



higher education  
& training

Department:  
Higher Education and Training  
REPUBLIC OF SOUTH AFRICA

# Policy Framework to address Gender-Based Violence in the Post-School Education and Training System

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Version 4.0

For Public Comments

15 April 2019

## Foreword

The President of the Republic of South Africa, Mr Cyril Ramaphosa, in his address at the *Presidential Summit on Gender-Based Violence and Femicide* on 1 November 2018, said that gender-based violence is “a crisis that is tearing our society apart. It is a crisis that affects every community in our country and that touches the lives of most families in one way or another. Gender-based violence is an affront to our shared humanity”.

We have been talking about the problem of violence for many years. We have developed a range of programmes, developed new laws since 1994 - yet the scourge of violence, especially gender-based violence, seems increasingly brazen and difficult. We as the Post-School Education and Training (PSET) System have to work harder at creating a safer caring society with a concerted focus on safety and protection of all people, in particular our female students and staff. As some often remind us, these problems exist in other parts of the world too. Our concern however, is that they seem not to be incidental but are a deeply entrenched part of our social fabric.

With this Policy Framework we want to direct the PSET system in contributing to identify effective responses and solutions to what is clearly a deeply complex social challenge for South Africa. It is our vision that this Policy Framework will become part of the solution, not only to address gender-based violence in our institutions, but also to engage society and communities in curbing gender-based violence.

Gender-based violence is not acceptable. Condemnation needs to be constant and consistent, perpetrators need to be prosecuted. It requires that we address societal issues of patriarchy, economic relations and changing the way of thinking about gender relations. No man is entitled to exert economic and other forms of power over women. And no woman must find themselves tolerating the injustices perpetrated against them, simply because they may have inadequate economic or emotional resources to walk away from a dangerous relationship. Preconceived notions of how women and men should behave must be addressed - no person has the right to treat anyone as inferior or to harm them in any way.

Men and women are equal in all respects.

A society that does not support notions of authority and control over women, and does not tolerate violence against women, is more likely to reduce gender-based violence. By working together, by confronting difficult issues, and by mobilising everyone in and around our institutions, we shall create a society where everyone, especially women, feel safe and are safe at all times and in all places.

Dr GNM Pandor, MP

Minister of Higher Education and Training

Date:

## Acronyms

African Union	AU
Commission for Conciliation, Mediation and Arbitration	CCMA
Commission for Gender Equality	CGE
Community Education and Training	CET
Council for Higher Education	CHE
Convention on the Elimination of All Forms of Discrimination Against Women	CEDAW
Declaration to End Violence Against Women	DEVAW
Department of Higher Education and Training	DHET
Department of Planning, Monitoring and Evaluation	DPME
Department of Health	DoH
Department of Justice and Constitutional Development	DoJ&CD
Department of Women	DoW
Department of Social Development	DSD
Domestic Violence Act	DVA
Gender-Based Violence	GBV
Gender-Based Violence Command Centre	GBVCC
Intimate Partner Violence	IPV
Higher Education and Training Health Wellness and Development Centre	HEAIDS
Human Resource Development Council of South Africa	HRDC
Lesbian, Gay, Bisexual, Transgender, Queer or Questioning and Intersex	LGBTQI
National Policy Framework	NPF
National Prosecuting Authority	NPA
Post-school education and training	PSET

Promotion of Equality and Prevention of Unfair Discrimination Act	PEPUDA
Sexual Offences and Related Matters Amendment Act, 32 of 2007	SORMAA
South African College Principals Organisation	SACPO
South African Medical Research Council	SAMRC
South African Police Services	SAPS
Students Representative Council	SRC
Student support services	SSS
Technical and vocational education and training	TVET
Universal Declaration of Human Rights	UDHR
Universities South Africa	USAf
United Nations	UN

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# 1. Introduction

## 1.1. Background and rationale for the Policy Framework

The Universal Declaration of Human Rights (UDHR) proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217A) sets out fundamental human rights to be universally protected. The Universal Human Rights Framework, on which the South African Constitution (Act No 108 of 1996) is based, regards gender-based violence (GBV) as one of the serious crimes that violates the right to life, equality, human dignity, freedom and security of the person. The right to human dignity, in particular, is always violated in all cases of GBV.

The rights of all people of South Africa are enshrined in the Constitution (Act No 108 of 1996), particularly Chapter 2 (the Bill of Rights). These rights affirm the democratic values of human dignity, equality and freedom. The state and all its organs must respect, protect, promote and fulfil the rights in the Bill of Rights. It protects in specific the rights of women and the Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Intersex (LGBTQI) communities against all forms of GBV and discrimination.

It is therefore on this basis that concerted efforts should be made to eliminate the scourge of GBV in the Post-School Education and Training (PSET) System. PSET institutions have a duty to respect, protect, promote and fulfil the rights of students, staff and any other people within the space in which they operate. PSET institutions are confined spaces where people from different socio-economic backgrounds meet and interact at different levels and on many different aspects, thus there is an urgent need for the democratic values of human dignity, equality and freedom to be affirmed and promoted.

GBV is a global phenomenon.

The latest statistics of the World Health Organisation reflects that 35% of women worldwide experienced either physical or sexual intimate partner violence (IPV) or non-partner sexual violence. This is an alarming figure that underscores the need for global cooperation in overcoming gender-based violence.

In South Africa the problem is even more severe. High levels of violence have been a prominent historical feature of South Africa.

We have, relative to international means, high levels of violence and criminality. According to the South African Police Services (SAPS) Crime Statistics report of 2018, 50 108 cases of sexual offenses were reported in 2017/8 - a 0.9% increase from the previous year and that femicide increased by 11% over the last two years. The most recent data from the World Health Organisation shows that South Africa's femicide rate was 12.1 per 100 000 in 2016. This is almost five times higher than the global average of 2.6 per 100 000. Statistics South Africa

(Stats SA) in the *Crime against women in South Africa (2018)* report, estimates that 138 per 100 000 women were raped in 2016/17, the highest rate in the world.

Statistics drawn from studies by the Medical Research Council and the Centre for Public Mental Health on IPV reveals that:

- Every eight hours (on average), a woman dies at the hands of an intimate partner in South Africa;
- IPV is the most common form of violence experienced by South African women and is the leading cause of death among South African women;
- More women are killed by their current or former intimate male partner in South Africa than in any other country in the world;
- Victims remain hesitant to disclose their situation because of the stigma attached to IPV. Those who do report incidents reportedly deal with public servants who fail to detect their problem or deny that it exists; and
- Of pregnant women, 36-40% experience physical IPV and 15-19% experience sexual IPV. The violence increases the risk for the baby, which could be born pre-term and with a low birth weight.

Furthermore, gender stereotyping in society and patriarchy inter alia have produced a pattern of unequal social relations. Men and women do not experience the same forms of violence and nor do they experience violence to the same extent. In contrast to men, women have been more likely to be blamed for much of the violence inflicted upon them which has also not historically been regarded as criminal, nor provided with effective legal remedies. This is evident from the fact that sexual harassment was not recognised as a wrong in the workplace until 1989, while it took until 1993 for a husband's rape of his wife to be treated as a crime. It should however be conceded that the legal framework has gradually changed since the advent of democracy in 1994.

GBV has plagued the PSET system for quite some time. More cases of rape and murder of women students have been reported in recent years. Most of these crimes against women were perpetrated by men who were well known to the victims as partners, former partners or fellow students. This has resulted in students protesting against unsafe environments and demanding gender transformation in institutions. These protests have negatively affected the academic calendar of institutions and in some instances interfered with their academic progress.

GBV has also been linked to other societal problems such as drug and alcohol abuse, abuse of people with disabilities, safety of students and staff on campuses and in student residences, and mental health problems such as depression on the part of victims and their families. It further places a huge burden on the resources of institutions as they are required to render

support to the student/staff member through many phases of the process towards healing. The healing process could be very long and the psychological scars can be everlasting.

The Department of Higher Education (DHET/the Department) therefore needs to put measures in place, not only to address the increased occurrence of GBV on campuses, but also to prevent GBV from happening on campuses as well as the correct and systematic monitoring and reporting of it.

## **1.2. Scope of the Policy Framework**

Following the policy directives presented in Chapter 2 of the 2014 *White Paper for Post-School Education and Training*, this Policy Framework sets out the strategic intent of the DHET to curb the scourge of GBV in PSET institutions. The scope of this Policy Framework is the entire national PSET system – institutions and organisations, including universities, technical and vocational education and training (TVET) colleges and community education and training (CET) colleges, as well as skills providers, but not at the schooling sector. The Policy Framework applies also to all students, whether full-time or part-time, residential or online, as well as all staff of institutions and organisations.

It also applies to registered and legally operating private PSET institutions (higher education institutions, colleges and skills providers) as these too are required to operate in terms of the Constitution (Act No 108 of 1996), and other applicable law, as well as workplaces and places where practical learning or workplace based learning is taking place. It furthermore applies to Sector Education and Training Authorities (SETAs), Quality Councils reporting to the Department, as well as the South African Qualifications Authority (SAQA), the National Student Financial Aid Scheme (NSFAS), the National Skills Authority (NSA), the Human Resource Development Council of South Africa (HRDC), and the National Skills Fund (NSF).

The term ‘institution’ is further used in this document and includes all the above institutions and organisations.

This Policy Framework also addresses all forms of GBV, inclusive of sexualised violence and harassment, as well as IPV. While women are most frequently the victims of these particular forms of GBV, the Policy Framework recognises that men are also subject to these harms, as well as LGBTQI individuals.

This document is thus inclusive, irrespective of position, role, sexual orientation, and gender identity or gender expression. Nonetheless, precisely because these acts and crimes are not gender-neutral, use of the gender binary is retained in order to highlight the key role gender plays in these various abuses.

