

JOINT SUBMISSION ON THE DRAFT WHITE PAPER ON SAFETY AND SECURITY



Joint submission by:

1. Afrika Tikkun's Young Urban Women
2. AIDS Legal Network
3. Gender Health and Justice Research Unit, University of Cape Town
4. Isidima Sam
5. Masimanyane Women's Support Centre
6. Progressive Women's Movement of SA
7. Children's Happy Home Development Youth Centre
8. Rapcan
9. Sonke Gender Justice
10. SWEAT/Sisonke
11. Treatment Action Campaign
12. Triangle Project
13. Wellness Foundation
14. Western Cape Network on Violence Against Women
15. Women on Farms Project
16. Women's Legal Centre
17. Young Urban Women

For enquiries:

Ms Anielia Batschari

Coordinator of the Shukumisa Campaign

coordinator@shukumisa.org.za

18 September 2015

Contents

1. Introduction	4
2. Participation	4
3. Effective criminal justice system	5
3.1 Comments on terms.....	6
3.2 Lack of data	9
3.3 Diversion.....	9
3.4 Criminalisation of sex work.....	9
3.5 Inter-sectoral and inter-departmental coordination	10
3.6 Police and criminal justice officials	10
4. Early intervention and prevention	11
4.1 A healthy start for infants and children, including first 1000 days of life, pre-school and school children, and their parents, caregivers, guardians	11
4.2 A safe and supportive home, school and community environment for children and youth	12
5. Victim support	13
6. Public participation.....	15
6.1 New and existing structures and plans	16
6.2 Resources and capacity	17
6.3 Specific gaps identified.....	17

1. Introduction

At the outset, we welcome the opportunity to make written submissions on the Draft White Paper on Safety and Security and wish to thank you for extending the deadline for submissions to allow our position to be considered in the finalisation process.

This is a joint submission, resulting from a joint workshop process at which all the above-mentioned organisations engaged critically with each of the themes contained in the Draft White Paper on Safety and Security (DW PSS), and the DW PSS as a whole.

The submission is structured to address only those themes contained in the DW PSS that resonate with our organisations from the perspective of **gender-based violence**, and is directly informed by our areas of expertise, our own experiences, and the experiences of our clients and/or constituents.

2. Participation

In order for a policy-making process to be truly participatory, the persons affected most by a particular issue must have an opportunity to engage with policy and policy-makers. While we understand that you have previously published this DW PSS for public comment, we wish to point out several aspects we believe hinders real public engagement on this important document:

- The DW PSS is only available in English;
- The DW PSS is not available in a format that allows illiterate or sight impaired persons to engage with it.

We are aware that this is not specific to the Civilian Secretariat for Police (CSP), and that draft policies and laws are ordinarily not made available in all 11 official

languages of South Africa, nor are they made available in formats that allow for differently-abled people to easily and independently make their contribution. However, we would be remiss if we did not point out this difficulty with public participation in the finalisation of this document. We strongly recommend that once finalised, the document is made available in languages other than English, and with a view to allowing differently-abled persons to have knowledge of its content.

Linked to the issue of language and format accessibility, is the issue of plain language. While we understand the need to preserve conceptual nuance, we strongly recommend simplifying the language of the document, and avoiding the use of jargon as far as reasonably possible.

Another general observation with regards to the document as a whole is that fact that the roles and place of civil society organisations (CSOs) are not always clearly defined, or recognised. There is limited mention of cooperation with CSOs, and where it is mentioned, it is not clear how this cooperation is to be managed going forward. **Most conspicuous by its absence is the lack of a policy statement about sufficient, fair and timely state resourcing for non-governmental organisations that provide critical services relating to the criminal justice system, and in relation to prevention and early intervention.**

At times reference is made to “non-governmental organisations”, and at times use is made of the term “non-state bodies”. It would be useful to define at the outset what is meant by “civil society” (whether it includes CBOs, NGOs, etc.), and what is meant by “non-state bodies”, and to use an appropriate collective noun(s) consistently throughout the document.

3. Effective criminal justice system

We are pleased to see this theme expressly stated in the DWPSS, and we believe it is a key area for improved service delivery and effective resourcing.

