performance indicators adopted to measure compliance by state institutions (such as the SAPS) with their gender-equality commitments.¹² Moving beyond the performance of the SAPS, the gendered analysis of policing also needs to take into account the extent to which oversight institutions, such as the Independent Police Investigative Directorate (IPID), adopts a gender-sensitive approach to identifying and investigating complaints against the SAPS. Given the importance of gendered accountability, the following section examines how relational feminism facilitates substantive gendered accountability.

How relational feminism facilitates substantive gendered accountability

As indicated in the immediately preceding section, research has already revealed the constitutive power of personal relations in establishing identity and in shaping experiences and inequalities.¹³ Jennifer Nedelsky's relational feminist approach can therefore be utilised to reimagine police accountability in South Africa. A relational feminist approach supports the interrogation of existing background legal rules and practices (such as the traditional divide between the public and private spheres) and the true social impact of such distinctions.

A relational feminist approach calls for transformation through examining how police institutions and norms of behaviour are currently structuring relations that generate the specific problem. This approach further considers how these organisations and norms can be transformed in order to structure more constructive relations.¹⁴ This entails moving beyond focusing only on specific examples of police misconduct. Instead, the focus is on understanding the existing organisational culture and the broader social norms that foster sexist conduct by the police. In accordance with a relational feminist approach, there are four aspects underlying the current police response to GBV that need to be questioned and transformed.

First, there is the need to examine the social context through a relational feminist lens. Most approaches to GBV retain a primarily individualistic and criminal law focus, informed by liberal conceptions of privacy, choice and autonomy. The reality is, however, that GBV is caused by a number of complex and interconnected factors that require a transformative as opposed to a reactionary approach. GBV is not only a criminal law matter. It is also an economic issue that affects the feasibility of choice for women. It is, furthermore, a social issue, as gendered patterns of relating are learnt within the family, are reinforced by our broader community, and are passed on intergenerationally. A relational feminist lens highlights that a gendered hierarchy is embedded in social and cultural norms, which are then sustained through private violence and, ultimately, through an ineffective criminal justice response. It also reveals that violence, choice and autonomy need to be understood as systemic, relational and complex. The high levels of GBV also call for heightened accountability. As emphasised by the Constitutional Court:

This matter cannot be divorced from the horrific reality that this country has for far too long been, and continues to be, plagued by a scourge of [GBV] to a degree that few countries in the world [experience].¹⁵

Second, there is a need for a value-sensitive approach to responding to GBV. This entails establishing the particular competing values that are at stake in determining how to define accountability. As this step is value-sensitive, it enables one to question and examine the underlying assumptions that traditionally inform the interpretation of rights, responsibilities and values. This aspect is useful, as it tends to bring to the foreground the

underlying issues in the debate. This is necessary, as one of the policy arguments against responding to GBV is the protection of autonomy, or the perception that this is 'private violence', but without taking into account the relational social and economic conditions that shape women's choices and their private relationships. For many officers (and members of the public), there is often frustration regarding survivors who do not wish to proceed to court or who struggle to leave their abusive relationship.¹⁶ Conceptions of privacy, autonomy and choice therefore require in-depth analysis and development in relation to GBV, particularly as violence usually escalates when survivors attempt to leave a relationship.¹⁷ A relational feminist conception of autonomy requires full support for women's agency and calls for policing that is proactively responsive to the specific needs and choices of survivors.

The third step underlying a relational feminist approach entails questioning the kinds of relations that would give effect to the value of accountability. This entails questioning how the police response to GBV can be transformed so as to shift the locus of responsibility onto state institutions, while supporting the agency of survivors of GBV.

Finally, there is the need for transformative interpretations of accountability mechanisms so as to structure more constructive relations between men and women, and between survivors of GBV and the police. Such an approach requires more than simply recognising women's relational disadvantage; it also requires redistributive steps to dislodge the status quo and establish more equitable relations. Accordingly, there is a need to shift responsibility onto state institutions in terms of providing effective policing services and socio-economic solutions. While the police represent the criminal justice response to GBV, they are part of the overarching state response that should be challenging social norms and contributing to the change that needs to occur. While much work still needs to be done in this regard, South Africa's judiciary has already recognised the devastating impact of GBV, while calling for a heightened level of relational police accountability.

The Constitutional Court's endorsement of relational accountability

There have been a number of progressive South African judicial decisions¹⁸ that have recognised the devastating nature of GBV and which have further clarified the nature of the state's obligation to protect women against such violence.

In April 2022, the Constitutional Court handed down a landmark judgment in the case of *AK v Minister of Police*,¹⁹ finding that the SAPS was negligent in its response to the applicant's experience of being kidnapped, robbed and gang-raped for more than 15 hours in 2010. After her ordeal, the applicant spent years attempting to ensure that the police would properly investigate these crimes. Finally, she instituted an action in the High Court in November 2013 to hold the Minister of Police delictually liable for failing to conduct an effective search and investigation.