### 1.3. Purpose of the Policy Framework

Through this *Policy Framework to address Gender-Based Violence in the Post-School Education and Training System*, the DHET is creating an enabling environment for the eradication of GBV and instil respect, protection, promotion and fulfilment of human rights as enshrined in the Bill of Rights of the Constitution of the Republic of South Africa (Act No 108 of 1996). The Policy Framework intends to assist PSET institutions to address the occurrence of GBV and to provide a monitoring instrument to the Department to assess the implementation of the Policy Framework.

The Policy Framework aims to:

- i) Conceptualise GBV and define its manifestation in terms of existing laws and policies;
- ii) Detail the international and national regulatory framework compelling institutional and departmental responses to GBV;
- iii) Provide guidance around the structures, mechanisms and processes that PSET institutions must put in place to address GBV;
- iv) Compel PSET institutions to both create awareness of GBV policies and prevent incidents of GBV; and
- v) Set out a framework for oversight of the DHET and PSET institutions' development and implementation of policy.

### 1.4. Policy development process

#### 1.4.1. Background to the development of the Policy Framework

In the second half of 2016 and amidst protest action on university and TVET colleges' campuses throughout the country, the issue of GBV once again come to the forefront. Institutions highlighted the need for the PSET system to actively address GBV that has long plagued campuses and the country at large. It became evident that policy and programming was an imperative course of action. It should also be noted that campus programmes were further disrupted by anti-rape demonstrations during and post-*FeesMustFall* and other protests.

As a result of these protest actions, the Deputy Minister of Higher Education and Training mandated the *Higher Education and Training Health, Wellness and Development Centre* (HEAIDS), a programme of the Department, to implement a GBV programme in university and TVET college campuses to mitigate the problem.

In this area HEAIDS aims to:

- develop an integrated model for managing sexual and GBV at PSET institutions with specific emphasis on policy interventions to eradicate GBV;
- improve victim/survivor support services; as well as
- address GBV more broadly in society.

It is against this backdrop that HEAIDS led several key activities in collaboration with key role players across the country, inclusive of government and donor partners to develop a GBV Policy Framework for the PSET system.

In addition to technical guidance and support, the United Nations Population Fund (UNFPA) and United Nations (UN) Women, provided financial support to the development of the Policy Framework by funding a technical assistant and also providing funding for the consultative process.

#### **1.4.2. Processes in developing the Policy Framework**

Key to the development of the Policy Framework has been the following:

- **Convening of the GBV Technical Task Team (TTT)**, made up of a range of internal and external experts in the field of GBV, programme experts, sector leaders, government representatives, student activists and leaders and donor and development partners. These include the South African Medical Research Council (SAMRC), the Departments of Social Development (DSD), Health, Women, Higher Education and Training, and Justice and Constitutional Development and the National Prosecuting Agency (NPA). The PSET system was represented by DHET staff, university and TVET colleges staff and principals;
- A **Technical Assistant** was appointed to support the work of the TTT in developing the Policy Framework. The TTT collaborated with both the UNFPA and UN Women;
- Further to the convening of the TTT in October 2016, the team constituted itself into **Policy and Programmes sub-committees**, each with a focused agenda directed at guiding the formulation of the Policy Framework and a set of minimum standards to guide institutional level programming and implementation;
- An **extensive consultation process** commenced at the inception of the drafting of the Policy Framework and continued during the course of the development. Three significant GBV student dialogues were facilitated at University of Zululand, University of Venda and Umfolozi TVET College. These dialogues were critical in enabling the leadership to hear the voices of students and staff and to also understand the stark realities on the ground. These dialogues will continue in the next coming months;
- Internal consultation took place in the DHET and with the Minister;
- In collaboration with the DHET, a joint session between University Vice Chancellors and College Principals and the Executive Director of UN Women was facilitated;
- The DHET co-ordinated further consultations with the Departments of Social Development, Health, Women, Basic Education, Justice and Constitutional Development, SAPS and the National Prosecuting Agency;
- In parallel the Policy Framework is being subjected to the Socio-Economic Impact Assessment System (SEIAS) through the Department of Planning Monitoring and Evaluation (DPME). It will be consulted widely through the public comment process; and

- For the final approval of the Policy Framework, the Council for Higher Education (CHE) will be consulted and asked to advise the Minister as the Policy Framework will also be applicable to universities of all types in the country.

### **1.5. Evidence-based policy development**

This Policy Framework was developed by integrating experience, judgement and expertise with the best available external evidence from research. A consultative approach and the SEIAS methodology were included that represents a more rigorous, rational approach that gathers, critically appraises and uses high quality research evidence to inform policymaking and professional practice.

Evidence was used to:

- i. Understand the policy environment (national and international context);
- ii. Appraise the likely effects of policy changes, choosing between different policy options and subsequently assessing their impacts (SEIAS methodology);
- iii. Demonstrate the links between strategic direction, intended outcomes and policy objectives and impact, to show the clear lines of argument and evidence between current practice and the aims outlined in the Policy Framework (theory of change);
- iv. Determine how to meet the strategic goals, outcomes and objectives (strategic objectives and implementation strategy); and
- v. Influence institutions, partnerships and stakeholders to achieve and implement policy goals (implementation strategy).

### **1.6. Structure of the Policy Framework**

The Policy Framework is organised into four sections, namely an introduction; the conceptual framework; the strategic intent; and the policy implementation strategy that includes monitoring and evaluation.

The conceptual framework conceptualises ‘gender-based violence’ within the context of PSET institutions and organisations. It outlines the principles that underpin policy development and implementation in the PSET system. Sections follow on the international context, agreements and treaties relevant to GBV, and on the legislative and policy context in South Africa.

The document furthermore sets out the policy framework’s strategic intent. The DHET’s vision for PSET is presented with an emphasis on the system that assists in building a fair, equitable, non-racial, non-sexist and democratic South Africa and that is responsive to the needs of the individual citizens and of employers in the public and private sectors, as well as broader societal and developmental objectives. Aligned with the 2013 White Paper for PSET, it then formulates the vision statement of the Policy Framework and discusses the goals, outcomes adopted and the strategic objectives of the Policy Framework in terms of the theory of change

that underpins the Policy Framework. It furthermore delineates the detailed policy actions emanating from the strategic objectives.

The high level implementation strategy addresses the co-ordination needed to ensure the sound and sustained implementation of GBV policies; formulates the policy instruments and steering mechanisms to be used in implementation; and mandates the formation of steering mechanisms. Within the context of the DHET's and the *Policy Framework for the Realisation of Social Inclusion in the PSET System's* (2016) monitoring and evaluation frameworks, this policy framework then outlines the instruments for monitoring and evaluating the implementation of open learning. It also includes brief descriptions on institutional implementation, funding, and the evaluation and review of the policy framework are provided.

## 2. Conceptual Framework

The DHET affirms its commitment to democratic values of human dignity, equality and freedom and therefore commits to respect, protect, promote and fulfil the rights of all people in the PSET system.

### 2.1. Conceptualising Gender-Based Violence

The World Health Organisation states that 'sex' refers to "the biological and physiological characteristics that define men and women," and 'gender' refers to "the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women".

Gender is therefore used to differentiate people as either masculine or feminine, with these divisions informed by individuals' biology, as well as their demonstration of certain roles, behaviours, attributes, abilities and capacities. While these gender constructs and categories change over time and vary widely within and across cultures, most societies value differently the capacities, abilities and traits attributed to men and women, with those defined as feminine often treated as inferior to those defined as masculine. This has the effect of making relations between men and women unequal on a range of dimensions, as well as societies characterised by masculinist domination.

As the World Health Organisation stated, there is a close and intimate relationship between gender and sexuality. In the same way that societies associate particular abilities and behaviours with specific bodies, so they similarly map sexual practices and expression onto those particular bodies. Dominant conceptions of gender also assume that there are only two sexes, rather than a spectrum, and that people's gender identities will always correspond with their bodily features.

Closely linked to this is the belief that people are only attracted to those whose sex is different to their own, constructing heterosexuality as the only 'normal', acceptable form of sexual practice. Heterosexuality, in turn, is often based on norms that position women as sexually passive and men as sexually aggressive. As a consequence, women are denied sexual agency while men's sexual needs are elevated to the level of entitlements. Where these sorts of norms are prevalent, women may be perceived as signalling their sexual availability through their dress and/or conduct, while men may be excused for their violence on the grounds of their overwhelming sexual urges.

Despite the fluidity of gender identity and expression, many societies closely police men and women's behaviour to prevent deviation from gendered heterosexual norms. Where people do not comply with these social expectations, violence, abuse, discrimination and related intolerance may be employed to force conformity, to punish, or to assert dominance and so enforce gendered social relations and hierarchies.

The term GBV has thus been coined in recognition of the ways in which gender shapes particular manifestations of violence. In some contexts, especially when this violence is targeted at someone on the basis of their sexual orientation or gender identity, it may also be defined in law as a hate crime.

GBV is most often directed at women and girls as the obvious bearers of the female and feminine. LGBTQI individuals may also experience GBV, including on the basis of being gender non-conforming and/or not practicing heterosexuality. Violence may also be used to feminise men, or undermine their masculinity, ensuring that they are not exempt from some forms of GBV either. The use of violence to institute and maintain particular forms of gender relations is also influenced in complex ways by perpetrators' ideas about their victim's race, disability, social class and citizenship status, among other factors. These factors similarly influence how others respond to instances of GBV, as well as individuals' access to helpful resources.

GBV takes different forms including physical, sexual, emotional and psychological, as well as economical. These forms may vary across different societies and at different historical points. The increasing availability and sophistication of digital technologies, for example, illustrates the need for institutions to be alert to these changing manifestations of violence and abuse in order to ensure their responses remain relevant and up to date.

In South Africa, GBV has most often manifested as intimate partner violence (IPV), whether in short-term or more permanent relationships; as well as sexual harassment and assault, and rape. Our law defines these behaviours as follows:

### **2.1.1. Intimate Partner Violence**

IPV is one type of violence dealt with by South Africa's Domestic Violence Act (DVA), (Act No 116 of 1998). IPV is domestic violence by a current or former spouse or partner in an intimate

relationship against the other spouse or partner. IPV can take a number of forms, including physical, verbal, emotional, economical and sexual abuse, as well as stalking and intimidation, or any other form of controlling behaviour. It includes by law “engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration” irrespective of whether these relationships are heterosexual or same-sex.