However, if the DWPSS is to form the foundation for improving the response of the criminal justice system to crime and violence, and if the criminal justice system is to play a role in prevention, we must pay close attention to the language used. It is with this in mind that we would like to make the following submissions on the terms and definitions used in the DWPSS.

3.1 Comments on terms

While acknowledging the specific vulnerability of women and children in society, the current DWPSS may serve to further portray static binaries relating to gender where women are always the “victims” and men always the “perpetrators”. This not only serves to disempower women and undermine women’s agency, but will inadvertently be a driver of secondary victimisation of victims of crime who do not identify as female (including but not limited to men, transgendered and gender queer individuals), especially where such individuals are victims of sexual violence and intimate partner violence.

In relation to the use of the term, “vulnerable groups”, we welcome the clear acknowledgement in the DWPSS that violence and crime affects different groups of people in different ways. This understanding is important. However, the current formulation of who constitute “vulnerable groups” is problematic for several reasons.

The first is that it is inconsistent: the vulnerable groups listed in the table in the beginning of the document differ from those discussed later in the text. The text includes LGBTI people, whereas the table does not. Similarly, where the text deals with factors that influence the “life course” of a person, a different set of criteria which are said to be drivers of vulnerability are used. Finally, when referring to reliable disaggregated statistics, the paper uses yet another set of characteristics which are seen as useful for understanding vulnerability. We suggest that one set of characteristics, which inform vulnerability, is developed and used consistently

throughout the document. In this regard one could make use of the definitions and categories contained in existing legislation dealing with discrimination. We also suggest that while the “life course” approach is a valuable one, it should include socio-economic indicators and their effect on the life course of people and its relation to being drivers of both perpetrators and victims of crime.

The second is that the list is incomplete: the current formulation does not include sex workers, foreign nationals and refugees or other factors that might likely be drivers of vulnerability to crime.

The third is that the list does not foster an understanding of intersectionality: using lists such as these does provide scope for the overlapping and cumulative vulnerabilities experienced by individuals and groups. For example, while sexual orientation is a clear driver of victimhood of crime, it is often the presence of other factors and co-existing vulnerabilities that make a black lesbian woman vulnerable – in a way that a white lesbian woman is often not. We suggest the inclusion of a disclaimer, which indicates that these “categories” of vulnerable people serve **only** as a guide, to help people understand that not everyone has the same vulnerability. However, the mere possession of the traits of vulnerable group does not automatically make you vulnerable, nor does it make you vulnerable in the same way as other members of that group.

In respect of the term “restorative justice”, research suggests it means “restoring the person who has been the victim to the position that they were in before the crime”. This assumes that it is possible to know what position the person was previously in. It also assumes that, before the violence or crime against the victim took place, the victim was in a circumstance they would wish to be restored to. We suggest that the term “transformative justice” is used instead.

The term “responsive” is used throughout the paper but is not clearly defined. The current formulation could lead to an interpretation where any response – even one that in no way addresses the initial concern – is still a response. We suggest that

“responsive” be defined, with an emphasis on appropriateness, timeliness and impact on the victim. We also suggest the insertion of “non-discriminatory” in the description of this theme, to read “(e)fficient, responsive, non-discriminatory and professional criminal justice system”.

The concept of “violence” is currently defined in broad developmental terms, as “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation”. We, however, submit that violence includes not just action, but inaction by those with power and authority, i.e. structural violence. It is important to expand the definition of violence to include structural violence.

In its discussion on LGBTI people, the DWPSS includes the phrase “choose to love”. We are not in favour of the conceptualisation, because it inadvertently perpetuates a problematic stereotype, namely that non-heterosexual sexual orientation is always a “choice”, as opposed to an inherent sexual characteristic. Also, while trying to achieve the opposite, the current framing of the understanding around who people “choose to love” perpetuates myths and stereotypes relating to homosexual and/or bisexual sexualities and sexual behaviour, as well as what is thought of as “acceptable”/“understandable” - with reference to heteronormative subjectivities with religious overtones. All human beings may engage in relationships based on “love”, but we may also do so based purely on physical attraction or a multitude of other reasons. Mention of only one reason influencing such choices (“love”) may ultimately have unintended discriminatory impact, and belies an underlying value judgment. Accordingly, we suggest that the reference to “choose to love” should be deleted.