The High Court ruled in favour of Ms Kawa, finding the SAPS grossly negligent in the performance of its duties and of demonstrating 'extreme indifference'.²⁰ The SAPS, it held, failed to perform basic police tasks effectively (e.g. it failed to conduct a basic foot search in the immediate 75 minutes after the applicant's car was discovered, while the CCTV footage was viewed only eight years later). In spite of overt duties to address GBV through, for example, the 2020 Emergency Response Action Plan on Gender-Based Violence and Femicide (GBVF) as well as relevant National Instructions,²¹ the court's ruling raises red flags regarding how effectively these obligations are being implemented. While the Supreme Court of Appeal ruled in favour of the police in the initial appeal, the Constitutional Court ultimately found that the police had failed to act diligently and with the skill required by the Constitution. The case is particularly noteworthy for drawing on international law to further specify the duties of police officers when investigating GBV.²² These duties include never acting in a cavalier manner and never displaying indifference to the plight of survivors of GBV. The court further confirmed that it is not enough that the police simply respond to GBV; police officers must exemplify effective conduct in line with that expected of a diligent and reasonable person.²³

The Minister of Police argued that finding in favour of the applicant in these circumstances would have a chilling effect on the SAPS's ability to conduct investigations and carry out its constitutional mandate.²⁴ In contrast, the High Court found that *not* holding the SAPS accountable would undermine the ability of all who live in South Africa to enjoy their rights. The Constitutional Court further emphasised the relational importance of holding the SAPS accountable, finding that the 'chilling-effect' argument was at odds with the importance that the norm of accountability plays in the wrongfulness enquiry.²⁵ The Constitutional Court's findings confirmed that imposing liability in this case was an accountability-enhancing measure, as it strengthened the relational capacity for survivors of GBV to vindicate their rights.²⁶ It also underscored the importance of accountability for omissions committed by the state. While the doctrine of respect for individual autonomy usually requires restraint when imposing liability for omissions committed by private

persons, the position is different with regard to omissions committed by the state.²⁷ This is due to the fact that the state and its agents, including the SAPS, have a positive obligation to respect, promote and fulfil the provisions of the Bill of Rights, including the rights to equality and freedom from violence. The court's findings were informed by the current context of high levels of GBV and problematic policing, which is explored in further detail below.

The context: Problematic policing

Policing has undergone a significant shift in recent years. Social uprisings and publicised incidents of violence and abuse by police officers have resulted in significant distrust of the SAPS.²⁸ This, together with corruption and systemic challenges in fulfilling their constitutional mandate to deliver safety and security for South Africa, has resulted in the police being viewed as the least trustworthy institution in the country according to both Corruption Watch and the 2019 Global Corruption Barometer Report.²⁹

While the overall police response to GBV can be described as dismal, it needs to be emphasised that, given the complexity of this violence, police organisations alone cannot 'fix' this problem. As recognised by the United Nations, GBV is a social issue that requires a multifaceted social response.³⁰ This aligns with the socio-ecological model, which is the dominant paradigm utilised to understand GBV. According to this model, violence emerges from the interplay of multiple intersecting factors at different levels of the social 'ecology'.³¹ This complexity was recognised and confirmed in South Africa's National Strategic Plan on GBV and Femicide (the NSP). Gendered accountability therefore needs to be informed by an integrative and collaborative approach that recognises the complexity and multidimensional nature of GBV, and which seeks to create linkages and logical chains of cooperation between actors in the different sectors.³²

While the law and its enforcers have limitations, the police do have unique powers and responsibilities to protect women from harm, to refrain from harming women, and to refrain from entrenching sexist beliefs and social norms. The SAPS is, furthermore, a critical stakeholder in the fight to prevent crime in general and to combat GBV in particular. In *S v Baloyi*,³³ Justice Sachs emphasised that an ineffective criminal justice response to domestic violence, as one form of GBV, effectively intensifies the subordination and helplessness of complainants.³⁴ Police officers are, furthermore, in a unique position in that they usually have early contact with a complainant. As emphasised by Seehaam Sarai, Director of the Women's Legal Centre:

*The SAPS are often the first interaction or engagement that women will have with the justice system. They become the public face of government's commitment to address and eradicate gender based violence. There must therefore be a commitment within the highest ranks to address and meet these obligations.*³⁵

With regard to the police response to GBV, part of the problem is that policing is still considered a primarily masculine occupation. While masculine traits have their value, research has revealed that the overly masculinised organisational culture within police institutions ultimately influences the police response to GBV.³⁶ This results in the internal organisational culture serving as a barrier for women seeking to access justice.