Furthermore, according to the DVA, domestic relationships can exist between people who share a residence but have no sexual or romantic relationship. This brings both housemates and students in residences within the ambit of the Act’s protection.

### **2.1.2. Flashing**

In terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act (SORMAA), (Act No 32 of 2007), flashing is defined as exposing one’s genital organs, buttocks, or female breasts to the view of others. Whether this is an offence will depend upon the context in which such exposure takes place. Revealing these parts of the body can constitute a legitimate form of protest or be sanctioned within particular cultural practices.

### **2.1.3. Sexual Assault**

Sexual assault refers to different forms of unwanted touching and sexual contact. The SORMAA defines sexual assault as the unlawful and intentional sexual violation of another person without their consent. Sexual violation includes any act which causes direct or indirect contact between the genital organs or anus of one person or, in the case of a woman, her breasts, and any part of the body of another person or an animal, or any object, including any object resembling or representing the genital organs or anus of a person or an animal. It can also include unwanted kissing, as well as contact between one person’s mouth and the genital organs or anus of another person, or a woman’s breasts. The unwanted masturbation of one person by another also falls within the definition of sexual violation.

### **2.1.4. Rape**

Rape is an unlawful and intentional act of sexual penetration with another person without that person’s consent. Sexual penetration can be vaginal, anal and oral. While acts of oral penetration are only considered rape when penetration is accomplished by a genital organ, in the case of vaginal and anal penetration, both penetration by any body part, or an object, constitutes rape.

South African law recognises that consent must be freely given and thus distinguishes between submission and consent. Consent is undermined under the following circumstances:

- i) The use of force or intimidation by the alleged perpetrator against the complainant, another person or the property of these persons;
- ii) A threat of harm, real or perceived, by the alleged perpetrator against the complainant, another person or the property of these persons;
- iii) An abuse of power or authority such that the complainant is inhibited from expressing her/his resistance or unwillingness to participate in the act;
- iv) False pretences or by fraudulent means;
- v) The inability of the complainant to appreciate the nature of the act of sexual penetration, including where the complainant is at the time of the commission:
  - o asleep or unconscious;
  - o in an altered state of consciousness, including, but not limited to, under the influence of any medicine, drug, alcohol or other substance, to the extent that her/his ability to consent is adversely affected; or
  - o mentally disabled.

The recognition of how particular circumstances can be exploited in coercive ways highlights the importance of context in determining whether or not particular acts were genuinely consented or submitted to.

## **2.2. Context of Gender-Based Violence in Post-School Education and Training Institutions**

No national data exists documenting the extent of GBV on campuses. The few studies which have been undertaken are also specific to particular universities (and often particular faculties) and focus almost exclusively on students' experiences of sexual harassment and rape. Surveys are not comparable and do not enquire about intimate partner violence. Violence towards LGBTQI students has been similarly neglected.

Emanating out of the research, GBV manifests on campuses and other places of learning in the following ways:

- i) Grading or rating of appearance by verbal comment, wolf whistling, or other noises;
- ii) Stalking and repeated, unwanted requests for dates;
- iii) Derogatory comments, including in relation to people's gender non-conformity;
- iv) The use of work (either academic or administrative) as an excuse for inappropriate, private meetings;
- v) Rape;
- vi) Sexual assault;
- vii) Physical assaults by intimate partners, or against individuals perceived as gender-nonconforming;

- viii) Requests/demands for sex in exchange for improved marks, accommodation in residences, or other needs and benefits;
- ix) Spying, or intruding upon women and men in residences while bathing or dressing;
- x) Streaking and flashing;
- xi) In the case of abusive relationships, preventing, or interfering with, a partner's studies, including by withholding fees; and
- xii) Murder by an intimate partner, individuals or groups of individuals (in the case of perceived gender-nonconforming).

These can occur between students, between staff and students, as well as between staff. They may also be perpetrated by third parties such as visitors to campus, on-site contractors or someone outside the institution. A survey done by HEAIDS in 2016 reflects that GBV outside campuses and residences by students, staff or third parties; or experiences of GBV prior to attendance at, or employment by the institution of third parties account for the bulk of victimisation. They are extremely difficult to monitor and report on, but cannot be treated as irrelevant, given their effects on attendance, learning and performance.

Therefore PSET institutions must be prepared to work with at least six specific groups (staff and students) in responding to GBV:

- i) Those who have already experienced GBV prior to attending, or being employed by, a PSET institution;
- ii) Those who were subjected to GBV by another student or staff member while employed by, or studying at, a PSET institution;
- iii) Those who were subjected to GBV by third parties over whom PSET institutions have no jurisdiction;
- iv) Those who have behaved violently;
- v) Those who may be at risk of behaving violently; and
- vi) Lastly, the entire institution's staff and students form a very important group who must be made aware of GBV, how to avoid situations where GBV can occur and what to do in an emergency.

One of the most significant challenges of GBV in general, and in specific in PSET institutions, is low levels of reporting to structures responsible for addressing GBV. As is the case more generally, those who experience GBV are more likely not to report, or if they report, they report such incidents to their families and friends, rather than to formal structures such as SAPS.

A number of factors contribute to such under-reporting:

- i) Vague policy that leaves the reporting process unclear;
- ii) Lack of knowledge about existing policies and legislation;
- iii) Lack of trust in institutional structures, including the fear of being victimised;

- iv) Being dissuaded from pursuing formal complaints;
- v) Reluctance to engage with processes seen to be lengthy and which offer inadequate support and protection to complainants;
- vi) Feelings of confusion, guilt and uncertainty over the incident(s), including self-blame, or concerns about possible complicity;
- vii) Fear of being labelled and stigmatised;
- viii) Complex feelings of respect and admiration for the perpetrator, including not wanting to adversely affect his future and career;
- ix) Fear of being regarded as insubordinate and being victimised by superiors e.g. when perpetrator is a staff member or a senior student;
- x) Inadequate psycho-social support;
- xi) A Belief that ignoring it will cause it to stop; and
- xii) Institutional silence around sexual harassment, suggesting that it is not something to be raised.

The design, location and management of institutional structures and mechanisms can also limit the effectiveness of responses. Where responses are fragmented across a range of institutional structures such as human resources, student affairs, legal offices, and Equity and Transformation units (universities)/Student Support Services (TVET colleges), they may end up not communicating with each other, resulting in confusion over who to report to, as well as the follow-up of cases. Mostly, such structures are reported as lacking institutional authority, being under-resourced and having just one person available to manage all processes. More generally, there may be confusion around what constitutes sexual harassment.

Under-reporting has ensured that few complaints are laid – with the result that those working with complaints often have only a limited store of experience from which to draw. This lack of experience is further compounded by the fact that personnel tasked with managing these processes may have received no training to do so either. Finally, institutions are perceived as wishing to conceal or brush aside allegations of GBV in the attempt to protect the institution's reputation.

Most of these factors are amenable to intervention via clear, well-worded policy documents and effective and responsive practices and procedures. At a minimum these must include case management and investigation; psychological and social support to complainants; and prevention activities, including awareness-raising and education.

### 2.3. Key Principles for Gender-Based Violence Policy Development and Implementation

This Policy Framework and any policies developed by individual PSET institutions must be informed by the following principles:

- i) **Rights-based:** The values and rights contained in the Constitution (Act No 108 of 1996) must underpin all policy processes and procedures. At a minimum, these must actively seek to give concrete expression to the rights to equality; dignity; freedom and security of the person; and bodily and psychological integrity;
- ii) **Comprehensive and multi-faceted approaches to GBV:** PSET institutions' responses to GBV cannot focus on one aspect or manifestation of the problem alone. Even though the nature of the response may differ, all forms of GBV must be responded to. Further, interventions to address GBV must be multi-faceted, comprising prevention and information; established structures; confidentiality, trust and empathy; complaints processes and procedures; support to complainants; and (where possible) assistance to the perpetrator in changing their behaviour;
- iii) **Comprehensive and multi-faceted approaches to GBV prevention:** PSET institutions' responses to GBV must include comprehensive prevention, education and information about GBV policies and programmes including social mobilisation activities and campaigns intended to promote safety on campus and prevention of GBV;
- iv) **Specialisation:** Responding to GBV requires specialised knowledge and skills. All staff and students involved in addressing GBV in any way must be able and skilled to handle it. This include being gender-sensitive, receiving ongoing training and support and conducting their work in accordance with clear guidelines, protocols and codes of ethics. Programmes and other responses must reject ideologies that perpetuate gender stereotyping or cultural beliefs, excuse or justify gender-based violence or blame complainants;
- v) **Confidentiality:** All responses to GBV must maintain the confidentiality and privacy of the complainant whose trust, safety and physical and psychological needs must be prioritised;
- vi) **Complainant-centred:** Assistance to the complainant must support and encourage their sense of personal control, which includes respecting the complainant's informed decision at every stage of the process. Reporting, investigative or support staff must offer comprehensive information about all processes and options in a manner which is non-judgmental, appropriate, clear and sensitive to the complainant in terms of language, culture, disability, gender and sexuality;
- vii) **Zero tolerance:** Policies must contain a clear statement by the institution rejecting all forms of GBV. This message must not be diluted or made ambiguous by the policy referring to false complaints, or procedures for dealing with allegedly false complaints. Should investigations yield evidence of false complaints these can be dealt with in the same way misconduct is ordinarily dealt with; and
- viii) **Accountability:** Implementation of the policy must be routinely monitored, reported and evaluated and senior managers held accountable for its effective implementation. This

includes maintaining documentation and records in accordance with health, police and legal requirements and the need for confidentiality, security and choice.