In respect of the use of the term “families”, we find the proper contextualisation of the term is lacking. Without context, referral in the DWPSS to families – either in the document itself or in the reference and context legislation provided – may be narrowly interpreted. We suggest that the DWPSS define “family” in an inclusive and

broad manner, with the express understanding of functional dependency and need beyond the traditional bonds of blood.

3.2 Lack of data

While the DWPSS does speak to the need for data collection to improve, and the need for disaggregated data, this is not enough. The current formulation of the DWPSS does not make it clear how data would be collected, centralised and made useful, and how inter-departmental cooperation would be authorised and operationalised. The practical arrangements to allow departments to collect data in a standardised way, and to share such data, are absent from the document.

We suggest a strongly articulated commitment to standardised, accurate data collection, which should include clear instructions and mandatory collection and reporting of data in a centralised manner. We also suggest broadening the base of data collection to include community-based organisations, non-governmental organisations, and academic and research institutions.

3.3 Diversion

The DWPSS is unclear about diversion in cases of repeat offenders. This is problematic for sex workers in particular, for as long as sex work remains criminalised. We suggest a more detailed definition of what diversion entails, including its operation in the case of repeat offenders.

3.4 Criminalisation of sex work

Current legislation continues to entrench the vulnerability of sex workers who are often denied access to efficient justice themselves, while being victimised by the criminal justice system for their work. Decriminalisation of sex work is an important step to reducing the stigma and the vulnerabilities of sex workers and encouraging efficient and professional services. We suggest that the DWPSS should include an

express recognition of the human rights violations against sex workers that are bound to continue, for as long as sex work remains criminalised.

3.5 Inter-sectoral and inter-departmental coordination

The DWPSS is largely silent on how interdepartmental coordination will be practically operationalised and managed. In the absence of some operational and management guidelines and benchmarks, the same challenges currently facing cooperative governance structures will continue, despite the recognition that service delivery in the context of gender based violence must be inter-departmental and intersectoral in order to be successful. We suggest that the DWPSS reflects frankly and critically on the reasons why interdepartmental collaboration so often fails, and uses the lessons learnt to outline better policy positions on how to achieve interdepartmental collaboration. This should include a policy position on specific budgeting for such collaboration, and its administration.

3.6 Police and criminal justice officials

For some in South Africa, it is a sad reality that victimisation often comes from officials in the criminal justice system. For certain vulnerable people in South Africa, the SAPS in particular are able to abuse their power with little recourse. This is particularly true for foreign nationals and refugees as well as sex workers. There are many cases in which SAPS and other justice personnel are involved in, or abetting incidents of gender-based violence. This is exacerbated where an official has access to firearms.

Further, the same justice personnel experience high levels of trauma, secondary trauma and stress, and their role in safety and security may be compromised if these stresses are not acknowledged and attended to.

We suggest that the DWPSS includes an understanding that members of the SAPS and other justice personnel play a role in crime and victimisation, in particular against vulnerable groups and in relation to their families. We also suggest that the DWPSS includes a policy commitment to improve the working conditions and access to mandatory psycho-social support for officials working in the context of gender-based violence.

4. Early intervention and prevention

We believe that poverty alleviation is at the heart of prevention of gender-based violence and early intervention. We also believe that gender education, as opposed to just sex education, is critical for children of all ages, if we are to shift the power balance in our society, which currently exists in favour of heterosexual, cis-gendered men. Such education should go beyond addressing the narrow “male against female” conceptualising of gender-based violence.