While police officers, as the gatekeepers to the criminal justice system, should play a role in protecting survivors of GBV, there are numerous reports detailing the dissatisfactory police response to GBV. For example, the 2020 investigation of police compliance by the Western Cape Police Ombudsman revealed that 80% of victims who lodged complaints against the Family Violence, Child Protection and Sexual Offences Unit were not interviewed in private, while 60% were not afforded an opportunity to offer information during the investigation or trial.³⁷ In addition to this:

*80% of victims were not informed of their rights to protection from threat of harassment or intimidation; 60% of victims were not informed of available support services in their community; and none were informed on how to apply for monetary compensation where they had suffered damages or financial loss.*³⁸

Alarming, police officials are not only providing unsatisfactory response services, but are also often the perpetrators of GBV. For example, in 2020, police responded brutally to women protestors (who were protesting the high levels of GBV in South Africa).³⁹ In early 2022, a Limpopo police officer shot and killed his wife, Ndivhuwo Munyai, and later turned the gun on himself.⁴⁰ In January of 2022, a rape victim who sought police assistance in Brackenfell was subsequently raped by a police officer.⁴¹ These reports align with the Civilian Secretariat for Police Service's (CSPS's) February 2022 report to Parliament. The report noted that, through a visit to 460 police stations between April and September 2021, 239 police officers were reported to be perpetrators of domestic violence.⁴² Data from IPID also revealed that policemen have been accused of nearly 1 000 rapes since 2012. The report further revealed that up to 97% of those accused are not convicted in court, partly due to problems with forensic evidence.⁴³ While shocking, these cases represent only the tip of the iceberg, as GBV is notoriously under-reported. Through perpetrating GBV, often with impunity, and through causing secondary victimisation for survivors of GBV, the police are embedded within and effectively reinforcing inequitable gendered relations. While there are a number of oversight mechanisms that are aimed at improving services for survivors of GBV, the section below, in discussing these mechanisms, highlights a number of existing gaps.

Oversight measures

The high levels of GBV stand in stark contrast to South Africa's progressive constitutional, legislative and policy framework that seeks to combat gender inequality and instil police accountability. For example, the Constitution protects the rights to equality (section 9), life (section 11), and freedom and security of the person (section 12). With regard to the police response to GBV, the Constitution confirms that the objects of the police service include *protecting and securing the inhabitants of the Republic* (section 25(3)).

With respect to GBV, the SAPS has a number of specific responsibilities under the Criminal Law (Sexual Offences and Related Matters) Amendment Act (SOA)⁴⁴ and the Domestic Violence Act (DVA).⁴⁵ These legislative obligations include positive duties to protect persons who experience domestic violence, to manage the reporting and investigation of sexual offences, and to refer those reporting sexual assault and domestic violence to medical services and to shelters.

Following the historic 2018 Presidential Summit against Gender-based Violence and Femicide, the NSP was published in 2020. The NSP aims to provide a multisectoral, coherent strategic policy framework to strengthen a coordinated national response to GBV. It focuses on six pillars: improving accountability and leadership; engaging in prevention and the rebuilding of social cohesion; improving justice, safety and protection; providing responsive care, support and healing; building economic power; and enhancing research and information management systems.

In addition to the progressive constitutional, legislative and operational framework, there are both internal and external oversight mechanisms for the police in South Africa. These oversight mechanisms include internal complaints mechanisms and procedures within the SAPS for disciplining its members, as well as the CSPS and IPID.⁴⁶

The CSPS is mandated to conduct civilian oversight of the police, while also overseeing the implementation of the DVA. IPID is mandated to investigate complaints involving the police as well as any deaths or rapes that occur as a result of police action or while a person is in police custody. While both the CSPS and IPID are technically independent, concern has been expressed regarding whether these bodies have the capacity to fulfil their mandate due to inadequate funding and resources.⁴⁷

In addition to the CSPS and IPID, the South African Human Rights Commission (SAHRC) is mandated to investigate allegations of human rights violations, the Public Protector is mandated to investigate allegations involving corruption by state agencies, and there are a number of non-governmental organisations (NGOs) working on issues relating to the police. Many survivors of GBV have also turned to the courts to claim damages, while the Portfolio Committee on Police provides parliamentary oversight in relation to the implementation of existing legislation and policy. At the provincial level, there is the Police

Ombudsman for the Western Cape. While there are therefore a number of oversight mechanisms, gaps in implementation continue to exist.