## 2.4. Policy Mandates

This section outlines the mandate for the development of the Policy Framework by covering the international context, agreements and treaties relevant to GBV, and the legislative and policy context in South Africa.

### 2.4.1. International Context, Agreements and Treaties Relevant to Gender-Based Violence in Post-School Education and Training Institutions

South Africa has ratified a series of international instruments since the birth of democracy in 1994.

Enshrined in the UDHR, the *Beijing Declaration and Platform for Action* (1995) calls for the following measures:

- Adopting and/or implementing and periodically reviewing and analysing legislation to ensure its effectiveness in eliminating violence against women, emphasising the prevention of violence and the prosecution of offenders;
- Providing women who are subjected to violence with access to the mechanisms of justice, and, as provided in national legislation, to just and effective remedies for the harm they have suffered;
- Informing women of their rights in seeking redress through such mechanisms of justice;
- Creating and strengthening institutional mechanisms so that women can report acts of violence against them in a safe, confidential environment, free from the fear of penalties or retaliation;
- Create, improve or develop a funding model for training programmes for personnel dealing with gender –based violence in order to ensure fair treatment of victims; and
- Provide psycho-social support and legal support for victims of gender-based violence.

This Policy Framework fully endorses the measures of the Beijing Declaration and Platform for Action (1995) as well as Article 4 of the African Union Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (2003). This Article calls for African states to focus on both public and private violence against women and adopt specific measures to protect victims and punish perpetrators. The causes of violence against women should also be identified and support services be provided to victims.

South Africa has further committed itself to the realisation of the *2030 Agenda for Sustainable Development* (2016). Goal 5 addresses gender equality, as one of its targets, the elimination of all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.

## **2.4.2. General Legislative and Policy Context in South Africa**

The Constitution (Act No 108 of 1996), as the supreme law, prohibits GBV with all its manifestations. Chapter 2 of the Constitution of the Republic is the Bill of Rights ensures the equality and human dignity of all citizens.

### **2.4.2.1. The South African Constitution (Act No 108 of 1996)**

The South African Constitution (Act No 108 of 1996) as the highest law of the land defines the rights to which all citizens are entitled. In relation to violence, the following provisions of the Constitution apply:

- **Section 9:** Everyone is equal before the law and has the right to equal protection and benefit of the law. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. No person may unfairly discriminate directly or indirectly against anyone;
- **Section 10:** Everyone has the right to human dignity and the right to have their dignity respected and protected;
- **Section 12(1):** Everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either private or public sources; and
- **Section 12(2):** Everyone has the right to bodily and psychological integrity, which includes the right: to security in and control over the body; and not to be subject to medical and scientific experiments without their informed consent.

### **2.4.2.2. The Promotion of Equality and Prevention of Unfair Discrimination Act (Act No 4 of 2000)**

The Promotion of Equality and Prevention of Unfair Discrimination Act (Act No 4 of 2000) (PEPUDA) prohibits discrimination of any kind on the grounds of sex, gender or sexual orientation and makes clear that GBV is considered a prohibited form of discrimination. Its provisions have broad application that extend beyond the workplace and thus place a duty on all PSET institutions to promote equality.

### **2.4.2.3. Employment Equity Act (Act No 55 of 1998)**

The Employment Equity Act (Act No 55 of 1998) states that “No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice,” and mandates that employers take steps to eliminate unfair discrimination in the workplace.

#### **2.4.2.4. Code of Good Practice on the Handling of Sexual Harassment in the Workplace (2008)**

The Code of Good Practice on the Handling of Sexual Harassment in the Workplace (2008) was developed under section 203(1) of the Labour Relations Act (Act No 66 of 1995). The Code recommends that all persons designated to support and assist complainants have the appropriate skills and experience; are appropriately trained; and given adequate resources to carry out these duties. The Code suggests that employers seek to maintain an environment where the dignity of all employees is respected, complainants are taken seriously and complainants do not fear reprisals. Where employers are aware of incidents of sexual harassment and fail to take action against these, they may be held vicariously liable for their occurrence by the courts.

Labour legislation and the right to equality have direct and obvious applicability to PSET institutions in their role as workplaces. PSET institutions are more than workplaces however; they are also educational institutions required to promote a positive learning environment. This includes a fiduciary duty towards students that obligates institutions to protect students from harm while on campus and from persons employed or associated with the institution. Thus PSET institutions are required to uphold the rights to freedom and security of the person, which incorporate the right to be free from all forms of violence, and take note of the civil and criminal laws emanating from these provisions in the Bill of Rights.

#### **2.4.2.5. Criminal Law (Sexual Offences and Related Matters) Amendment Act (Act No 32 of 2007)**

The SORMAA (Act No 32 of 2007) is the main body of legislation dealing with sexual violence against both adults and children. It sets out comprehensive definitions for a range of sexual offences, from flashing to rape. In relation to rape, institutions must take into account the Act's recognition of how an abuse of power or authority can undermine consent. Depending on the circumstances, this may mean that *quid pro quo* harassment, which entails the denial of particular resources such as improved marks, access to a residence, or the offer of a job or promotion unless sex is acceded to, can also be dealt with as rape.

The Act also introduces a supportive structure aimed at ensuring its effective implementation. This structure encompasses the establishment of an Inter-Sectoral Committee, the adoption of a National Policy Framework (NPF) for the Management of Sexual Offences and the development of national instructions, directives and training courses for police officials, prosecutors and medical practitioners dealing with sexual offences. Importantly, the NPF also places certain duties on the DHET in relation to sexual offences (***see also section under Enforcement***).

#### **2.4.2.6. *The Protection from Harassment Act (Act No 17 of 2011)***

The Protection from Harassment Act (Act No 17 of 2011) addresses harassment and stalking behaviours which violate Constitutional provisions of right to privacy and dignity of individual persons. The Act provides for inexpensive civil remedy to protect a person from behaviour which may not constitute a crime but may impact negatively on various rights of an individual. It aims to address harassing behaviour by means of a court order, in terms of which the harasser is prohibited from continuing with the act of harassment. If the harasser breaches a protection order, he or she commits an offence which is punishable with a fine or imprisonment. The Act also introduces important protection from digital forms of harassment.

#### **2.4.2.7. *South Africa's Domestic Violence Act (Act No 116 of 1998)***

Intimate partner violence is one type of family violence dealt with by South Africa's Domestic Violence Act (DVA), (Act No 116 of 1998). Relationships governed by the Act include "engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration" irrespective of whether these relationships are heterosexual or same-sex. The Act also recognises that domestic relationships can exist between people who share a residence but have no sexual or romantic relationship. This brings both housemates and students in residences within the ambit of the Act's protection.

The Act defines domestic violence as including, among other things, harassment, abuse of a physical, sexual, emotional, verbal and/or physical nature, stalking and intimidation, as well as any other form of controlling behaviour.

All other relevant Acts and policies are discussed in the ***enforcement section*** of the Policy Framework.

### **2.4.3. Legislative and Policy Context in the Post-School Education and Training System**

The DHET has passed a series of White Papers, Policy Frameworks and Acts aimed at combating all forms of discrimination, in line with the Constitution (Act No 108 of 1996) of the Republic.

The Higher Education Act (Act No 101 of 1997), the Continuing Education Act (Act No 16 of 2006) and the Skills Development Act (Act No 97 of 1998) lay the foundation for non-discrimination and equality amongst all people in the PSET system. It provides the legislative grounding for PSET policies.

The *White Paper on Education and Training* (1995) acknowledges the skewed gender relations in many education institutions, including the most senior, social relations among students, and between staff and students, exhibit sexism and male chauvinism. Sexual harassment of girl and women students and women teachers, as well as acts of violence against women, are

common in many parts of the education system, both on and off campus and has to be addressed. From 1995 there is a strong continued focus on improving equity in relation to gender, race and disability.

The *White Paper 3, A Programme of Transformation of Higher Education* (1997) states that supporting a democratic ethos and a culture of human rights through education programmes and practices conducive to critical discourse and creative thinking, cultural tolerance and a commitment to a humane, non-racist and non-sexist social order is an element of the education system's transformation. It strongly objects to incidents of rape and sexual harassment on campuses and urges institutions to develop internal policies in this regard. The *Continuing Education Act, (Act No 16 of 2006)* requires TVET Colleges to adopt disciplinary codes that address any form of unfair discrimination, violence and harassment, especially of a sexual nature. College Councils are required to develop strategic plans that address gender and other forms of inequality. They also need to ensure that there are measures that guarantee the safety and security of students, lecturers and support staff.

The contribution of education to social justice is also recognised in Chapter 2 of the *White Paper for Post-School Education and Training* (2013) states clearly the objectives of the PSET system is, in particular in improving access and success for those groups whose race, gender or disability status had previously disadvantaged them" as well as to create a social inclusive society in PSET institutions with no discrimination based on inter alia gender.

Similarly, the national education policy mooted in the 2006 Continuing Education and Training Act for TVET colleges also sees the education and training system as contributing both to the personal development of individual students, as well as the broader development of society, including through the advancement of democracy and rights.

The *Policy Framework for the Realisation of Social Inclusion in the PSET System* (2016) calls on PSET institutions to "ensure that institutional policies include social inclusion mechanisms that are guided by principles of substantive equality that aim to remove all barriers that perpetuate and create inequalities in society." The Policy Framework makes it mandatory for PSET institutions to develop policies eliminating sexual harassment, including by setting standards and guidelines for dealing with offenders.

The development of policy, standards and guidelines for the management of sexual offences is also underlined by the *Sexual Offences and Related Matters Amendment Act (Act No 32 of 2007)* (SORMAA). The SORMAA mandates the training of staff in the management of sexual offences, the support of victims as well as monitoring and evaluation of the intervention measures.

The DHET is part of the Inter-Sectoral Committee, which is chaired by the Director-General of the Department of Justice and Constitutional Development. It is required to submit its own

intervention measures and reports to the Inter-Sectoral Committee as directed by the National Policy Framework (NPF) for the Management of Sexual Offences.