4.1 A healthy start for infants and children, including first 1000 days of life, pre-school and school children, and their parents, caregivers, guardians

We are in favour of the holistic approach adopted by the DWPSS in this regard. However, we have identified the following gaps in the current formulation of this aspect of the theme and the manner in which it is fleshed out in the DWPSS:

- Teachers are not included in the list
- Community members are not included in the list
- Corporal punishment of children is an ongoing problem currently and needs to be addressed
- Children are often neglected and are at risk even at school
- There is a lack of infrastructure to monitor safety at schools
- Minimum norms and standards for schools are lacking

We would like to make the following suggestions in this regard:

First, we believe that reference to Ubuntu must be included in the DWPSS, especially in this particular context. We would also suggest a clear policy commitment to:

- 4.1.1 Appointing of quality teachers, caregivers and guardians, and the mandatory use of existing mechanisms such as screening against the Sexual Offenders Register and the Child Protection Register;
- 4.1.2 Increasing the number of teachers in the classroom to have better oversight, less risk and negligence – especially in early childhood development centres where young children cannot easily speak for themselves when abuse occurs;
- 4.1.3 Training teachers in schools to promote safety and prevent crime and violence, as well as all community members who all impact and play a role in children’s development and safety; and
- 4.1.4 Improving security infrastructure, e.g. providing cameras across campuses and school grounds, and environment inspectors to assess safety of school grounds.

4.2 A safe and supportive home, school and community environment for children and youth

We are likewise in favour of the approach to this aspect of the theme in the DWPSS. However, we submit that more detail can and should be provided on how the desired outcomes will be achieved.

We suggest a clear, policy commitment to taking more specific action, perhaps including but not limited to:

- 4.2.1 Providing physical safety around schools and aftercare facilities, such as fencing and gates around school premises;
- 4.2.2 Increased security around playgrounds and parks, such as security huts to monitor children playing and moving around this area;
- 4.2.3 Big brother/sister programmes – creating after-school programmes in community centres where older youths take care of younger ones in a structured and safe way;
- 4.2.4 Providing education on positive parenting, mother/fatherhood, sexual and reproductive health and rights, gender and sexual orientation, human rights, and corporal punishment. This will necessarily entail the creating of safe environments to have discussions/workshops on these topics for adults and parents who are then able to identify problems their children have and ensure their safety;
- 4.2.5 Creating support groups through antenatal groups;
- 4.2.6 Providing specific school buses to transport children to and from school without additional stops; and
- 4.2.7 Community mobilisation, programmes and education, which can lead to better parenting and open discussion between parents and children.

5. Victim support

Under this theme, the DWPSS should meet the five recommendations in *The Road to Justice: Victim Empowerment Legislation in South Africa Road Map Report*, a report

produced by Rape Crisis Cape Town Trust, Open Democracy Advice Centre and the Women's Legal Centre.¹

The report concluded that in order for victims of gender based violence, and victims of crime in general, to be properly assisted and supported, five key areas need to be addressed:

- Communication and education for the public on how the criminal justice system works, and what victims' rights are;
- Providing victims with more information about their individual cases and how to track their progress;
- Empower and support victims with greater psychosocial care;
- Develop inter-sectoral collaboration between all of the relevant departments and role players in the criminal justice system; and
- Create better accountability mechanisms and a centralised complaints system.

Despite the DWPSS's express mention of the Victim's Charter, very few people in South Africa are aware of the Charter, its content, and most importantly, how to enforce the rights contained in the Charter. There is also very little public information available, through accessible and inclusive channels that take into account the challenges raised above, on the general workings of the criminal justice system, particularly courts. We suggest that the DWPSS make a strong policy commitment to forging new, innovative, evidence-based ways to effectively educate members of the public about these issues.

We also suggest a clear commitment to the progressive roll-out and dedicated resourcing of service delivery models that are proven models of good practice, including: Sexual Offence Courts; Thuthuzela Care Centres; Family and Child and Sexual Violence Units; and victim-friendly facilities at relevant service points.

¹ Available at <http://www.shukumisa.org.za/wp-content/uploads/2010/11/The-Road-to-Justice-Research-Report.pdf>

Victim support services must be inclusive, accessible, and of a high quality. The DWPSS should provide some content to the idea of “quality” services, in this regard, that is focussed on victim experiences and outcome. To this end, we suggest a stronger policy commitment to progressive resourcing, and gauging the sentiment of those making use of the support services, and whether the services are experienced as intended – it will be particularly important to pay attention to the experiences of vulnerable groups and communities. The experiences of victims, as they move through the criminal justice system and other relevant systems, must be the most important indicator of progress and success.

Inter-departmental collaboration and information sharing is critical to providing victims with a seamless continuum of care that does not cause secondary trauma, and that allows a victim to track progress with their case through the system. The DWPSS should reflect critically in the existing hurdles to successful collaboration, and commit to overcoming these hurdles.