Lack of legal accountability (sexist beliefs and police apathy)

As mentioned above, applicable legislation, such as the DVA, contains a number of progressive sections. However, there is a severe disconnection between these impressive rights and everyday policing practice. For example, despite the progressive provisions of section 2(a) of the DVA, many police officials do not assist complainants in accessing health-care facilities.⁴⁸

Research has also revealed that there is a lack of knowledge regarding the procedural provisions of the DVA. For example, in a study conducted by Gender Links and the Medical Research Council, it was revealed that only 9.8% of police stations in Gauteng complied with the DVA. The March 2022 CSPA report to Parliament⁴⁹ also confirmed that compliance with the DVA remains an issue. During the CSPA's follow-up presentation to Parliament on 25 May 2022, the CSPA again confirmed that there were gaps in the implementation of the DVA at police station level. This was shown by the high level of administrative and operational non-compliance. While the SOA also places detailed duties on the police when combating sexual offences, the problem of police apathy has been emphasised by Dee Smythe:

*The problem is not with the law in the books but with criminal justice practice. It is in the practical realities of everyday policing and in the attendant discretionary choices ... that police responses to rape crumble.*⁵⁰

These problematic attitudes are borne out by comments made by the SAPS leadership in 2020 in which views giving rise to concern were expressed regarding the responsibility of the police to respond to violence that occurs within private spaces. For instance, it was insinuated that this was a private matter falling outside the responsibilities of the police.⁵¹ Such a view is based on a liberal conception of autonomy and reinforces the traditional conception of the public-private law divide. In terms of the traditional conception of this divide, women remain confined to the private sphere, with violence in this sphere rendered 'invisible' and beyond state intervention. This liberal conception of privacy and autonomy is problematic for a number of reasons. One example of its limitations is that it primarily serves masculine conceptions of autonomy and freedom that reflect the reality of men's lives. While it is important to recognise that the public-private law divide does not reflect the non-binary reality of all lives, it is necessary to recognise, and address, all forms of subordination at all levels of society and to question conceptions of 'private violence'. This perception needs to be addressed, as this is a cultural norm that permeates policing institutions and social relations. Society and state institutions (like the police) must instead confront and address the many multilayered, routine and relational forms of domination that converge in the lives of many women, which limit their choices and their ability to escape abusive relationships.

The SAPS's response in the case of *AK v Minister of Police* is also concerning. Of concern is the Minister's argument that the applicant's case was not about GBV, and that it was not a constitutional issue but rather a 'normal delictual action'.⁵² The Minister of Police defended the SAPS's lacklustre services while downplaying the trauma that the claimant had experienced. This approach undermines the NSP's goal to strengthen leadership and accountability. If this negative conception of police accountability represents the underlying narrative informing the police response to GBV, it raises concerns about how effective the newly established GBV desks will be.

In addition to the weaknesses identified in the implementation of the legal framework for policing responses to GBV, the complaints system in respect of the SAPS is not sufficiently

responsive to women's needs, and is also not being effectively implemented. While a survivor of GBV who experiences poor service can report this to the relevant station commander, to the SAPS complaints centre⁵³ and to the Police Ombudsman (in the Western Cape), given the nuanced nature of GBV, most people who have been ill-treated may not want to return and complain at the same station. The difficulties of accessing police stations in rural areas further undermines the likelihood that socio-economically vulnerable women will have the capacity to return to the police station to make a complaint. For women who have been seriously injured, their primary concern (and need) may be to have access to emergency socio-economic relief, such as access to life-saving health care, or access to a shelter. The SAPS is obliged to facilitate this access in terms of section 2(a) of the DVA. In spite of this obligation, as mentioned above, there is a persistent failure by the police to implement the DVA.

The underlying beliefs of police officers, their actions, their decisions regarding how they investigate, and whether they facilitate access to health-care services or shelters and whether they encourage complainants to report their crimes, all have an impact on how the legal framework is implemented. These actions further indicate the value that is placed on the lives and the rights of women.⁵⁴ Such relational barriers to implementation therefore need to be addressed strategically and systematically.

Lack of political accountability through lack of transparent data

In spite of the various oversight mechanisms that exist, in South Africa, there is a lack of quality and reliable data on all forms of GBV as well as a lack of data on complaints of GBV against the police. With regard to the official statistics on crimes such as rape and intimate femicide, a number of critics have claimed that the SAPS statistics are inadequate, as they do not give an accurate depiction of the full scale of GBV.⁵⁵ Within the context of sexual offences, Lisa Vetten has emphasised that police data fails to provide information about the context in which specific forms of rape occur.⁵⁶ Relying on police statistics therefore poses certain problems. While the police statistics remain a point of contention, research undertaken by the South African Medical Research Council (SAMRC) in 2022 revealed that intimate-partner femicide has been decreasing since 1999. The study concluded that the rate of intimate-partner femicide declined from 8.8/100 000 population in 1999 to 4.8/100 000 population.⁵⁷ While this is a positive development, the level of intimate femicide remains extremely high, with the study highlighting a number of issues relating to missing data and police competence. This includes missing dockets, perpetrators not being identified during the investigation, and the failure to complete⁵⁸ over 2 000 police interviews that took place during the COVID-19 pandemic. The SAMRC emphasised that, in spite of its research highlighting (for almost two decades) that investigating officers need to enquire about previous intimate-partner violence, as part of the case investigation, 'there is a continuing lack of awareness of gender-based motivations for the murder of women among police, and failure to prioritise these cases.'⁵⁹