These cited legal measures should be read with other applicable laws such as The Domestic Violence Act (Act No 116 of 1996), The Protection from Harassment Act (Act No 17 of 2011) and The Promotion of Equality and Prevention of Unfair Discrimination Act (Act No 4 of 2000).

These measures, together with international protocols on human and people's rights and gender ratified by South Africa are enforceable and there can be legal consequences for the Department, the PSET institutions and the perpetrators in general, if they are ignored.

### 3. Strategic Intent

#### 3.1. Vision Espoused in the Policy Framework

The DHET's vision as contained in the as set out in the *White Paper for Post-School Education and Training (2013)*, is set within the context of cooperation and mutual support among the DHET and institutions for the benefit of the PSET system, its students and other stakeholders.

This Policy Framework acknowledges the vision of the White Paper for PSET as:

- A PSET system that assists in building a fair, equitable, non-racial, non-sexist and democratic South Africa;
- A single, coordinated PSET system;
- A PSET system that has expanded access, improved quality and increased diversity of provision;
- A stronger and more cooperative relationship between education and training institutions and the workplace; and
- A PSET system that is responsive to the needs of the individual citizens and of employers in the public and private sectors, as well as broader societal and developmental objectives.

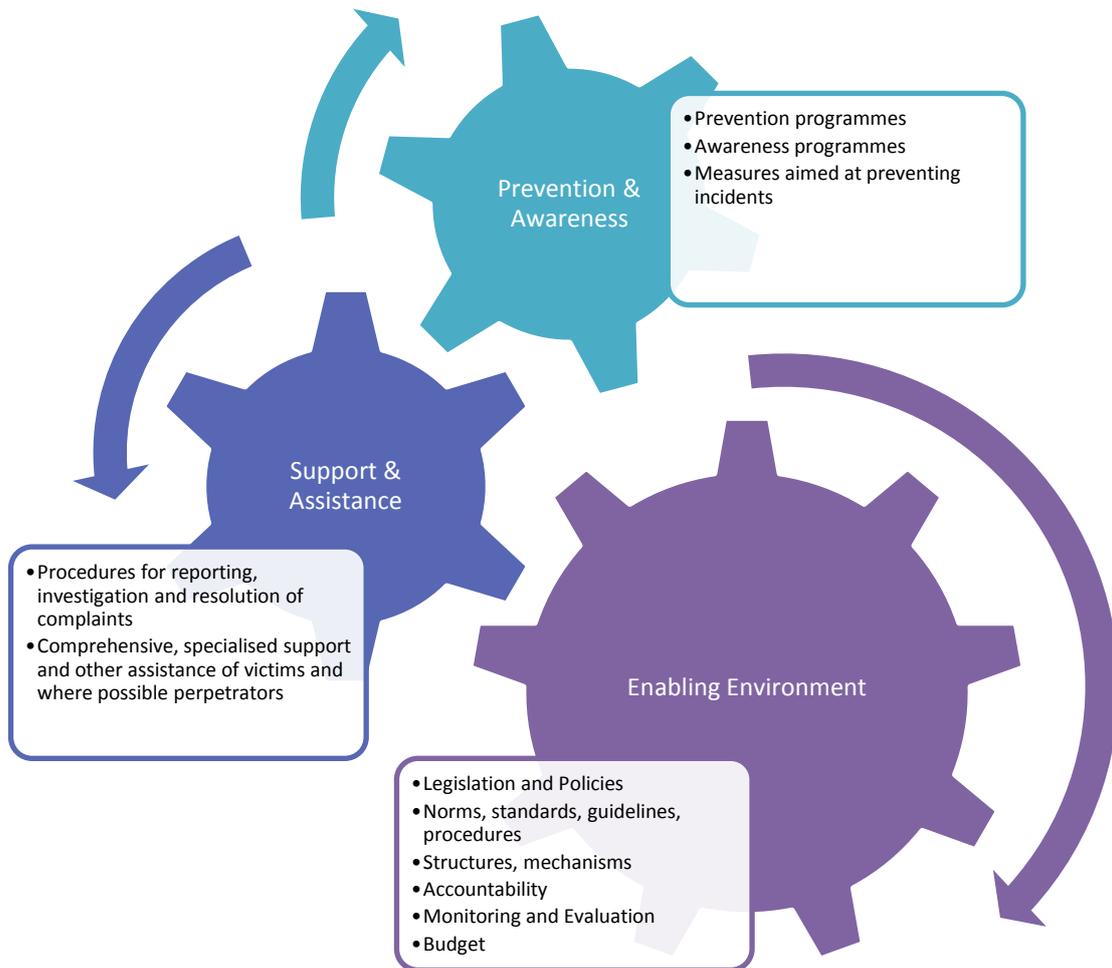
Within the vision of the DHET, the vision/impact of the Policy Framework is that: 'everyone has the right to live, study and work freely and safely in PSET institutions without any fear of sexual/gender-based intimidation, harassment, abuse, rape or other forms of sexual/gender-based harm'

### 3.2. Goals of the Policy Framework

The goals of the Policy Framework can be encapsulated as follow:

- An enabling environment is created to inform, prevent, support and monitor GBV in PSET institutions. These include:
  - Support PSET institutions through policies, norms, standards, guidelines and standardised procedures;
  - Create national structures and mechanisms intended to support PSET institutions' implementation of GBV policies;
  - Ensured effective implementation of policy and programmes through attention to budgeting, monitoring, reporting and evaluation; and the creation of a system of accountability;
- Promote the safety of all students and staff by putting in place comprehensive awareness and prevention programmes intended to raise awareness of policies and services addressing GBV, as well as other measures aimed at preventing incidents of GBV in the PSET system;
- Put supportive, efficient and reparative assistance procedures to complainants/victims in place. These include:
  - Establish just and specialised procedures for the reporting, investigation and resolution of complaints; and
  - Provide comprehensive, specialised support and other assistance to victims and where possible perpetrators of GBV.

The following figure illustrates the intricacies of the goals of the Policy Framework:



### Outcomes Adopted in the Policy Framework

The Policy Framework sets out a comprehensive response to GBV consisting of a combination of outcomes intended to mutually reinforce each other. These comprise:

- National and institutional enabling environment is in place to curb GBV;
- National support for PSET institutions is effected in implementation of GBV policies;
- Students and staff support in GBV-related matters is realised;
- Prevention of GBV is prioritised; and
- National and institutional systems of accountability are performed.

### **3.3. Strategic Objectives of the Policy Framework**

In order to realise the vision, goals and outcomes of the Policy Framework, the following Strategic Objectives are formulated.

#### **3.3.1. Strategic Objective 1: Enabling Environment**

Create an enabling environment in the DHET and PSET institutions to ensure the effective implementation of the Policy Framework, actions and programmes.

These include regulations, norms, standards, guidelines and standardised procedures; structured engagements with other government departments, agencies, entities and non-governmental organisations; institutional policies are implemented; as well as accountability, monitoring and evaluation. The Policy Framework allows for the participation in and the establishment of national structures and mechanisms intended to enable implementation of PSET institutions' policies. Funding remains pivotal to addressing GBV in a structured manner in institutions, therefore attention has to be given to funding strategies and resourcing the system to address GBV.

#### **3.3.2. Strategic Objective 2: Prevention and Awareness**

Promote the safety of all students and staff by putting in place comprehensive prevention programmes intended to raise awareness of policies and services addressing GBV, as well as other measures aimed at preventing incidents of GBV in PSET institutions.

Prevalence data suggests that a significant proportion of the violence and abuse that students and staff experience will be perpetrated outside the institutions' property or by individuals who do not fall under the direct management or jurisdiction of the institution. This category may include intimate partners and other family members, friends, neighbours, acquaintances and other community members; and those unknown to the complainant.

While PSET institutions have very limited influence over incidences happening outside the institution or these people, this does not stop institutions from providing practical advice, information and guidance (for awareness and prevention) and assistance and support (strategic objective 3) to staff and students victimised in this way.

PSET institutions can however, exercise some degree of control over third parties such as visitors to the university or college, as well as employees of companies contracted to provide some form of service to the institution. Staff and students are also placed in workplaces, such as hospitals and schools, where they are expected to supervise, or complete, practical training. These teaching and training facilities are seldom under the control of PSET institutions. Nonetheless, universities and colleges are still in a position to ensure that harassment and other forms of abuse by the staff of these training sites is addressed.

