



Ms CN Ndaba

Chairperson: PC on Women, Youth and Persons with Disabilities

For attention: Ms. Neliswa Nobatana

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19 May 2023

Submission on the National Council on Gender-Based Violence and Femicide Bill [B31-2022].

We attach our written submission in response to the invitation for comments on the National Council on Gender-Based Violence and Femicide Bill [B31-2022].

We would like to confirm our interest in making oral representations at a later convenient date.

Should you have any queries, it would be appreciated if you could contact me at the following email address: nicole@hsf.org.za.

Yours sincerely

A handwritten signature in black ink that reads 'Nicole Fritz'.

Nicole Fritz

Director

Executive Director: Nicole Fritz
Trustees: Nick Binedell • Max du Plessis • Cora Hoexter • Nick Jonsson • Daniel Jowell • Kalim Rajab • Gary Ralfe • Phila Zulu
Patrons: Prof. Thuli Madonsela • Lord Robin Renwick



1. Introduction

1.1. This submission serves to signal the Helen Suzman Foundation's ("HSF") broad support for the National Council on Gender-Based Violence and Femicide Bill [B31-2022] ("Bill").

1.2. The Bill seeks to establish the National Council on Gender-Based Violence and Femicide ("Council") and to provide for its objects, functions and appointees. The Council's purpose is, among other things, to eliminate gender-based violence ("GBV") and femicide by implementing the 2018 National Strategic Plan on Gender Based Violence and Femicide ("NSP");¹

1.3. HSF submits, in summary, that:

- 1.3.1. the Bill's definition of GBV should be expanded to include violence based on gender identity and sexuality;
- 1.3.2. the NSP's deadline of March 2024 for achieving its targets should be extended to allow the Council time enough to formulate their action plan to implement the NSP ("Action Plan"), seek public comment thereon and properly implement the Action Plan itself;
- 1.3.3. the Bill's inter-sectoral approach to eliminating GBV and femicide should include the organs of state listed in Pillar 1 of the NSP as well as the National Prosecuting Authority ("NPA") and the Department of Basic Education ("DBE");
- 1.3.4. the Bill must provide for the Council's operational structures so that it can best implement the Council's Action Plan at national, provincial and local levels;
- 1.3.5. the Council's Chief Executive Officer ("CEO") must be sufficiently independent; and
- 1.3.6. oversight of the Council must be improved by: establishing a Parliamentary Oversight Committee dedicated to implementing the NSP and by providing for regular reporting periods and public participation in the Council's reporting processes.

¹ The NSP can be read [here](#).

2. The Bill's Definition of GBV

- 2.1. Section 1 of the Bill defines GBV without expressly including non-conforming sexual or gender identities. In doing so, the Bill leaves out of the Council's purview significant groups of people who are also at risk of violence animated by exactly similar prejudice and stereotypes.
- 2.2. Moreover, the NSP expressly caters for people with non-conforming sexual or gender identities and it stands to reason that the Bill should do so as well to ensure that the Council effectively implements the NSP.

3. The Council's Implementation of the NSP

- 3.1. Section 5(1)(a) of the Bill requires the Council to implement the NSP through its Action Plan.
- 3.2. To ensure the Action Plan's effectiveness, the public and relevant stakeholders must be allowed to make comment thereon before it is adopted. To the extent that the Bill allows the Council to review and subsequently amend the NSP, future versions of the NSP – and any consequent Action Plan – should also be subjected to a public participation process.
- 3.3. Further, the Council may find itself pressed for time in formulating and implementing its Action Plan, given that the NSP has set March 2024 as the deadline for achieving its targets. This is because the Bill allows for six months after the Council has been established to formulate its Action Plan. This is on top of the time it will take to pass the Bill and appoint the Council's members. As such, the NSP's deadline should be reasonably adjusted.

4. Operational Gaps

- 4.1. Section 5(1)(h), read with section 16(b) of the Bill, requires "inter-sectoral" co-operation between "ministries, departments and different levels of government" when combatting GBV and femicide.
- 4.2. Given that the Bill does not specify a closed list of participants in its proposed inter-sectoral approach, HSF submits that these structures must include: the Commission for Gender Equality; the South African Human Rights Commission; the Public Service Commission and the Cultural, Religious and Linguistic Rights Commission. These entities are all listed under Pillar 1 of the NSP, which suggests its own vision for a co-ordinated effort against GBV and femicide, and it stands to reason that they should be a part of the Council's co-ordinated efforts as well.

4.3. However, HSF submits that these efforts should also include the DBE and NPA, given the priority that the NSP gives to schools-based initiatives and prosecutorial effectiveness in combatting GBV and femicide.

4.4. Further, section 5(1)(i) of the Bill requires that the Council monitor and evaluate the NSP's implementation nationally, provincially and locally, as well as in "community and other forums." However, the Bill does not, but should, provide for structures through which the Council carries out its mandate at each of these levels. The Bill could do this in three ways:

4.4.1. the Bill itself could detail these structures;

4.4.2. the Bill could provide that the Minister of Women, Youth and People with Disabilities ("Minister") make regulations, in consultation with the Council, to provide for such structures; or

4.4.3. the Bill could require that the Council include local, provincial and national operating structures as part of its Action Plan – on condition that the Action Plan is subject to public consultation before it is adopted, as we submitted in paragraph 3.3.

5. Appointment of the Chief Executive Officer

5.1. As it stands, the Bill does not guard against appointing persons with conflicts of interest as the Council's CEO. This could be especially problematic when the Council embarks on its inter-sectoral approach to implementing the NSP. As such, HSF submits that a further criterion of the CEO position must be that the appointee is sufficiently independent of interests that could interfere with the Council's mandate.

6. Increased Oversight and Accountability

6.1. As it stands, the Bill does not, but should, render the Council accountable to Parliament, via a dedicated Portfolio Committee. In this regard, it is notable that the NSP also suggests a Parliamentary Oversight Committee dedicated to monitoring the NSP's implementation.

6.2. HSF recognises that section 5(1)(j) of the Bill requires that the Council report to Cabinet. However, this reporting function could be enhanced by: specifying reporting intervals; making reports publicly accessible; and by providing for public comment in this reporting function.

6.3. Additionally, section 20 of the Bill does not, but should, provide for public participation in the Council's annual reporting function to Parliament. A good example to follow in this regard is section 6 of the National Minimum Wage Act No 9 of 2018, which provides that public views are reflected in the annual review report of the National Minimum Wage Commission.

7. Conclusion

7.1. In conclusion, HSF welcomes government's implementation of the NSP via the Council to eliminate GBV and femicide in South Africa.

7.2. However, HSF has submitted that the Bill can be improved by: using more inclusive language in the Bill's definition of GBV; providing guidance as to the Council's operational structure at national, provincial and local level; and ensuring increased public participation in formulating the Council's Action Plan and in its reporting processes.