Gaps in the data on GBV also have an impact on the extent to which the police respond to GBV, and on budgetary and operational decisions that are made. For example, in 2020, the SAPS stated that it had identified GBV hotspots, claiming that these areas would receive additional resources and support. Lisa Vetten, however, has pointed out that the data that was used to identify these GBV hotspots was problematic. One of the reasons for this is that the police are inconsistent in the type of details they record. The crime statistics that are used to calculate the hotspots are for rape; kidnapping with the purpose of committing a sexual offence; trafficking, especially for purposes of sexual exploitation; murder and attempted murder within the context of domestic violence; and assault with intent to cause grievous bodily harm. However, in 2019–2020, the police provided no statistics on trafficking.⁶⁰ The police statistics for murder, attempted murder and assault with the intent to cause grievous bodily harm were also not disaggregated by gender.⁶¹

Vetten goes on to underscore that it is thus impossible to verify 'how many of these crimes occurred within the context of a domestic relationship'.⁶²

With regard to complaints levelled against police officers, members of the public are consistently urged to use the SAPS's complaints hotline. However, there does not appear to be a standardised and transparent system for dealing with these complaints.⁶³ In May of 2022, the National Assembly's Portfolio Committee on Police lamented the high number of complaints lodged by the public against the SAPS for its failure to implement the DVA. However, the Committee's press release failed to indicate the specific number of complaints. According to the SAPS's presentation to Parliament, during the period 1 March 2021 to 30 September 2021, only eight complaints against police officers were finalised.

Data on the different forms of GBV (such as trafficking and corrective rapes) and on complaints against the police are not the only missing piece of the puzzle. While research on combating GBV as well as the NSP have specifically recognised the integral importance of empowering women socio-economically,⁶⁴ there is inadequate data on the extent to which the police focus on assisting survivors in accessing emergency financial relief, health care and shelters, and on whether there are any consequences for failing to do so. The NSP goes on to specifically emphasise the need for an improved understanding of financial abuse within the context of domestic violence, such as in the case of maintenance defaulters. Given that a successful state response to GBV necessarily requires a redistributive element, the socio-economic aspect of GBV (and particularly of the DVA) requires further attention and training for officers. There is, furthermore, the need for more organised and quality data on all forms of GBV, for information on complaints against the police, and for disaggregation of existing data, both in terms of gender identity and sexual orientation.

Lack of political and fiscal accountability: Failure to establish the GBV Council

The NSP calls for a 'national, multisectoral coordinating body to be established within six months of the signing of the Summit Declaration' (which took place in 2018). This oversight body is intended to be championed by the President, with sufficient resources while being governed by a suitable statutory framework with transparent and inclusive representation. However, in the four years following the Summit Declaration, no real progress has been made with regard to this commitment. To date, the National Council on GBV and Femicide exists only conceptually, with the Bill 'currently being consulted before submission to Cabinet to request approval for it to be tabled in Parliament'.⁶⁵ Both the SAHRC and the NSP have emphasised the importance of continuous oversight in order to ensure the implementation of the NSP. This necessarily includes implementation of the provisions relating to accountability and the role of the police. The failure to establish this oversight body therefore speaks volumes about government's commitment to combating GBV.

Lack of administrative accountability through discipline failures and corruption

Even with existing accountability measures in place, corruption and a lack of follow-through with regard to disciplinary cases undermine a number of these mechanisms. In 2021, an investigative series by Viewfinder exposed loopholes in police discipline regulations which effectively allowed station commanders to protect their colleagues who had been accused of violence.⁶⁶

In one particular case, Viewfinder questioned whether the SAPS had enabled a murder via its historical failure to properly discipline a police officer who had assaulted the deceased,

in spite of repeated IPID findings of assault against him. Disturbingly, the article revealed that this lack of effective discipline was a common occurrence.⁶⁷ The inadequate disciplinary measures instituted within the SAPS and the lack of transparency regarding how officers were dealt with, were a particular point of contention during the May 2022 parliamentary meeting on the implementation of the DVA.

There are also gendered aspects of corruption, with women disproportionately representing the victims of abuse of power, bribery and patriarchy. Collectively, this contributes to the failure to prosecute cases of GBV.⁶⁸

Developments required

While South Africa's high levels of GBV have been exacerbated by the pandemic, we are not powerless to address it. The state (and the SAPS) can, and must, take concrete steps towards further empowering survivors of GBV and shifting gendered relations. There have, furthermore, been a number of positive developments that can be celebrated, for example: the development of the NSP on GBV, the increased political commitment to combat GBV, and the decrease in intimate femicide. However, there is still much work to be done.