### **3.3.3. Strategic Objective 3: Support and Assistance**

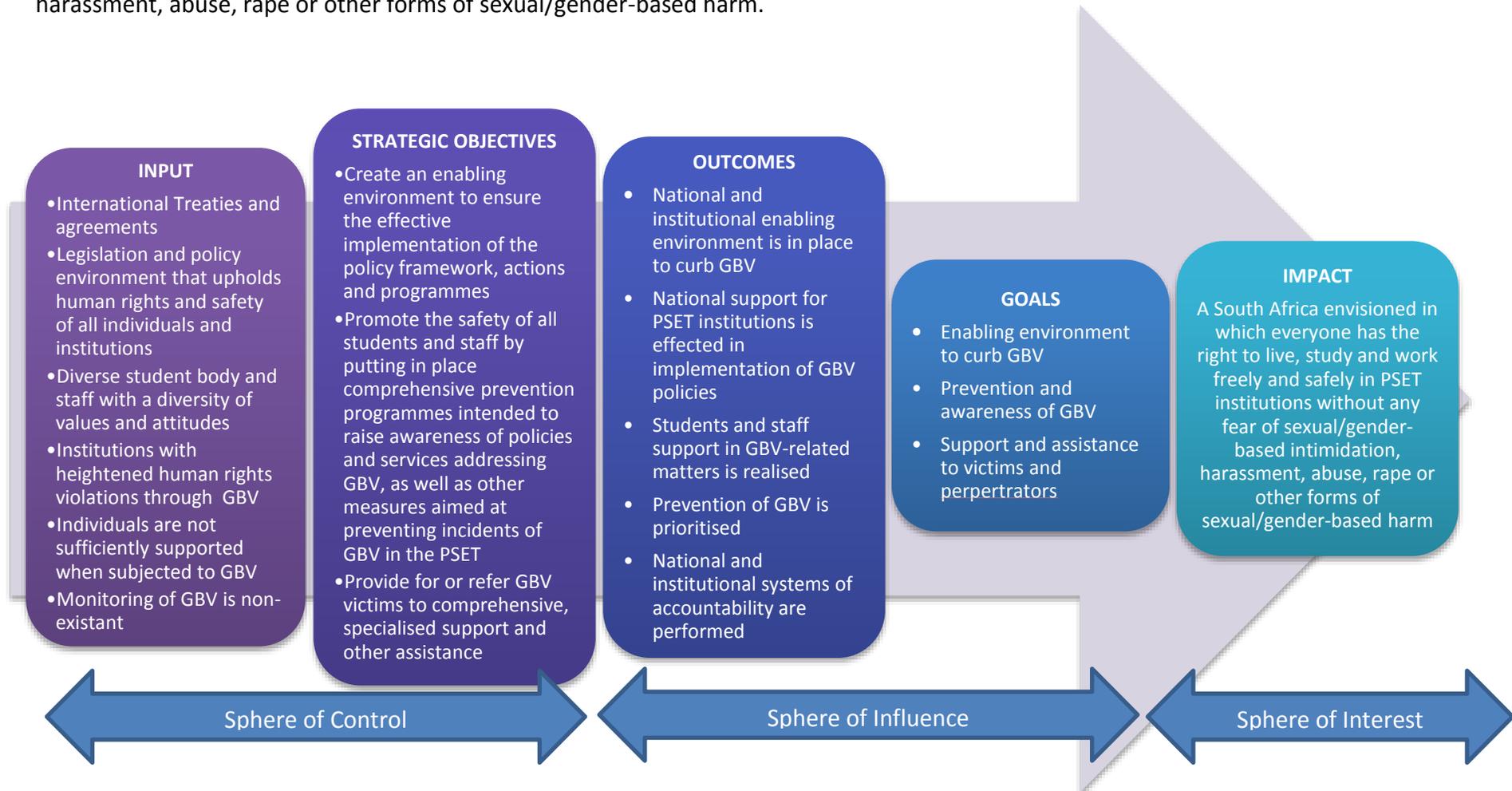
When GBV, in any form as outlined in paragraph 2.1 (Conceptualisation of GBV) occurs, PSET institutions must refer the victim of GBV appropriately to and provide for comprehensive, specialised support and other assistance. This support and assistance must be properly and systematically be reordered and appropriately reported.

PSET institution must also consider, where possible, appropriate support and assistance to the perpetrator.

The policy actions that are emanating from the above strategic objectives are contained in paragraph 3.6.

### 3.4. Theory of Change

The rationale for a GBV Policy Framework for South African PSET as stated above is argued in terms of the theory of change that underpins the Policy Framework. The theory of change recognises that change at individual level depends on multi-level systemic reform and institutions valuing the right of everyone to live, study and work freely and safely in PSET institutions without any fear of sexual/gender-based intimidation, harassment, abuse, rape or other forms of sexual/gender-based harm.



### 3.5. Policy Actions Emanating from the Strategic Objectives

The following policy actions will be pursued under each strategic objective.

#### 3.5.1. Policy Actions Emanating from Strategic Objective 1: Enabling Environment

**Create an enabling environment to ensure the effective implementation of the policy framework, actions and programmes.**

The Minister will set up a special investigation task team that will report within six months on the extent and scope of sexual offences, directed at both staff and students, in the PSET sector with recommendations on addressing GBV in institutions.

The Department will:

- a) Conceptualise and run a national PSET GBV Campaign (within budgetary/resource constraints);
- b) Develop national regulations, norms, standards, guidelines and standardised procedures in support of the Policy Framework;
- c) Have structured engagement, develop partnerships and sign protocol agreements with Departments such as the Departments of Social Development, Health, Women, and Justice and Constitutional Development; SAPS and the National Prosecuting Agency where appropriate;
- d) Work closely with agencies and Non-Governmental Organisations where appropriate in the implementation of this policy;
- e) Ensure that national structures such as the National Social Inclusion Forum and the Transformation Managers' Forum (Universities) are set up for all sectors and that these structures address GBV appropriately, and that these structures must include Universities South Africa (USAf) and South African College Principals Organisation (SACPO);
- f) Provide guidelines to institutions for the development of institutional policies on GBV;
- g) Provide guidance around the structures, mechanisms and processes that PSET institutions must put in place to address GBV;
- h) Recommend steps that PSET institutions must take to both create awareness of GBV policies and prevent incidents of GBV;
- i) Set out a framework for oversight of the DHET and PSET institutions' development and implementation of this policy framework;
- j) Standardise on institutional mechanisms/arrangements tasked with dealing with sexual offences and the resourcing thereof, taking into account the type and size of institutions;
- k) Ensure that the eradication of GBV is identified as one of the drivers for social inclusion as outlined in the *Policy Framework for the Realisation of Social Inclusion in the PSET (2016)* and that GBV indicators for institutions are included in the agreed Social Inclusion Indicators;

- l) Ensure that GBV is part of the Social Inclusion Review and Improvement (SI-RIM) as outlined in the *Policy Framework for the Realisation of Social Inclusion in the PSET (2016)*;
- m) Establish just, specialised and efficient procedures for the reporting, investigation and resolution of complaints;
- n) Create effective and standardised reporting, monitoring and evaluation mechanisms;
- o) Develop mechanisms for the implementation and monitoring of institutional policies;
- p) Create a system of accountability; and
- q) Develop multi-pronged funding strategies.

Each PSET institution will develop and implement an enabling environment starting with a comprehensive, overarching policy addressing GBV and should be submitted to DHET. This policy must be integrated within other policies and reporting mechanisms of the institution.

Each PSET institution will:

- a) Have a comprehensive, overarching policy addressing GBV, that includes harassment and discrimination more broadly, staff grievance and disciplinary proceedings, as well as student and staff codes of conduct, that is aligned and integrated within the total policy environment of the institution, in specific policies addressing different aspects of discrimination and inclusivity (such as race, sexual orientation and disability);
- b) Institute a charter on ethics that will be signed by all staff and student leadership in institutions. The charter should clearly specify ethical conduct that pertains to the eradication of sexual harassment and GBV;
- c) Set structures, mechanisms and processes in place to address GBV, harassment and discrimination;
- d) Establish institutional mechanisms within the national norms set by the DHET, with adequate resources to deal with sexual offences;
- e) Use the SI-RIM to self-assess progress made in implementing measures against GBV;
- f) Establish effective reporting, monitoring and evaluation mechanisms; and
- g) Report quarterly and annually to the Department on GBV implementation as standardised.

### **3.5.2. Policy Actions Emanating from Strategic Objective 2: Prevention and Awareness**

*Promote the safety of all students and staff by putting in place comprehensive prevention programmes intended to raise awareness of policies and services addressing GBV, as well as other measures aimed at preventing incidents of GBV in the PSET.*

GBV occurs within a matrix of vulnerability constituted by gender identity, disability, sexual orientation, race, age, and level of income (to name but a few). Within this context power may be exercised both formally (through the positions people hold, for example), as well as informally (such as age, or the ability to write good assignments). Studying further also occurs

at a particular time in people's lives. For a number of students, attending university or college may be the first time they are away from their homes and families for extended periods at a point in their lives where they are increasingly making important decisions on their own behalf, including around sexual relations. This may be coupled with some pressure on both male and female students to be seen as sexually active. Strategies to prevent the occurrence of GBV must take this complex blend of dynamics into account, as well as how they manifest within individual institutions.

Within six months after the publication of this Policy Framework, the Department will convene a GBV Colloquium for all PSET institutions and stakeholders to identify national, regional and institutional initiatives to create awareness and prevent GBV in institutions. This colloquium will also identify resources that can be shared or collaboratively developed to be used across the country. It must also focus on the accessibility and availability of student accommodation which is an ongoing challenge for PSET institutions generally – including in relation to GBV. Where student housing is located, as well as how it is managed, can facilitate or limit incidents of all forms of violence, including GBV. Off-campus facilities leased by institutions have sometimes been located in areas that expose students to rape and other crimes on the walk to and from the institution.

This colloquium will be followed by a National Stakeholders' Forum that will meet annually to gauge progress made in implementing the Policy Framework, to identify gaps and set priorities for the DHET to consider.

Within the enabling environment set in Strategic Objective 1, the Department will furthermore:

Institutions must implement awareness programmes that focus on the prevention of GBV in PSET institutions, but also include information on how to handle disclosure of GBV.