What is also critically absent from the DWPSS is a policy commitment to a central, well-publicised complaints mechanism that can be used by members of the public that receive unsatisfactory service. There is a critical paucity of well-known, user-friendly avenues for complaint and recourse, both in the criminal justice system and beyond, when victims of crime have their rights violated by those working in the system.

6. Public participation

The treatment of this theme in the DWPSS is generally vague, and does not appear to be informed by sufficient community engagement on what public participation should entail. The current policy commitment on public participation must be articulated far stronger, and in a more practical manner if it is to translate into active steps to improve such participation.

6.1 New and existing structures and plans

We are concerned that the current approach appears to assume that existing public participation structures are functioning optimally, or are completely dysfunctional and must be entirely replaced.

We would suggest an analysis of existing public participation structures with a view to ascertaining how and why they are functional or not functional, as a basis for taking policy stances that will bring about positive change. For example, the DWPSS introduces “community safety forums”, but fails to compare or contrast them with community policing forums, and the institutional challenges experienced by community policing forums. Under the circumstances, it is not clear why a new structure is being introduced, whether it will supplant the community policing forums, and the reason for this. There is also very little critical reflection on why the National Crime Prevention Strategy could not be implemented properly, and how this DWPSS will avoid similar pitfalls and challenges.

Further, the rationale for the introduction of a National Safety, Crime and Violence Prevention Centre is entirely unclear in the current DWPSS. We suggest an explanation of why it is required, how it will function, and what its powers and functions will be. We also suggest that this be preceded by an analysis of what existing structures there are that could fulfil this role, and why they have been deemed unsuitable.

We urge you to guard against the proliferation of new structures, resulting in confusion, duplication and wasteful expenditure, as opposed to making better use of what already exists. Time and resources should be spent on capacitating existing structures to achieve the necessary goals, unless it can conclusively be proven that existing structures are completely unsuitable and need to be dismantled. In this regard, there should be a clear indication of what structures will be retained, and what structures will be dismantled or replaced.

6.2 Resources and capacity

We are encouraged by the way in which the DWPSS addresses resourcing and capacity, specifically the stance on the manner in which resources should be allocated.

However, we suggest that the same language in respect of resourcing national government (see clause 6.3.1 in the DWPSS) should be used consistently in relation to the resourcing of provincial and local government.

6.3 Specific gaps identified

We believe there is scope for improvement of the content of this theme, specifically the following aspects:

- 6.3.1 There are several areas for improvement We believe that the DWPSS should adopt a strong non-partisan approach, making it clear that goals must be achieved in collaboration despite party politics at all levels of government and at community level;
- 6.3.2 We also suggest that “community engagement” and “accountability” be defined in this context, with an emphasis on quality and footprint of such engagement. This will help avoid a “tick-box” approach to community engagement;
- 6.3.3 A clear definition of “active citizenry” will likewise bring about further clarity for those who live in South Africa, and the role we are all expected to play;
- 6.3.4 A clear recognition of the fact that municipal structures are dysfunctional (at ward level, district level, and especially in rural areas) accompanied by a clear policy commitment to work closely with the Department of Cooperative

Governance and Traditional Affairs to ensure good communication with communities on ward level - not only before and during elections;

6.3.5 A clear policy commitment to government costing of public participation, which recognises that structures and mechanisms cannot be used by people who are unable to travel to the relevant meeting spaces and events. This is especially important in rural areas, and at grassroots level where people are most affected by gender-based violence and crime;

6.3.6 We strongly suggest the inclusion of the business sector, and the collaborative role it is expected to play in prevention and early intervention, notably in relation to central business districts and city improvement districts;

6.3.7 In respect of monitoring and evaluation, we suggest a clear policy stance on the manner in which public participation opportunities will be better publicised and advertised in the future, in a manner that is inclusive and accessible to ordinary people. We suggest an express policy statement about the importance of the community voice on monitoring and evaluation – the experiences of ordinary people would be valued as the most important indicator of improvement, and strategies for gauging public sentiment should consider geographical, socio-economic and other challenges.