Given that GBV is rooted in systemic inequality and dysfunction, the complexities in shifting sexist mindsets and abusive behaviour require extended interventions on multiple levels. A criminal law response that provides survivors with an avenue of complaint needs to be coupled with measures that are capable of changing the social paradigms which blame women for the violence they experience, and which expect women to avoid violence and remain silent. In accordance with the need to shift gendered relations and a relational feminist lens, a number of strategic steps are required. Examples of these steps include building capacity and expanding training, establishing the National Council on GBV, enhancing transparency through effective information management, and improving professionalism within the SAPS. These measures are discussed below.

Legal accountability (capacity building and expanded training)

While government policy (such as the Emergency Response Action Plan on GBVF) places responsibility on the police to combat GBV, there is a need to further enhance the role and the capacity of the SAPS in implementing the existing legal frameworks (such as the DVA). The SAPS has also lamented the high levels of attrition in domestic violence cases,⁶⁹ with the focus on complainants who withdraw cases. GBV is a complicated social problem, emerging from the interplay of multiple intersecting factors at different levels of the social 'ecology', including social and community norms. While the SAPS is correct that GBV is a broader social problem,⁷⁰ the SAPS should focus on the role of the police in fulfilling their constitutional obligations and in going back to the basics by providing effective investigative and protective services. The SAPS should also focus on its role in facilitating access to health-care services and shelters for women, as per section 2(a) of the DVA. The National Instruction 3/2008 on sexual offences also specifically requires every station commissioner to liaise with local representatives of the Departments of Health, the Department of Social Development, the local community police forum, and any other relevant local institution, in order to identify local organisations which are willing and able to provide counselling and other support services (including medical services) for survivors. There is, however, very little information available on whether police officers are trained in these duties.

As police officers are often the first point of contact for women experiencing violence, it is imperative that police institutions lead the way in developing and popularising a zero-tolerance policy in respect of GBV, including sexual harassment and other forms of sexual or gendered violence that occur within the organisation. The SAPS leadership must be particularly clear that it is committed to upholding a zero-tolerance policy and that this must be adhered to every day.

Improved leadership and accountability needs to be coupled with intensive training geared towards transforming the internal culture within police organisations. With regard to training, there is a need to ensure that training is offered on an ongoing basis and that it is updated in accordance with legislative and judicial changes and developments. Training should also be followed up with regular assessments and check-ins with personnel to determine the extent to which the training is being internalised. This is necessary, as, while the SAPS has reported to Parliament that domestic-violence training is part of the police training curriculum,⁷¹ there have been consistent problems with implementation. This was highlighted by the Western Cape Government's Report on Policing Needs, which stated that 74% of detectives at the province's top 20 police stations had not received training in the DVA.⁷² This is in spite of the NSP specifically referring to the need to train police officers. While the NSP also calls for the revised Guidelines for the Management of Survivors of Sexual Violence to be distributed to all police stations and for the SAPS to ensure that each investigating officer has been trained in these; it is unclear from the police reports to Parliament whether this has been done. There is, therefore, the need for increased transparency as to how many officers have been trained, the subject matter of the training, and whether the training has had a discernible impact.

In line with a relational feminist approach, training in GBV should also include a relational and reflective element, one that offers the opportunity for personal development and which provides support and skills in managing GBV in the lives of police officers themselves. This is emphasised in the NSP, which points out that those working in the criminal justice system should be open to interrogating their own value systems, and to making personal shifts that respect the rights of women, LGBTQIA+ persons, and victims from all walks of life. The need for further training has also been set out in the government's policy on reducing barriers to the reporting of sexual offences. While this policy specifically sets out requirements pertaining to the training of the police, the extent to which this policy has been implemented is unclear.

The need for further support and training was also raised in the Parliamentary submissions by the CSPS⁷³ as well as by the South African Minister of Justice and Correctional Services, Ronald Lamola.⁷⁴ The Minister specifically emphasised that there is a need for a broader understanding of, and response to, gender within government departments. This training is necessary given the patriarchal culture within police institutions and in the police response to survivors of GBV.

Improving political accountability (establishing the National Council on GBV)

The importance of political accountability has been underscored by Lisa Vetten:

In the case of the DVA, it was the increasing practice of political accountability between 2007 and 2013 that eventually converted a set of oversight mechanisms into an accountability structure. This pressure on SAPS to answer for the implementation of the DVA, resulted in a more substantive notion of accountability, one which resulted in greater responsiveness, transparency and liability.⁷⁵

However, while this resulted in a more cohesive set of institutional arrangements, more needs to be done to successfully alter police conduct.