PSET institutions will:

- a) Develop annual action plans for the awareness (including how to report incidents) and prevention of GBV and submit it to the DHET;
- b) Develop and share awareness and prevention materials to be used;
- c) Make available awareness and prevention materials on the National Portal and/or the Clearing House;
- d) Implement and report annually on the implementation of institutional plans to the DHET;
- e) Document and evaluate any programmes they develop to enable broader sharing of effective interventions with other campuses and share it with other institutions;
- f) Undertake safety audits of campuses and residences in order to identify issues of concern to students and staff and take the necessary steps to address these. This may include adopting new rules for accessing campuses, visiting hours at residences, as

well as the use of shared ablution facilities (to suggest but a few). Safety audits must also identify those parts of campus where students and staff feel unsafe, or where abuse could easily occur. Where environmental design provides opportunities for abuse, or security is inadequate, institutions must take steps to address these deficiencies. Such measures may include providing adequate lighting at night, help lines, and staff and student accompaniment by security personnel to residences, offices or other places;

- g) Promote the safety of all students and staff by putting in place comprehensive measures aimed at preventing incidents of GBV in PSET institutions (on campus, in residences and on transport). These include interventions that create and maintain a physical environment limiting opportunities for abuse and attack as staff and students go about their day; and the inculcation of gender-equitable norms within members of the campus community (see h);
- h) Inculcate individual and institutional change through combinations of education, awareness, campaigning and other forms of activism and programmes aimed at transforming gendered norms on campus;
- i) Exercise control over third parties such as visitors to the university or college, as well as employees of companies contracted to provide some form of service to the institution to avoid any contact with staff and students that can lead to GBV;
- j) When selecting contractors – especially security agencies –make prior training in GBV a condition of their appointment;
- k) Universities and colleges must communicate their GBV policy to contractors and encourage them to adopt similar policies, and to agree to the institution’s code of conduct while working on its premises;
- l) Work with workplaces, such as hospitals and schools among others, where staff are expected to supervise, or students expected to complete work-integrated-learning or practical learning to prevent GBV involving staff and/or students. Universities and colleges must enter into memorandums of understanding with workplaces and training institutions to ensure that procedures are put in place that enable students to make complaints and that these are investigated and resolved;
- m) Be mindful of staff and students may need to travel long distances to reach campus and be dependent on public transport to do so in either not schedule activities at times that can expose staff and students to risk or provide transport and/or escorts to students place of residence afterwards;
- n) Create student peer education networks. Students involved in peer education should reflect the diversity of students on campus, including LGBTQI students and students with disabilities.
- o) These discussion should also attend to the relationship between campus drinking and drugs cultures and GBV. While alcohol and the use of drugs, per se, does not cause violence, it can facilitate and excuse its expression, as local university-based studies and reports suggest. In the case of residential universities or colleges, PSET institutions

are encouraged to have clear drug and alcohol policies and approach liquor outlets to ensure the responsible sale of alcohol, among other measures;

- p) Critically scrutinise initiation and residence practices and rituals to ensure they do not contribute to the normalisation and perpetuation of stereotypical notions around gender and sexuality;
- q) Implement a staff empowerment programme. Staff at all levels must also be provided with opportunities to learn more about GBV, including its prevention. Discussions in this regard should focus on creating affirming and equitable work environments and relations, as well as engaging with students appropriately;
- r) Put measures in place to limit the extent to which lecturers can demand sex for marks such as ensuring that papers are marked by multiple examiners or are subjected to moderation processes; and
- s) Look beyond their immediate environment to engage in localised community-based initiatives and campaigns addressing GBV given that staff and students experience GBV mostly off-campus. This may include becoming involved with the local community policing forum and other relevant structures.

### **3.5.3. Policy Actions Emanating from Strategic Objective 3: Support and Assistance**

*Each institution will provide proper support and assistance to victims of GBV. PSET institutions must provide for and refer the victim of GBV appropriately to comprehensive, specialised support and other assistance. PSET institution must also consider, where possible, appropriate support and assistance to the perpetrator.*

Reporting points must be clearly identified for those who do wish to pursue complaints. Once reported, complaints may either be resolved through alternative justice processes (including mediation, restorative justice and remedial discussions), or dealt with as matters of discipline and/or criminal procedure.

Victims (and preferably also perpetrators) of GBV must have access to comprehensive, specialised support services in dealing with the case regardless of the form. It must furthermore accompany the victim through the process procedurally, socially and psychologically. This support and assistance must be properly and systematically be reordered and appropriately reported.

The Department of Social Development's GBV Command Centre (GBVCC) have to be integrated to support the Department and PSET institutions in support and assistance of GBV incidents. It is a 24-hour call centre dedicated to providing support and counselling to victims of GBV and can be integrally part of these services. The GBVCC is a comprehensive, integrated system that provides immediate, consistent, coordinated and timely support to victims of GBV. It uses mobile technology to estimate the location of a victim, assign the closest social worker in the field to the case, and record and receive continuous feedback on the case. The

Centre is also staffed by trained social workers/command centre agents who provide immediate counselling to victims and help them to avoid or minimise further exposure to GBV.

Reporting of GBV remains a complicated issue. Unless dealing with a student under 18 years of age, there is no legal requirement to formally report incidents of GBV unless it is a criminal offence as outlined in legislation. Therefore, within six month of the publication of this Policy Framework the Department, in collaboration with the Departments of Social Development and Justice and Constitutional Development; SAPS and the National Prosecuting Agency, will commission a study on the legal requirements pertaining to reporting and handling GBV in PSET institutions and provide institutions with policy statements in this regard.

The DHET will:

- a) Standardise reporting through regulations, norms, standards and/or guidelines for reporting incidents;
- b) Investigate the possibility of publishing a register of offenders that will be used in recruitment of council members, staff and support personnel;
- c) Investigate a 'whistle-blowing' mechanism to report GBV in PSET institutions; and
- d) Commission a study on the possible support to perpetrators of GBV and provide institutions with policy statements in this regard.

PSET institutions will:

- a) In conjunction with the establishment of a specialised structure, develop clear guidelines around the process of reporting any case of GBV. These guidelines must identify all the individuals/structures involved in the reporting of matters and set out their roles in this process;
- b) Develop policies, services and procedures for students and staff to report any GBV incidents that happen on campus;
- c) Put confidential processes and procedures in place that victims can report incidences of GBV without fear;
- d) Put support and assistance mechanisms in place that can immediately offer support to victims of GBV in PSET institutions. These include as a minimum reporting to the relevant authorities, providing immediate, consistent, coordinated and timely support and counselling to victims of GBV, in dealing with the case regardless of the form such as including indecent assault, physical violence, rape, verbal abuse, stalking, emotional abuse, sexual harassment, bullying and partner/family disputes, to name a few. It must furthermore accompany the victim through the process both procedurally, socially and psychologically;
- e) Commit to provide regular feedback to complainants regarding progress in the investigation;

- f) Provide free access to complainants, whether staff or students, to different forms of emotional and social support, including peer support, regardless of whether or not proceedings are instituted. This also includes access to external systems of support and counselling;
- g) Put in place measures to protect complainants' safety;
- h) Record and report cases, support and assistance properly and systematically;
- i) Develop communication mechanisms as part of their awareness drive to introduce students and staff to the effective reporting of GBV on campus. Although no-one should be pressurised to lay a formal complaint, all students and staff have to be aware of the advantages and procedures in laying a formal complaint, reporting GBV that happened on campus and have access to support services. Because victims are more likely to tell trusted others about experiences of GBV than they are to report these to authorities, a distinction needs to be drawn between disclosing and reporting GBV. In the former, victims may reveal incidents to confidants (such as fellow students, lecturers, or other members of staff) in the hope of relieving the burden of feelings associated with the incident and/or as a way of testing how others will react, with a negative response frequently discouraging any further action. Disclosure of particular incidents may also be coupled with requests for guidance around how to address the particular situation. In this instance, it may be helpful to refer individuals to a reporting point to explore their options further;
- j) Train and continuously support reporting officers to present options to complainants in a clear and neutral manner, without pushing them in a specific direction; train and support support-personnel and capacitate staff to support victims of GBV;
- k) Empower staff who have extensive contact with students (such as lecturers or residence wardens) with their institutions' reporting procedures so that they can provide students with accurate information about these. Except where they are the first point of disclosure, teaching staff should not however, play a significant role in these processes as their work commitments limit the attention they can give to matters. If they are to play any part, then this role must form part of their job description and their time be allocated accordingly;
- l) Ensure that background checks that are done in all PSET institutions before appointing any council member, staff member or support personnel on campuses on GBV offences. If there are any offence recorded, the perpetrator will be deemed unfit for appointment.

## 4. Policy Implementation

On publication, the Department and PSET institutions, will ensure the implementation of the Policy Framework and programming activities that includes:

- National level development of an enabling environment to curb GBV in PSET institutions;
- A national PSET GBV Campaign;

- Institutional level policy development and implementation strategies;
- Prevention and awareness activities;
- Support and assistance processes and procedures; and
- Capacity development of institutional staff and students.

#### 4.1. **Creation of a system of accountability**

The DHET must undertake to fulfil its role as outlined in applicable acts governing skills development, colleges and universities. It must ensure that PSET institutions observe national legislation and policies on combating GBV and discrimination. Some of the applicable laws go beyond the mandate of the Department. This will require the wider collaboration and coordination of implementation of this Policy Framework. The mandate of the Department is to create the enabling environment, support implementation and monitor implementation.

PSET institutions have been enjoined to attend to sexual harassment and rape as an aspect of institutional culture since 1997 and the issuing of White Paper 3. Two decades later, it is apparent that progress in this regard is not as advanced as it ought to be. It is thus necessary to establish accountability structures and procedures to ensure this goal is realised. These must operate at the level of both individual institutions, as well as the state.

#### **Governance of PSET Institutions**

According to the Higher Education Act (Act No 101 of 1997) University Councils must develop or review their own institutional policies, so that they can be in line with the Policy Framework and other pieces of legislation and policies governing PSET institutions. Councils as the highest decision-making bodies of institutions, is also responsible to review the institution's report to the DHET and set out the steps they propose undertaking to address any shortcomings identified by the report. Any progress made in attending to gaps identified by reports from previous years must also be reported on.

In terms of the Continuing Education and Training Act (Act No 16 of 2006), it is the responsibility of the college Council to draft strategic plans that include measures to address both gender and disability, as well as create safe learning environments for students, lecturers and support staff. These plans should also meet with the approval by the college's academic board. These provisions clearly locate responsibility for the development and implementation of a GBV policy with individual college councils.

The Council also has the power to appoint committees to assist it in the performance of its functions. They must thus appoint a committee able to oversee and support the implementation of the college's policy addressing GBV. It is also the responsibility of each college's council to review their particular institution's report to the DHET and include an addendum setting out the steps they propose undertaking to address any shortcomings

identified by the report. Any progress made in attending to gaps identified by reports from previous years must also be reported on.