The NSP specifically provides that the GBV Council is intended to be the custodian of the plan and will fulfil the role of strategic oversight regarding the realisation of the national outcomes outlined in the plan. The Council is also intended to facilitate programming, resourcing, and monitoring and evaluation while ensuring gender-responsive planning and budgeting. It is also meant to increase accountability, strengthen coordination and reduce impunity with respect to GBVF, and is required to report to the President through the Minister in the Presidency for Women, Youth and Persons with Disabilities. The NSP also calls for a comprehensive audit of all police stations and courts with a view to making recommendations that will facilitate victim-centric buildings. It is unclear, however, as to whether any progress has been made in this regard.

There is, therefore, the need to immediately establish the National Council, together with a costed and funded operational plan. In addition, there is a need for the development of measurable annual performance targets to be developed for every indicator of the NSP, particularly in relation to the Council and the work of the police.

Improving political accountability through enhancing transparency

The SAPS should demonstrate how it will strengthen the management and administration of disaggregated data on GBV, in all its forms and in terms of how it affects different groups, including on the basis of sexual orientation and gender identity.⁷⁶ This should be included in the SAPS's report to Parliament. This is necessary, as certain forms of GBV, such as sexual harassment, corrective rapes and human trafficking, have been rendered invisible within our society.

There is, furthermore, a need to develop and operationalise an online resource centre to exclusively archive and make accessible information on GBV for all interested parties. This needs to include a centralised and accessible case-tracking system that can link with various government departments, such as the police, the Department of Health, the courts, the Department of Social Development and NGOs, thus enabling all stakeholders to receive updated information on the status of a specific case, including cases against the police.⁷⁷ This online information system should include information from the Domestic Violence Registers (while de-identifying the complainants so as to protect their privacy).

Complainants lodging complaints of GBV should also be able to give an online rating of the services they have received at police stations. This is necessary, as complaints received about police performance from the public, as well as reports from oversight work by public representatives, must feed into an ongoing internal analysis of the police service in order to pinpoint areas of chronic dysfunction and enable meaningful troubleshooting and resolution.

The NSP has further emphasised the importance of 'citizen-based monitoring' of government performance and service delivery. Monitoring data generated directly by citizens, especially those affected and impacted by GBV, will be an important validation of progress made (or the lack thereof) by all stakeholders. This is particularly necessary in relation to rural police stations.

Information obtained from the Domestic Violence Registers should further inform the operational priorities of the SAPS so that such information can be used to identify which stations deal with the highest levels of domestic violence and thus require additional support to respond to cases and render appropriate assistance to victims. An effective information system can further foster the necessary cooperation that is required for an effective multisectoral response to GBV.

Fiscal accountability

While Lisa Vetten points out that the budget allocated for the implementation of the DVA is insufficient, the NSP has made a clear commitment to ensure sufficient funding for all levels of the government's GBV response.

During the SAPS's May 2022 presentation to Parliament on the implementation of the DVA, the SAPS confirmed that it had received an additional R100 million for GBV-related matters. While the May 2022 presentation to Parliament confirmed that an additional R100 million had been allocated to the SAPS, there is a need for a thorough, disaggregated budget analysis of allocation and expenditure on legislation, policy, training and programmes that are centred on combating GBV on an annual basis, and in a manner that is widely accessible to the public. In order to ensure that the GBV Council, IPID and the CSPS are able to effectively perform their duties, the government also needs to review the current budgetary allocations for these bodies.

There is also a need for improved collaboration and transparency regarding the funding provided for all government departments and how they are working cohesively. For example, in a September 2022 parliamentary meeting on GBVF,⁷⁸ the SAPS made a presentation in which it stated that there was a three-year plan in place to ensure an adequate number of victim-friendly rooms (VFRs) to accommodate survivors of GBV. In its report, it mentioned that, in the interim, facilities of sister departments (such as the Department of Social Development) and NGOs were being used to accommodate victims where police stations had not yet been capacitated. While the meeting did mention the importance of empowering women socio-economically, the Department of Social Development was not included in this meeting and there was no discussion concerning the exact budgetary allocations made in respect of SAPS. Although there was a request for further clarity on the NGOs that were working with the SAPS, there was no discussion regarding the financial struggles of these NGOs, many of which were facing closure due to shrinking funds.⁷⁹ There is, therefore, still a need for further clarity on how government funds allocated to addressing GBV are being spent. Priority areas should, however, deal with further training, improving basic services and reducing the DNA backlog, as well as with strong linkages that provide effective socio-economic support for survivors of GBV.

Administrative accountability

The continuing disjuncture between policy commitments and implementation speak to the need for job-related accountability. One way of achieving this is to ensure that combating GBV is incorporated into job descriptions, performance agreements, and detailed performance indicators.⁸⁰ This should also be coupled with regular, independent monitoring and evaluation of the handling of GBV cases by the police, including monitoring the quality and timeliness of investigations, and subsequently linking performance-related targets to these reviews. As further emphasised by the NSP, the concept of bold leadership needs to find expression in the vetting of all public servants.