### **Management of PSET Institutions**

University Vice-Chancellors and Principals of colleges are responsible for the safety and well-being of staff and students. Assessment of the overall implementation of the Policy Framework must form part of their performance contract and their annual performance appraisal. Senior managers responsible for different functions and structures within their institutions also have particular obligations to implement the Policy Framework effectively (including in residences). These responsibilities must be set out in their institutional policies and corresponding performance measures attached to their job descriptions.

PSET institutions must set up structures that will (1) provide awareness, information, advice, and guidance to prevent GBV; (2) deal with safety of students and staff; (3) handle incidences of GBV; (4) provide adequate assistance and psycho-social support to victims of GBV; and also (5) effectively deal with perpetrators as outlined in the Sexual Offences and Related Matters Amendment Act No 32 of 2007 (SORMAA) and other related legislation.

PSET institutions, supported by the Department and social partners, must undertake the training of students, student leaders, staff and support staff in diversity management, human rights education and gender awareness.

### **Institutional Forums**

It is a legislative mandate to set up Institutional Forums. Among other things, their role includes advising Council around race and gender equity policies, and fostering an institutional culture which promotes tolerance and respect for fundamental human rights and creates an environment for teaching, research and learning. Reporting on the status of policies addressing GBV clearly forms part of their mandate.

The composition of existing forums must be scrutinised to ensure they include officials responsible for addressing GBV. Where these Forums have not been set up or have not functioned as effectively as they should, steps must be taken by the Council and management of the institution to support their functioning. These structures must allow for student representation. Institutional Forums' role include that of advising the institutions' Council around race and gender policies as well as fostering an institutional culture which promotes tolerance and respect for fundamental human rights and creates an environment for teaching, research and learning. They must promote this positive institutional culture and report on the status of policies addressing GBV in their institutions.

It is the role of this structure to ensure that reports on the implementation of their particular institution's policy are compiled and submitted at least twice per year to Council, and that they review these reports beforehand.

## **National Coordination**

### ***Transformation Managers' Forum and Social Inclusion Forum***

Transformation Managers' Forums will be established for all institutional types where it do not exist, and will work collaboratively per institutional type to address GBV and to share experience and expertise. They will also work together in the Social Inclusion Forum that will aggregate in addressing national issues and priorities.

### ***Directors-General Inter-sectoral Committee for the Management of Sexual Offences***

The SORMAA requires the DHET to account for its implementation of various provisions of the legislation and the NPF. These include the development of policy, standards and guidelines; training and support of staff attending to sexual offences matters; and monitoring and evaluation of these activities. Quarterly and annual reports documenting progress are to be submitted to the Directors-General Inter-sectoral Committee for tabling in Parliament.

To fulfil these requirements the DHET must ensure that colleges and universities submit quarterly and yearly reports recording the following:

- a) The number of cases reported in total, including those where counselling/information only was sought. These totals should also distinguish between those cases perpetrated on-campus and those off-campus;
- b) The number of cases dealt with through alternative justice processes and the number referred to disciplinary proceedings. This section must also provide an overview of case outcomes;
- c) Time taken to resolve the cases and actions taken to mitigate obstacles to resolution of cases;
- d) Training provided to staff responsible for implementing the policy;
- e) The nature and extent of efforts made to provide information about the various policies to staff and students, including the platforms utilised to disseminate information;
- f) Any programmes or other interventions undertaken to improve safety and reduce incidents of GBV;
- g) Interactions with external stakeholders in relation to the policy, its programmes and procedures;
- h) Budget and expenditure on addressing GBV;
- i) Any policy developed to further support the implementation of the GBV policy; and
- j) Assessment of successes and challenges in implementing the policy, including any recommendations offered.

The Inter-Sectoral Committee for the Management of Sexual Offences is a structure mandated by section 63 of the SORMAA. The Committee is to consist of the Director-General of Justice and Constitutional Development (who is also designated the chairperson of the

Committee); the National Commissioner of the South African Police Service; the National Commissioner of Correctional Services; the Director-General of Social Development; the Director-General of Health; and the National Director of Public Prosecutions. The Committee should meet at least twice a year. The Committee, through the Minister of Justice and Constitutional Development, must submit reports annually to Parliament, by each Department or institution, on the implementation of this Act.

Section 65 sets out the responsibilities, functions and duties of the Committee. The Committee shall be responsible for developing and compiling a draft national policy framework, as contemplated in section 62(1), which must include guidelines for:

- a) The implementation of the priorities and strategies contained in the national policy framework;
- b) Measuring progress on the achievement of the national policy framework objectives;
- c) Ensuring that the different organs of state comply with the primary and supporting roles and responsibilities allocated to them in terms of the national policy framework and this Act; and
- d) Monitoring the implementation of the national policy framework and of this Act.

The DHET is included in this structure by the NPF.

### ***Commission on Gender Equality (CGE)***

The purpose of the CGE is to advance, promote and protect gender equality. Its functions include monitoring and evaluating the policies and practices of government, the private sector and other organisations to ensure that they promote and protect gender equality; public education and information; reviewing existing and upcoming legislation from a gender perspective; investigating inequality; commissioning research and making recommendations to Parliament or other authorities; investigating any gender-related complaints; and monitoring/reporting on compliance with international conventions.

This scope of activity grants the CGE a role in ensuring that PSET institutions develop and implement policies and programmes addressing GBV. Specifically, all PSET institutions, organisations and agencies are required to send copies of the annual report on their institutional response to GBV to the CGE.

The CGE will peruse these reports and may request institutions to provide further information about any aspect of these. The CGE may also issue recommendations to individual institutions, as well as to DHET arising from these reports.

The DHET will report annually to the CGE and the report will include comprehensive information on GBV in PSET institutions.

#### **4.2. Knowledge Management**

A knowledge and practice base in relation to GBV in PSET institutions has been developed over the decades. However, these developments have been uneven across institutions and there has been little opportunity for lessons and advances to be shared across the PSET system.

The DHET will facilitate the establishment of an electronic multi-channel platform as a mechanism and tool intended to address this unevenness by creating a supportive knowledge network in this field.

The DHET will investigate the establishment of an oversight body made up of expert government, university and college staff with a demonstrated interest in responding to GBV to advise the DHET in GBV's strategic direction and implementation in the PSET. It may review institutions' reports on their efforts to address GBV on campus and, where indicated, make recommendations regarding the improvement of their responses. The committee must issue its recommendations to DHET.

#### **4.3. Funding Strategy**

Although the Policy Framework is premised on a commitment to be non-disruptive of existing efficient and effective practices and budgets which are congruent with Constitutional values and government priorities; earmarked financial and human resources are necessary to provide support services as outlined in this Policy Framework, the SORMAA and other applicable policies.

Currently, through the specific mandates of each institution, GBV is funded through existing allocations. This arrangement will continue. Where further funding is required, it will need to be identified through current budgets and the National Treasury bidding process.

Funding strategies include: existing direct funding allocations from institutional budgets to ensure implementation of current mandates; budget support grants; allocation from the National Skills Fund (NSF); and donor funds. The challenge is to find the most appropriate mix of mechanisms, which will work in particular contexts. It is postulated that a "hybrid" resourcing model would emerge through an incremental distillation of "best practice" and "collaboration, cooperation and sharing of resources".

The DHET will explore possibilities where funding to institutions takes the form of block grants which enable strategies that require, or allow earmarking funds.

#### **4.4. Advocacy, Communication and Dissemination Plan**

An Advocacy, Communication and Dissemination Plan will be developed by the Department. This Plan will ensure that the Policy Framework is clearly understood by all role players. There

will be use of existing media platforms and instruments such as the observation of the *Calendar of Significant Days to promote Social Cohesion in the PSET System* as well as the holding of policy dialogues on an off campuses. The National Social Inclusion Forum (NSIF) will also be utilised as a structure to communicate and disseminate best practices.

Developing a written policy is only the first step in addressing GBV on campuses and PSET institutions must take a range of additional steps to create awareness of the policy and support its use. These measures cannot only be addressed to students and academic staff but must include service workers, unions and campus security, as well as contractors. At a minimum, these steps must include:

- a) Introducing the GBV policy during orientation activities, as well as residence programmes for first year students who may be particularly vulnerable to exploitative and abusive behaviour. Ideally, as part of their orientation, students should be required to complete a module on the policy, which may include testing around its contents, especially in relation to defining GBV and reporting incidents;
- b) Discussion of the policy must also form part of staff orientation and development;
- c) Raising awareness around the policy's existence must be ongoing. Faculties and departments must ensure that their class schedules allow for at least one discussion of the policy annually;
- d) Advocacy materials must be displayed where students are likely to congregate on campuses (such as fees offices) and residences. It must also be made available online;
- e) Electronic communication to all staff and students, as well as to third parties, at least once per year; and
- f) Workshops must also be conducted with student bodies, including the Students Representative Council (SRC), as well as house or other residence committees.

#### **4.5. Monitoring and Evaluation**

Monitoring and evaluation of the implementation of the Policy Framework will take place at two levels, institutional level and the national level. These two levels will interact all the time, in order to achieve a seamless system.

Monitoring and reporting of social inclusion, as outlined in the *Policy Framework for the Realisation of Social Inclusion in the PSET System (2017)* will include the monitoring of GBV in institutions.

A comprehensive Monitoring and Evaluation System will be adopted. Common indicators will be developed and agreed upon between the Department and PSET institutions. The purpose of the Monitoring and Evaluation System will be to periodically provide recommendations on how to improve the implementation of the Policy Framework across the PSET System. The Monitoring and Evaluation System will further take into account the diversity of the PSET System as universities and colleges cannot be treated the same.

This Policy Framework must itself be reviewed every five years. As PSET institutions become increasingly accustomed to implementing their policies and programmes addressing GBV it is likely that new issues may emerge and others become less important over time. Revising the Framework, is key to ensuring that it continues to provide relevant and appropriate guidance to the DHET and PSET institutions.

The Department, in consultation with PSET institutions, must set up monitoring and evaluation systems to monitor the implementation of the Policy Framework.

#### **4.6. Effective Date of Policy**

The implementation date will be stated in the Government Gazette.