In addition, complaints about police officers as well as reports must feed into the performance monitoring and assessment of police management, especially at station level, so as to hold management accountable for the localised resources and management authority entrusted to it. Where management falls short, remedial interventions must be implemented and, in cases of severe under-performance, the stations concerned must be placed under administration until the identified systemic defects are corrected.

There is, in addition, a need to further professionalise the industry. One way to potentially do this, is to create a continuous professional development (CPD) point system for police officers that is linked to engendered performance indicators. Just as financial advisors and medical practitioners are held accountable in terms of their level of competence and

compliance, police officers should be trained and tested on their level of capacity and knowledge, with their rank and salary connected to their level of compliance. This would open up the possibility for improved training on a range of extensive issues, including stress management and leadership skills, thus creating the potential to further empower police officers in other areas.

Conclusion

A relational feminist approach to addressing GBV does not solve all of the problems with regard to the police response to GBV. However, this article aims to highlight the need to examine the systemic and relational gender norms that contribute to GBV and the secondary victimisation of survivors of GBV. While some progress has been made, in terms of the development of an NSP on GBV and high-level political commitments to address GBV, there is a need to further improve the police response to GBV and to strengthen existing oversight measures. This is evidenced in the apathy demonstrated by police officers, the lack of sufficient data on GBV as well as on complaints against the police, the lack of discipline and high levels of corruption, and the continued failure to implement key policies and plans (such as the failure to establish the GBV Council as per the NSP on GBV).

In accordance with a relational feminist approach, there is a need for responses that are able to shift systemic inequality and entrenched gender bias. Examples of developments that are required include building capacity through offering improved, ongoing (and expanded) training for police officers. There is, furthermore, the need to establish the planned GBV Council, to ensure the strategic collection and sharing of disaggregated data on GBV and complaints against police officers, and for heightened screening of police officers. With regard to fiscal accountability, there is a need for heightened accountability through a disaggregated analysis of budgetary allocations made, as well as the need for heightened collaboration between governmental departments (such as the Department of Social Development) and NGOs that are supporting survivors of GBV, in order to ensure socio-economic empowerment for women (as envisaged by the NSP). In terms of administrative accountability, there is a need to develop engendered policing indicators which can be coupled with efforts to effectively professionalise the industry through, for example, CPD training. In this manner, the SAPS can play a more significant role in protecting survivors of GBV and in contributing to the change that needs to occur.

Endnotes

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- 19 [2022] ZACC 14.
- 20 Ibid., para 20.
- 21 For example, the National Instruction 3/2008 on sexual offences requires the station commander to have a list of organisations that provide counselling and support for survivors of rape (section 3(1)). It further requires the police officer to determine if the survivor needs medical treatment and, if so, to arrange for such treatment. Section 10 then refers to the specific requirements regarding the medical examination of rape survivors.
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About this report

A relational feminist lens is used to review existing police measures and response systems to GBV. This paper aims to identify gaps, and ultimately to distinguish potential solutions for fostering an engendered approach to democratic policing. The need for a transformative approach is necessary given the patriarchal culture within most police institutions and in the police response to survivors of GBV, which still often entails victim-blaming, and ultimately a failure to deliver appropriate and quality investigatory and support services to victims. Ultimately, this paper aims to discuss the need to shift the current response to gender inequality and GBV as one that is cautious and primarily focused on negative duties, to one that is progressive, accountable and transformative. The paper was presented at a Conference on Democratic Policing: The African Continent, conducted virtually by AAAJD in 2022 through a series of webinars. The Conference's theme was *Democratic policing: The African context*.

About the author

Dr Tarryn Bannister, Project and Research Officer at APCOF, holds an LLB degree from Stellenbosch University. Following this, she completed a research Masters cum laude through Stellenbosch University on the right to have access to health care services for survivors of gender-based violence. In 2016 she completed her doctorate in law, titled 'The implications of a relational feminist interpretation of the socio-economic rights of female cohabitants'. During her postgraduate studies she lectured at Stellenbosch University. Tarryn has significant experience in legal compliance, legal practice, human rights and higher education.

About APCOF

APCOF is a not-for-profit trust working on issues of police accountability and governance in Africa. APCOF promotes the values which the establishment of civilian oversight seeks to achieve, namely: assisting in restoring public confidence developing a culture of human rights, promoting integrity and transparency within the police service; and maintaining good working relationships between the police and communities.

About the AAAJD

The Afro-Asian Association for Justice Development (AAAJD) is a partnership of nongovernmental organizations on police and justice reform working in the continents of Africa and Asia. It is a not-for-profit and non-governmental international alliance and works from a multicultural perspective to improve public safety and justice in democratic societies.

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